

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

**In the Matter of the Public Hearing to Consider a Petition to
Amend and Terminate the Quota Implementation Plan**

OAH No. 2020080708

RECOMMENDED DECISION

Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephone conference on September 30, 2020, from Sacramento, California.

Megan Oliver Thompson, Attorney at Law, represented United Dairy Families of California (Petitioners), a coalition of dairy producers.

Ashley L. Vulin, Attorney at Law, represented the Stop QIP Tax Coalition (Stop QIP), a coalition of dairy producers.

Niall P. McCarthy, Attorney at Law, represented Save QIP, a coalition of dairy producers.

Michele Dias, General Counsel, California Department of Food and Agriculture (Department) attended the hearing and did not present evidence or argument.

Evidence was received, the record was held open for the submission of written arguments and supporting evidence, which were timely submitted by Petitioners, Stop QIP, and Save QIP.

The record was re-opened on the ALJ's motion to allow the parties to submit additional evidence and argument. Additional evidence and argument was received, the record was closed, and the matter was submitted for decision on November 9, 2020.

SUMMARY

Petitioners seek a referendum vote among eligible dairy producers on a Petition to Amend and Terminate the Quota Implementation Plan (Petition). The Quota Implementation Plan (QIP) is a program by which California dairy producers are paid a higher amount for raw milk covered by quota than for milk not covered by quota. The premium for quota holders is funded by dairy producers through deductions from the California milk pool.

Petitioners have met all legal and procedural requirements such that the Petition must proceed to a referendum vote. Save QIP does not oppose the Petition. Stop QIP supports the Petition. For all the reasons set forth herein, the Petition must proceed to a producer referendum.

FACTUAL FINDINGS

Jurisdiction and Procedural History

1. On June 25, 2020, Petitioners submitted the Petition to the Department. The Petition, if approved, would amend and terminate the QIP as follows: (1) equalize Regional Quota Adjusters so that the quota premium equals \$1.43 per hundredweight (cwt) in all counties, and (2) terminate (or sunset) the QIP effective March 1, 2025.

2. On July 24, 2020, the Department certified that the Petition had been signed by more than 28 percent of the eligible dairy producers. The Department then scheduled a meeting of the Producer Review Board (PRB) for August 27, 2020, to consider the Petition. The PRB recommended to the Secretary that the Petition proceed to a public hearing. The Department then issued a public notice, and this hearing followed.

3. On October 29, 2020, pursuant to the ALJ's Order Re-Opening Record and Request for Briefing, dated October 23, 2020, the Department issued a letter to the ALJ certifying that the Petition was signed by 27.74 percent of the eligible dairy producers, and that the production volume of the signatories was 36.49 percent of the total dairy production of eligible producers.

Applicable Laws and Regulations

4. The legal and procedural requirements for the Petition to proceed to a statewide producer referendum, include those set forth in Food and Agricultural Code¹ section 62717, and section 1103 of the QIP.

Section 62717, subdivision (b), states in pertinent part:

The [secretary of the Department] shall submit the termination of the plan on a statewide basis in a referendum . . . if . . . [she] finds that a substantial question exists as to whether or not producers desire the plan to

¹ All statutory references are to the Food and Agricultural Code, unless otherwise specified.

continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

Section 1103 of the QIP states:

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 [of the Department] 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

Evidence and Arguments

PETITIONERS

5. Petitioners presented testimony and documentary evidence regarding the process of developing consensus among dairy producers about the substance of the Petition. Petitioners also presented testimony from dairy producers who support the Petition.

6. Petitioners argue that the Petition meets all legal and procedural requirements, and that based on the facts and applicable laws, the Petition must

proceed to a statewide producer referendum. Specifically, the Petition qualifies for a referendum under section 62717. It was signed by more than 25 percent (27.74 percent) of the eligible dairy producers who represent not less than 25 percent (36.49 percent) of statewide dairy production. Based on the number of signatories, a "substantial question exists as to whether or not producers desire the plan to continue" (§ 62717, subd. (b).)

7. Petitioners also argue that it is not necessary to determine whether the Petition qualifies for a referendum under section 1103 of the QIP because the Petition qualifies under section 62717, subdivision (b). Thus, it is not necessary to make any determination under QIP section 1103 whether "the Plan no longer tends to effectuate the purposes intended." (QIP § 1103.)

SAVE QIP

8. Save QIP does not oppose the Petition. Save QIP filed a post-hearing brief and requested judicial notice of documents and pleadings "for the limited purpose or addressing a factual finding (if there is one) regarding [QIP section] 1103 . . . and whether quota tends to effectuate its intended purposes." As set forth in the Analysis below, it is not necessary to make any factual findings here regarding the criteria set forth in QIP section 1103.

STOP QIP

9. Stop QIP supports the Petition. Stop QIP noted in its post-hearing brief that Petitioners "need not demonstrate that the QIP no longer serves any legitimate purpose" but that the evidence "submitted by both [Petitioners] and Stop QIP prove that, on its merits, the QIP should be sunset and terminated." As set forth in the

Analysis below, it is not necessary here to make any factual findings whether the QIP continues to serve a legitimate purpose.

ANALYSIS AND LEGAL CONCLUSIONS

10. The issue in this matter is whether Petitioners have met the legal and procedural requirements such that the Petition must proceed to a referendum vote among eligible dairy producers. As set forth in the Factual Findings above, the Petition was signed by 27.74 percent of the eligible dairy producers, and the production volume of the signatories was 36.49 percent of the total dairy production of eligible producers. This satisfies the requirement under section 62717, subdivision (b), that a petition be signed by more than 25 percent of the eligible dairy producers who represent not less than 25 percent of statewide dairy production. Given the percentage of signatories among eligible dairy producers, there is a "substantial question" whether dairy producers want the QIP continue. Based on these facts, Petitioners have satisfied the requirements of section 62717, subdivision (b), to qualify the petition for a statewide producer referendum.

11. Based on the fact that the Petition meets the statutory criteria for a mandatory statewide referendum set forth in section 62717, subdivision (b), it is not necessary to a decision in this matter to make any findings whether the QIP continues to "effectuate the purposes intended" as set forth in section 1103 of the QIP.

12. For all the reasons stated herein, the Petition must be advanced to a referendum vote among eligible producers.

ORDER

Petitioners' request for a referendum is GRANTED.

DATE: December 9, 2020

Timothy J. Aspinwall
Timothy J. Aspinwall (Dec 9, 2020 13:05 PST)

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings