



Findings of the California Department of Food and Agriculture Regarding a Public Hearing Held on September 9, 2024 to Consider Proposed Changes to the Quota Implementation Plan

Background

Quota Implementation Plan

In 2017 California market milk producers took part in an industry vote that authorized the California Department of Food and Agriculture (CDFA or Department) to issue the Quota Implementation Plan (QIP¹), a stand-alone program to administer quota, if a federal milk market order was adopted in California. In 2018, the United States Department of Agriculture (USDA) made effective the California Federal Milk Marketing Order (FMMO). The FMMO and the QIP took effect on November 1, 2018. The QIP is promulgated under Section 62757 of the California Food and Agricultural Code (FAC).

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 it. The premium for quota-holders is funded by dairy producers through deductions from the California milk shipped to California milk processing plants. The current quota assessment to pay the premium is \$0.348/cwt (\$0.040/lb. of SNF). Prior to the QIP's inception, quota existed as part of the California Milk Pooling Plan; however, under an FMMO requirement quota can no longer be associated with class pricing. In practical terms this means that the quota assessment now appears as a line-item authorized deduction on producers' milk statements. The enhanced visibility into the quota assessments has created divisiveness within the industry over its existence.

Reason for the Hearing

On May 1, 2024, the Producer Review Board (PRB or Board), the advisory board appointed by the Department to advise the Secretary in the administration of QIP, recommended amendments. CDFA concurred with the PRB's recommendation to modify QIP and, on June 5, 2024, issued a notice that the Department had decided to issue the matter to an industry vote. Additionally, the Secretary added a technical item for consideration. However, before moving forward with an industry vote, CDFA decided to conduct public forums throughout the state to encourage informal dialogue among producers on the topic and seek industry insight on the proposal. Additional ideas regarding other potential changes to QIP were received at each of the public forums. In addition to creating a formal record, the public hearing held on September 9, 2024, provided a supplemental opportunity to the industry to provide feedback to the Department about the PRB's proposal.

¹ The formal name of the CDFA program that administers the Quota Implementation Plan (QIP) is the Quota Administration Program (QAP). Notwithstanding, the industry routinely utilizes the term QIP to refer to both the Plan and the Program. These findings honor that practice and utilizes QIP and QAP interchangeably throughout the document.

Proposed Amendments to the QIP

Notification

CDFA conducted a public hearing via Zoom videoconference and teleconference for the purpose of discussing proposed changes to the QIP. After a series of informal public forums geared to provide the industry the opportunity to discuss the proposal and provide feedback, a hearing was called pursuant to Article 3, Section 58061, being Chapter 1 of Part 1, Division 21 of the FAC, which permits CDFA to conduct investigations, make surveys, and assemble facts which are pertinent to marketing and to the formulation, administration or amendment of any marketing order, agreement or program which is authorized by any law now in effect or which may hereafter be enacted. At the hearing, all affected California market milk producers and other interested persons were invited to present their testimony about the proposal to amend QIP.

Due notice of the hearing was provided to California market milk producers and the public through an official Notice of Public Hearing issued on August 16, 2024. The notice included "Exhibit A" which detailed the complete text of the proposed changes (copy attached). Additionally, the notice described the various ways that interested people could submit testimony for this hearing. Mr. John Suther, Branch Chief, in the Department's Bureau of Livestock Identification, presided over the hearing. Mr. Joe Monson, Mr. Ben Kardokus, and Mr. David Ko, with the Department's Marketing Services Division, served on the hearing panel.

Proposed Amendments

QIP requires that an Effectiveness Survey be conducted every five years. The results of QIP's first 5-Year Effectiveness Survey were released in November of 2023, five years after the inception of QIP. The results showed a marked industry divide between quota and non-quota holders; particularly pointing to discontent by some non-quota holders about the financial impact QIP has on them. The results of the survey prompted Mr. Frank Konyn, dairy producer and PRB member, to work on a proposal to make changes to QIP that would aim to bridge the divide between quota and non-quota holders.

Mr. Konyn had originally introduced the idea of modifying QIP at a PRB meeting in May of 2023. Following the results of the survey, he continued to refine his concept until he formally introduced his proposal to modify the QIP at the May 1, 2024, PRB meeting.

Mr. Konyn's proposal to amend QIP consists of three parts:

- 1) Change the quota differential from \$1.70/cwt (\$0.195/lb. of SNF) to \$1.00/cwt (\$0.115/lb. of SNF);
- 2) eliminate Regional Quota Adjusters (RQAs); and
- 3) add clarifying language about hardships to match what was used in the California Pooling Plan:
 - a. The current hardship definition is: "Hardship means a challenge to the management and operation of a dairy due to the operation of this plan."

The proposal would revise the definition to: “Hardship means a challenge to the management and operation of a dairy due to conditions beyond the control of the producer; such as, fire, floods, storms, and other acts of God, or from federal and State eradication programs for disease control.”

Following the presentation made by Mr. Konyn at the PRB meeting, the Board discussed the pros and cons of the proposal and ultimately voted to recommend to the Secretary of CDFA that the Department issue an industry referendum to consider the modifications to QIP proposed by Mr. Konyn. After due consideration the Secretary concurred with the PRB’s recommendation and decided to issue the matter to an industry vote. Additionally, the Secretary recommended that the definition of a “Producer” in the QIP be reworded to enhance clarity:

- Current language:
 - o “Producer” means any person that produces market milk in the State of California from five or more cows and includes members of cooperative associations.
- Proposed language:
 - o “Producer” means any person, including members of cooperative associations, that produces market milk in the State of California from five or more cows.

The Board

The Producer Review Board is established by Section 62719 of the FAC. The PRB is composed of fifteen (15) producer members and two (2) producer alternates who shall give proportionate representation to all areas of the state, with regard to the relative production and usage of fluid milk in the various areas of the state. The term of office is four years; terms of office are staggered among board members. A producer may serve two terms and is not eligible for re-appointment thereafter.

The Board is advisory in nature and makes recommendations to the Secretary regarding the administration of QIP. The PRB generally advises the Secretary on matters related to quota premium assessment rates, hardship considerations, the 5-year effectiveness survey, producer petitions, and non-substantive amendments, along with any number of other administrative activities. If the Secretary finds, after review, that the recommendations of the Board are consistent with the authorities and purposes of the QIP and applicable laws, beneficial to the state’s dairy industry and general public, and consistent with CDFA’s policies and procedures, the recommendations are approved.

Overview of the Hearing Testimony

Prior to the hearing held on September 9, 2024, CDFA held three public forums geared to provide the industry the opportunity to learn about the proposal. Producers interested in presenting their perspective about the proposal were able to do so at these forums, as well as ask questions to CDFA and to their peers regarding the proposal. A total of 53 individuals attended these public forums. The forums were held in Santa Rosa, Modesto, and Tulare.

At the hearing on September 9, 2024, a summary of the comments made at the three public forums was presented and entered into the hearing record. Additionally, three persons testified during the hearing. Following is a compilation of the main points expressed in the hearing testimony and public forums.

Clarifying comments regarding the proposed amendments:

- A reduced premium payout will reduce the assessment fee producers pay; the Department estimates the new assessment would range from \$0.21 - \$0.23/cwt
- The assessment, which is on all market milk, pays for the quota. It is not technically tied to the FMMO price of Class 1 sales.
- This proposal does not prohibit another petition that would end quota altogether.
- This proposal is not intended to phase out quota.
- Another change to the quota differential would mean another industry referendum.
- The proposed changes will be voted on as one, not voted on separately.
- The Marketing Services Division, of which the Quota Program is a part of, conducts continuation processes for all California agricultural marketing programs, councils and commission in the State. The Division has experienced staff on hand with strict processes in place to ensure the integrity of the vote. The Department's Audit Office will also review the tallying of the ballots.
- As of the date of the hearing posting referendum tallies online is not one of the Department's standard practices.
- Producers are encouraged to check their ballots carefully upon receipt to make sure they contain correct information regarding their respective production entity(ies). Producers are urged to call the Department immediately if they find any errors. CDFA will work with them to make the necessary corrections and issue a new ballot.
- Each producer needs to look at the details and determine how this proposal will affect their operation and base their decision on how to vote on that.

Comments in support of the proposed amendments:

- **Mr. Konyn** argued that his intent in this proposal is that it is a compromise for all industry members, as it brings quota more in line with its original intention and will hopefully bring more unity to the industry rather than division on this topic.
- The quota premium payout of \$1.00/cwt is a fair return.
- This proposal is trying to be fair to both quota holders and non-quota holders. It tries to return the quota payout back to Class 1 sales, which was the original intent of quota. It hopes to take the tension out of the industry and bring great unity to the industry as a whole.
- One of the benefits for quota holders is the strengthening of the hardship language. There have been many hardship cases brought before the PRB since the start of the QIP.
- There was at least one mention indicating that some quota-holders would be willing to give that quota up without compensation to see the industry become more unified.
- Supporters of the proposal are grateful to Mr. Konyn for his work developing the proposal and taking it to the PRB for consideration.

- When California moved to the Federal Order in 2018, Regional Quota Adjusters became an archaic, redundant relic that was left over and has been supplanted by the location differentials in the Federal Order.
- Our industry has changed, and this is an important time for us to make some decisions.

Comments in opposition of the proposed amendments:

- This appears to be a cut in income for many quota holders.
- Some producers have calculated that Class 1 milk currently generates more than \$1.00/cwt and question who and how the calculations on the Class 1 values are made.
- This proposal is a compromise but no guarantee this will save quota.
- Historically, hardships were voted on by the PRB and it was thought that the PRB could determine if it was a hardship or not. There was generally known throughout the industry that a hardship is considered as a quota-holder that is going out of business or retiring or is forced to sell their cows but that ultimately the Board can decide if it is a hardship. This feels like the Board is punting on their decision.
- It doesn't appear that non-quota holders have to compromise.
- Not in favor of the proposed hardship language and would prefer to have a 5-year continuation approval process included.

Additionally, at the public forum that took place on July 29, 2024, in Santa Rosa, CA a suggestion was made to add an additional modification to the QIP that would allow the PRB to make future adjustments to the quota differential without a need to go to an industry referendum. During the August 8, 2024 public forum in Modesto it was recommended that each of the components of the proposal be voted on separately. Finally, during the public forum held in Tulare on August 9, 2024, a producer requested that language implementing a 5-year approval process be added to the proposal. The Department considered these additional modifications, and others made at the public forums, and determined that they deviated from the language the PRB reviewed and recommended; accordingly, they will not be considered in the industry referendum.

Overall, the comments and testimony received during the hearing and at the public forums highlighted the varying opinions and feelings regarding QIP. The testimony often strayed from the proposed amendments to dissatisfaction with QIP in general.

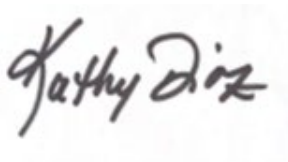
Conclusions

Under Article 3, Section 58061 of the FAC, CDFA is permitted to assemble facts which are pertinent to marketing and to the amendment of any program currently authorized by law. After review of the testimony and hearing record CDFA did not gather any additional facts that would call into question the decision to issue an industry referendum to consider the modifications to the QIP proposed by Mr. Konyn.

The Department also did not gather any facts that would change its determination that most of the proposed changes are substantive and significant amendments to the QIP.

Accordingly, a producer referendum will be held in the same manner as the referendum to consider the implementation of QIP, per the requirements of Section 1101 of the QIP. Ballots will be mailed to each market milk producer in the state in early October of 2024.

Date: October 7, 2024

A handwritten signature in black ink that reads "Kathy Diaz". The signature is written in a cursive, flowing style.

Kathy Diaz, Division Director
Marketing Services Division
California Department of Food and Agriculture

Attachments: Exhibit A: Extracts from the Quota Implementation Plan with full text of the proposed amendments