

**RECOMMENDATION OF THE PRODUCER REVIEW BOARD AND DETERMINATIONS OF THE SECRETARY OF FOOD AND AGRICULTURE**

*Public Meetings of the Producer Review Board to Establish a Stand-Alone Quota Program Should a Federal Milk Marketing Order be enacted in California*

September 19, 2017

**BACKGROUND**

In February of 2017, United States Department of Agriculture (USDA) published its recommended decision for the establishment of a California Federal Milk Marketing Order (CA FMMO). The recommended decision does not allow for quota to be incorporated in the pricing and pooling provisions of a CA FMMO. Rather, it would necessitate quota to operate independently of a CA FMMO as a stand-alone program, administered by the California Department of Food and Agriculture (Department).

Pursuant to Food and Agricultural Code sections 62757, should a CA FMMO be established, the Secretary has authority to establish a stand-alone quota program for California. The Secretary may adopt, deny, or alter the Board's recommendations based upon her independent assessment of the Department's authority.

As a result of USDA's recommended decision, the Department secured legislative authority through trailer bill language to establish the needed stand-alone program provisions. The Secretary charged the Producer Review Board (Board) with developing a recommendation outlining the provisions for a stand-alone producer funded quota program.

The Board conducted four public meetings between May and September of 2017, received input from the public and technical assistance from department staff, developed the stand-alone criteria and submitted its recommendations to the Secretary. (Attachment A, Quota Implementation Plan (QIP).

**RECOMMENDATION**

Based upon input from the public and department staff, the Board developed the QIP outlining the detailed criteria of how a stand-alone quota program for California should work if a CA FMMO be enacted. Staff recommends approving the QIP as submitted by the Board. The QIP will only go into effect should eligible California dairy producers assent through a referendum process.

It is hereby determined that the newly developed QIP shall become effective if it is assented by California dairy producers through a USDA referendum and a CA FMMO is enacted.



Karen Ross, Secretary  
California Department of Food and Agriculture

9-21-17

Date

**STATE OF CALIFORNIA**  
**DEPARTMENT OF FOOD AND AGRICULTURE**



CALIFORNIA DEPARTMENT OF  
FOOD AND AGRICULTURE

**QUOTA IMPLEMENTATION PLAN**

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It is the intent of the Legislature that the Department implements a stand-alone quota plan, adopted by producer referendum, only if and when USDA adopts a Federal Milk Marketing Order for California. The “pooling plan” referenced in the Trailer Bill (Section 62757 of the Food & Ag Code) means this Plan.

### **Article 1. Definitions**

“Act” shall be known and may be cited as the “Food and Agricultural Code”.

“Assessable milk” means market milk received from California producers at a California plant.

“Assessment” means money collected to administer a stand-alone quota program or to fund quota premiums.

“Bulk market milk” means milk, cream, or skim milk, other than packaged products, from market milk sources.

“Dairy ranch” and “dairy farm” are synonymous to mean a commercial production facility which produces milk.

“Family Transfer” means the transfer of quota between spouses, direct lineal descendants and their spouses, direct lineal ancestors and their spouses, and registered partners.

“Handler” means any person who operates one or more plants in California or that engages in the operation of selling, marketing, or distributing in California of Bulk Market Milk he or she has produced or purchased or acquired from a producer, or a duly incorporated cooperative association of producers which has authority from its individual producer members to market their milk and receive payment therefore.

“Hardship” means a challenge to the management and operation of a dairy due to the operation of this Plan.

“Manufacturing milk” means milk, cream, or skim milk, the source of which did not have the approval of any public regulatory or health authority for disposition as market milk.

“Market milk” means milk, cream, or skim milk that is produced in conformity with applicable regulations of the appropriate public regulatory or health authority for disposition as market milk.

“Milk” for purposes of this Plan, means the lacteal secretion from one or more cows, including the milk fat, solids not fat, and fluid carrier portions thereof, each to be computed and accounted for separately.

“Milk fat or fat” for purposes of this Plan, means the fatty portion of milk.

“Month” means any one of the 12 calendar months.

“New producer” means any person qualified as a producer who does not have quota and meets all the requirements for new entry.

“Person” means any individual, business unit, or organization.

“Plants of governmental agencies” means any governmental agency that produces, processes, and consumes in its own facilities only its own production.

“Producer” means any person that produces market milk in the State of California from five or more cows and includes members of cooperative associations.

“Producer Review Board” means a review board appointed by the Secretary composed of no less than 12 members to advise the Secretary in the administration of this Plan.

“Qualifying period production” is the lesser of 150 pounds of fat and 375 pounds of solids-not fat or the average daily production of fat and solids not fat marketed to a milk plant located in the State of California during the 91-day period of September, October, and November immediately preceding the date of application or initial allocation, whichever is less.

“Quota” means a daily allocation of pounds of fat and solids not fat contained in market milk for the purpose of receiving a payout from funds collected from an assessment on all market milk produced and delivered in California. Nothing in this Plan is intended to affect the amount of quota owned by producers as of the date of implementation of this Plan.

“Quota eligible days” means the number of calendar days in the month less the number of days on which a producer is degraded in accordance with procedures established by an appropriate public regulatory or health authority.

“Quota milk” means that amount of fat and solids not fat contained in milk delivered by a producer during the month which is not in excess of the quota of such producer multiplied by the number of quota eligible days in the month.

“Quota Premium” means money paid to producers based on their ownership of quota.

“Quota Revenue” means revenue collected from producers of market milk, for the sole purpose of paying a premium to holders of quota.

“Receive milk” means to convey milk physically into a milk plant where it is utilized within the plant, or stored within such milk plant and transferred to another plant for utilization.

“Regional Quota Adjuster” means an adjustment to quota premiums, based on the location of the dairy farm to which quota is assigned.

“Secretary” means the Secretary of the California Department of Food and Agriculture and his or her authorized designee.

“Solids Not Fat” means any milk solids that are not fat and will be measured using the standard milk testing methods used in a Federal Milk Marketing Order.”

## **Article 2. Allocation of New Producer's Quota**

Section 200. Any quota which has reverted to the Department pursuant to a hardship shall be allocated on a continuing basis to qualified new producers. This quota will be accumulated until such time as there is sufficient quota to issue to the next new producer on the priority list.

Section 201. The new producer's initial quota allocation shall be 60 pounds of fat and 150 pounds of solids not fat, not to exceed their qualifying period production.

## **Article 3. New Producer Entry**

Section 300. A new producer shall make application to the Secretary on forms provided by the Plan Administrator to establish eligibility for an allocation of quota.

Section 301. To qualify for an allocation of new quota, a new producer shall:

- (a) Have a current market milk contract and be shipping to a California handler prior to making application, and
- (b) Have at least one year of continuous commercial production within California prior to making application, and maintain continuous market milk production until receiving an allocation of new quota, and
- (c) Hold at least 50 percent of the interest in a dairy operation, or
- (d) Operate a production facility that is completely separate and apart from any other production facility for a minimum of one year prior to making application and until new quota has been allocated, and
- (e) Operate a production facility under the same ownership percentages as stated in the application for a minimum of one year prior to making application and until new quota has been allocated.

Section 302. No individual or person may apply for new quota on more than one production facility.

Section 303. For a minimum of five years from the initial allocation, a new producer shall continue to meet the requirements specified under Section 301. Failure to comply with this provision shall result in the forfeiture of all new quota.

Section 304. In the case of partnerships or corporations applying under the provisions of this article, each individual who is a partner or stockholder must individually meet the qualifying requirements.

Section 305. New entry is not available if any individual involved in the ownership thereof has:

- (a) Transferred or benefitted from the transfer of quota, except under the provisions of Section 306, during the preceding ten-year period; or
- (b) Held an ownership interest in another entity which has quota.

Section 306. Producers who have qualified under this article for new quota shall be allowed to purchase or otherwise acquire quota without jeopardizing their eligibility for an allocation of new quota provided two years have elapsed since the receipt of their new producer application.

Section 307. If a new producer purchases or acquires quota under this section and subsequently transfers such quota, that producer shall not be eligible to receive or apply for any allocation of new quota under this article until ten years have elapsed since the date of the last transfer.

Section 308. The Secretary shall give priority to new producer applications in the following order:

- (a) The date the application is physically received at the location designated on the application;
- (b) The total length of time in production or time elapsed since a transfer of quota, whichever is less; and
- (c) The total length of time in market milk production.

#### **Article 4. Ownership and Transfer of Quota**

Section 400. A transfer of quota shall be made on forms provided by the Plan Administrator and received by the 15th of any month prior to the first of the month on which day the transfer will become effective.

Applicants for quota transfers shall certify in the application that all matters relating to the transaction have been fully disclosed and documented. Any misrepresentation of facts or falsity in statements shall constitute cause for forfeiture of all or any portion of the quota under consideration for transfer.

Transfers are subject to the following conditions:

- (a) The transfer of quota shall be made only to a person who maintains a valid market milk permit or qualifies as a producer;
- (b) Quota shall not be transferred by a transferor in an amount less than 50 pounds of quota fat unless the transferor is transferring the entire quota eligible to be transferred;
- (c) Quota may not be received by a transferee in an amount less than 10 pounds of quota fat unless the transferee is receiving the entire quota eligible to be transferred by the transferor;
- (d) Any transfer of quota shall become effective for computation purposes on the first day of the month following the day the transfer is submitted;
- (e) Any producer who has acquired quota pursuant to this section during the preceding 24-month period shall not be eligible to transfer quota to another producer except as this may be permitted under the provisions of Section 500;
- (f) Any producer who received quota under the hardship provisions of Article 5 shall not be eligible to transfer all or any part of the quota so assigned until five years have elapsed after such assignment. Any quota held by such producer, may be disposed of only in their entirety within the five-year period specified and, if they are so disposed of within that period, the quota assigned under Article 5 shall revert to the Department for reallocation;
- (g) Quota issued under the Hardship provisions shall revert to the Department for reallocation in the event the holder of such quota discontinues milk production within the periods specified in Paragraph 400(f);

- (h) Any producer transferring a portion of the quota shall not be eligible to acquire quota, except pursuant to Article 5, within the 24-month period following such transfer;
- (i) Family transfers as defined in Article 1 shall not be limited by the provisions of Paragraphs 400(e), 400(f), 400(g), 400(h), and 400(k), but the member(s) of the family receiving such quota shall be subject to any restrictions which would have been applicable had the quota not been so transferred;
- (j) Producers who received an initial allocation of quota pursuant to Article 2 shall not be eligible to transfer any quota to any other person within a five-year period following the initial allocation. Should such producer discontinue milk production within this five-year period, the quota shall revert to the Department;
- (k) A corporation or partnership shall notify the secretary whenever a change in ownership interest in excess of five percent has occurred among existing stockholders or partners. Any transfer of ownership interest in a corporation or partnership to a person other than those who currently have an interest shall constitute a transfer and such transfer shall be subject to all restrictions provided under this article;
- (l) Transfer by testamentary device or bequest or intestate succession shall be excluded from all transfer restrictions imposed under Paragraphs 400(e), 400(f), 400(g), 400(h), 400(j), and 400(k) but the transferee receiving such quota shall be subject to any restrictions which would have been applicable had the quota not been so transferred; and
- (m) In addition to the provisions of Paragraph 400(i), a transfer to a direct lineal descendant shall not be limited by the provisions of Paragraphs 400(j) of this section, but the transferee receiving such quota shall be subject to any restrictions which would have been applicable had the quota not been so transferred.

Section 401. A transfer of quota shall be made only after compliance with the following:

- (a) Application shall be made on forms provided by the Plan Administrator and received by the 15th of any month prior to the first of the month on which day the transfer will become effective; and
- (b) Applicants for quota transfers shall certify in the application that all matters relating to the transaction are true and accurate. Any misrepresentation of facts or falsity in statements shall be cause for forfeiture of all or any portion of the quota under consideration for transfer.

Section 402. Any producer who discontinues shipping market milk through a California handler for any reason, including the placement of a producer on degrade status in accordance with procedures established by a regulatory or health authority, may within 60 days:

- (a) Locate and commence shipments through a California plant or cooperative association, or
- (b) If otherwise qualified, sell or transfer the quota to one or more producers holding valid market milk permits. If quota is not made active by shipments of market milk to a California plant or cooperative association or is not transferred within the 60-day period, such quota shall revert to the Department.

Section 403. All transfers of quota shall be recorded by the Secretary and provide for public disclosure of the terms of such transfers upon request.

Section 404. Quota shall not be leased or rented by one producer to another.

## **Article 5. Hardship Consideration**

Section 500. Producers may request relief from hardship to the Producer Review Board, include the basis for which the review is requested, and the extent of relief requested.

The Producer Review Board may request the applicant to submit additional information or documents as it deems necessary and appear for oral interview. The Producer Review Board shall submit its recommendation in writing to the Secretary, along with its findings. The recommendation shall include support of the request, denial or partial relief and indicate the extent of relief recommended and the effective date for such relief.

The Producer Review Board recommendations shall be subject to approval or modification by the Secretary, who shall notify the producer in writing of the decision within 15 days after receiving the recommendations from the Producer Review Board.

## **Article 6. Handler Reports**

Section 600. Each handler shall submit a monthly production report due no later than the 9th day of the following month on forms provided by the Plan Administrator and shall contain the following information identified by producer:

- (a) The pounds of milk, milk fat and solids not fat content of market milk received into the handler's plant;
- (b) The pounds of milk, milk fat and solids not fat content of market milk diverted to other plants; each listed separately by name and location; and
- (c) The number of milkings degraded in accordance with procedures established by the appropriate public regulatory or health authority.

Section 601. Brokers or agents of market milk shall be subject to the same reporting requirements as specified for handlers.

Section 602. Handlers shall retain records for a period of three (3) years. The Secretary shall be given access to all records for the purposes of implementing this Plan. If a handler fails to make available to the Secretary any records so requested, the Secretary may initiate a licensing action against the handler pursuant to Government Code Section 11400 et seq.

## **Article 7. Computation of Handler Obligation**

Section 700. A quota assessment shall be due and payable as directed by this Plan. Failure to pay any such assessment on time may result in the additional assessment of penalties and fines and court action for the collection of the assessment.

Assessments shall be collected from the handlers of market milk. A handler that pays any such assessments for and on behalf of any producer may deduct such producer assessments from any money which is owed the producer by the handler.

Section 701. The net obligation of each handler shall be computed by multiplying the pounds of solids not fat handled by the quota assessment rate, and deducting an amount calculated by multiplying the pounds of quota solids not fat by \$0.195 reduced by the applicable regional quota adjusters.

The quota of active member producers of a cooperative association shall belong to the individual producer, but shall be assigned to the custody and control of the cooperative association. A cooperative association may combine the quotas assigned to it by members and nonmembers into one quota for purposes of accounting for milk marketed, provided the quotas of the nonmembers may be so combined only if such cooperative association accounts to the nonmembers on a patronage basis.

Section 702. Handlers shall remit payment owed to the Secretary and the Secretary shall remit payment to any Handler owed money pursuant to this Plan on the 16<sup>th</sup> of each month.

Section 703. Funds in the Milk Pooling Equalization fund from the operation of The Pool Plan for Market Milk shall be used to manage the cash flow needs of the Quota Implementation Plan.

### **Article 8. Regional Quota Adjuster**

Section 800. The Secretary shall determine a regional quota adjuster for each market milk producer based on the geographical location of the dairy farm as set forth below:

- (a) A negative 11 cents (-\$0.11) per hundredweight, (-\$.012644) per pound of quota solids not fat, is assigned to dairy farms located within the counties of: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.
- (b) A negative 5 cents (-\$0.05) per hundredweight, (-\$.005747) per pound of quota solids not fat, is assigned to dairy farms located within the counties of: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Sonoma.
- (c) A negative 27 cents (-\$0.27) per hundredweight, (-\$.031034) per pound of quota solids not fat, is assigned to dairy farms located within the counties of: Fresno, Kings, and Tulare.
- (d) A negative 20.5 cents (-\$0.205) per hundredweight, (-\$.023563) per pound of quota solids not fat, is assigned to dairy farms located within the counties of: Kern, San Luis Obispo, and Santa Barbara.
- (e) No regional quota adjuster is assigned to dairy farms located within the counties of: Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, and Ventura.

Section 801. For each producer, who is not a member of a cooperative association, the total pounds of quota solids not fat shall be multiplied by the appropriate per pound of solids not fat regional quota adjuster in effect at the producer's dairy farm where the milk was produced.

Section 802. For each cooperative association, calculate the amount of daily solids not fat quota allocated to producer-members with the same regional quota adjuster and multiply it by the appropriate per pound of solids not fat regional quota adjuster.

Section 803. Adjustments to regional quota adjusters shall be subject to approval by Producer referendum.

## **Article 9. Quota Revenue Assessment and Program Administration Assessment**

Section 901. The Secretary shall review and/or adjust the quota premium assessment rate as needed. The rate of assessment shall be computed by dividing the quota premium paid to producer, net of Regional Quota Adjusters, for the most recent 12 month period by the pounds of assessable solids not fat produced in those 12 months.

The initial assessment rate shall not exceed \$0.0436 per pound of solids not fat (approximately \$0.3800 per cwt, assuming 8.7 pounds of solids not fat per cwt).

Section 902. The Secretary shall review and/or adjust the program administration assessment rate as needed to cover the cost of administering the Quota Implementation Plan. The initial assessment rate shall be \$0.0030 per hundredweight of assessable milk, but not to exceed \$0.0200 per hundredweight.

## **Article 10. Reports and Payments to Producers**

Section 1000. Handlers shall provide each individual producer from whom milk was received or diverted to California plants during the preceding month with a written report on or before the 19<sup>th</sup> of the month. The report shall include the following:

- (a) The amount of milk, milk fat, and solids not fat received from the producer or diverted;
- (b) The amount of product paid for as quota solids not fat and the revenue;
- (c) The dollar value and applicable rate of quota assessment deducted from the producer; and
- (d) The rate and amount of Regional Quota Adjuster deducted from the producer.

Section 1001. Handlers shall pay a premium to producers who own quota computed by multiplying the producers monthly pounds of quota solids not fat by \$0.195 minus any deduction for regional quota adjuster.

Section 1002. All assessments shall be adjusted through the handler's obligation account for the month following the notification by the secretary of the assessed amount.

Section 1003. Handlers shall deduct a fee from payments made to producers for all milk received or diverted each month in an amount calculated by multiplying the pounds of solids not fat handled for the producer by the quota revenue assessment rate. Handlers shall also deduct a fee from payments made to producers for all milk received or diverted each month in an amount calculated by multiplying the hundredweights of milk by the program administration assessment rate.

The amount of such fee shall be paid to the Secretary on or before the 16th day following the last day of the month in which such market milk was received or diverted. In the event the handler fails to pay this fee, the handler shall pay a penalty amount which shall be equal to 10 percent of such unpaid fee. All monies received under the provisions of this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

Section 1004. The Secretary shall have access to and may inspect the records of handlers upon reasonable notice.

## **Article 11. Administration**

Section 1100. A producer survey shall be conducted by an independent party selected by the Producer Review Board at least every five (5) years. The survey shall evaluate the effectiveness of the Plan.

The results of the review will be provided to the Producer Review Board for its consideration, and recommendation to the Secretary.

Section 1101. Substantive, or significant amendments to this Plan require a producer referendum to be held in the same manner as the referendum approving this plan.

Section 1102. The Secretary, after consultation with the Producer Review Board, may make non-substantive changes to this Plan.

Section 1103. Upon receipt of a petition signed by at least 25 percent of market milk producers regarding the amendment or termination of this Plan, the Secretary shall convene the Producer Review Board to review the merits of the petition and make a recommendation to the Secretary.

If the Secretary finds that the Plan no longer tends to effectuate the purpose intended, termination shall be submitted for referendum in the same manner as provided for its initial approval.

## **Article 12. Severability**

Section 1200. The provisions of this plan are severable. If any section, subdivision, paragraph, sentence, clause, or phrase of this plan should be declared or held unconstitutional or invalid for any reason, such unconstitutionality or invalidity shall not affect the validity of any other provision of this plan.