



Draft Guidelines for Blue Ribbon Task Force on Dairy Quota as requested by the State Board of Food and Agriculture.

Members of the Task Force are asked to explore if quota should continue, be modified or retired. These guidelines are intended to assist the Task Force in orderly deliberations so that input will be inclusive and extensive from the dairy producers prior to developing any recommendation(s) to the Secretary.

Option #1

- Should the existing quota system continue without change?
- What are the advantages and disadvantages to producers?

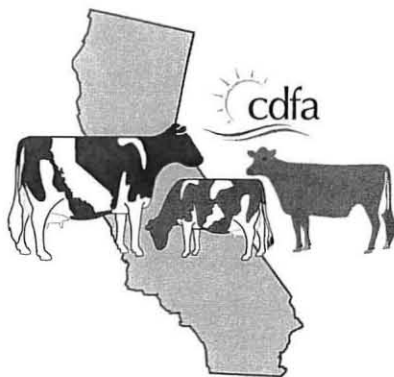
Option #2

- Should the quota system be modified?
- Identify the various modifications possible and what are the advantages and disadvantages of each.
- Determine legal and legislative requirements for each modification.
- What are the financial consequences of each modification.
- Determine preferred modification.

Option #3

- Should quota be retired?
- Develop a definition on what it means to retire quota.
- Determine alternative methods to retire quota.
 - Determine advantages and disadvantages of each alternative.
 - Determine legal and legislative requirements for each alternative.
 - Determine financial impact of each alternative.
 - Determine preferred alternative.
 - Determine process to accomplish preferred alternative.

With the three preferred options above, seek producer input prior to making recommendation to Secretary for action.



California

Dairy Review

2007 Quota Review
Committee Special Edition

A publication serving the California dairy industry for over 11 years

August 2007

California Quota Review Committee Completes Analysis of Pool Quota

At the request of the State Board of Food and Agriculture, Secretary Kawamura established an Advisory Committee to analyze the current situation of California milk pool quota and consider possible changes to quota for the future. The Committee was made up of 11 dairy producers from various regions of the State with a wide range in production volume and quota holdings. Producers also held varied affiliations with dairy cooperatives, dairy trade and other associations. The Committee was charged by the Secretary with exploring three quota options. The three areas of review were as follows:

Should the current pool quota system be:

1) continued with no adjustments; 2) modified; 3) retired?

The Committee undertook significant reviews of the three options by conducting six public meetings beginning May 23, 2007 and ending August 9, 2007. During these meetings the Committee used a systematic approach to identifying and discussing quota.

"The Committee's diligent effort in analyzing the three quota options and presenting a recommendation to Secretary Kawamura was an incredible achievement"

- Ann Silva

Committee Chair

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California Department of Food and Agriculture
A.G. Kawamura, Secretary

The process required input from all members, including sharing of their own ideas, as well as comments and opinions they have heard from other producers. Comments from the public were allowed at each of the six meetings. Public comment and input on the creation and historical operation of the quota system was helpful to the Committee as they analyzed the three options.

To aid the Committee in studying the issues at hand, they undertook an in-depth review of the California milk pooling program- past and present. This included a review of why milk pooling was introduced, what amendments have been made to the program since its inception, and what is required to make changes to the current system. Part of the discussion was to identify what quota does, and does not do (i.e. quota does not increase or reduce total producer revenue, but rather it is merely a method to sharing existing California farmgate

Continued next page

revenues). The California classified milk pricing system determines how much farmgate revenue is generated. A study of the milk pricing system was not included in the Secretary's charge to the Committee and therefore, was only an ancillary part of the Committee's review.

The process of reviewing pool quota fostered requests for additional data. Further analysis showed how pool prices (quota and overbase) were impacted by many factors. These included, among other things, class price formulas, commodity prices, pool payout methods (fixed \$1.70 spread versus the former variable price spread method), and regional quota adjusters.

Of particular interest to the Committee was a comparison of overbase prices using the \$1.70 differential to the variable payout method in place prior January 1, 1994. Since the 1994 introduction of the \$1.70 spread, an extra \$183 million has been paid to overbase milk than would have been under the variable price spread method. Further, if the class price formulas that are in use today would have been in place over this same time period, additional revenues above the \$183 million would have accrued to the overbase milk.

Another issue that generated considerable discussion among Committee members was the dollar amount and method currently used to finance the \$1.70 spread. Currently about \$11.5 million dollars per month is allocated to paying quota milk at a rate that is \$1.70 per hundredweight more than overbase milk. If all quota currently held by producers was bought out at May average market value of \$492 per pound of SNF, it would require a \$1.1 billion payment to producers. This does not include underwriting and legal fees. The monthly payment required to repay a loan of that amount would vary depending on the payback period and interest rate. Assuming a ten-year payoff at 5 percent the monthly payment would be approximately \$12 million. Concern was raised that overbase producers collectively may not be agreeable to reduce milk revenue by an additional \$500,000 per month to facilitate a quota retirement.

Regional Quota Adjusters (RQAs), which are reductions to the standard \$1.70 per hundredweight Quota milk can receive above Overbase milk, were reviewed by the Committee. The level of the RQA reductions vary by geographic area and range from \$0.00 per hundredweight

in Southern California to -\$0.27 per hundredweight for farms located in Fresno, Kings and Tulare counties. After taking the RQA reductions into account, Quota milk receives a higher net amount than overbase, ranging from \$1.70 more per hundredweight in Southern California to \$1.43 more per hundredweight in Fresno, Kings and Tulare counties. The committee considered various RQA options including one to equalize RQAs to the same level which would result in all Quota milk across the state receiving \$1.55 per hundredweight more than Overbase milk. A concern by some of the committee was the need to hold a referendum to make adjustments to RQAs. After discussing the pros and cons of each option the Committee decided to recommend no change to RQA levels.

Another scenario that the Committee discussed was the possibility that the next milk price downturn could cause a movement in the producer community to seek termination of the California pooling system. To terminate the pooling system would require a super-majority vote of California producers. At least 51 percent of producers would have to participate. Both 51 percent of producers voting by number AND 65 percent of milk volume (or 65 percent by number AND 51 percent by volume) would be needed for pool termination. After this discussion, the Committee concluded that a termination of the California pooling system (without a quota buyout) is unlikely in the next five years.

At the final meeting the Committee voted unanimous support for California producers to keep a pooling system. The Committee also voted unanimously against just modifying the current system. Then the Committee discussed whether to vote to retire quota or to leave quota unchanged. After reviewing the pros and cons between these two remaining choices, the Committee preferred the status quo option to leave quota unchanged. The Committee instructed CDFA staff to communicate a summary of the Committee's work to the state's dairy producers through the Department's monthly dairy newsletter. "The Committee's report will be a helpful record for a future review of pool quota. The Committee's diligent effort in analyzing the three quota options and presenting a recommendation to Secretary Kawamura was an incredible achievement" said Chair Ann Silva as the sixth meeting concluded.

Links to Quota Review Committee Documents on CDFA Website

1. Final Narrative Summary of All Committee Meetings (this Report) [http://www.cdfa.ca.gov/dairy/QRB Info/DairyReviewSpecialEdition.August2007.pdf](http://www.cdfa.ca.gov/dairy/QRB%20Info/DairyReviewSpecialEdition.August2007.pdf)
2. Committee's August 9, 2007 Report (long version) [http://www.cdfa.ca.gov/dairy/QRB Info/Morgan.08-09-07.pdf](http://www.cdfa.ca.gov/dairy/QRB%20Info/Morgan.08-09-07.pdf)
3. Committee's July 27, 2007 Report (long version) [http://www.cdfa.ca.gov/dairy/QRB Info/Morgan.07-27-07.pdf](http://www.cdfa.ca.gov/dairy/QRB%20Info/Morgan.07-27-07.pdf)
4. Notes from six Committee Meetings [http://www.cdfa.ca.gov/dairy/QRB Info/findings.html](http://www.cdfa.ca.gov/dairy/QRB%20Info/findings.html)
5. Instructions from Secretary Kawamura to the Committee [http://www.cdfa.ca.gov/dairy/QRB Info/BlueRibbonGuidelines.pdf](http://www.cdfa.ca.gov/dairy/QRB%20Info/BlueRibbonGuidelines.pdf)

Milk Pooling Branch • 916-341-5901

QRC Executive Summary

August 9, 2007

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The Quota Review Committee's Goal is to provide a recommendation on three milk pool Quota options to CDFA Secretary A.G. Kawamura on or about August 1, 2007.

The three options are: (1) quota unchanged; (2) modify quota; (3) retire quota.

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QRC QUOTA Recommendation to: Secretary A.G. Kawamura

- ❑ **Quota unchanged:** this is the QRC recommendation is based on our evaluation. The QRC had less than a required super majority vote (8 of 11) to recommend retirement.
 - Quota Unchanged: 6 votes
 - Retire Quota (annuity method or sunset): 5 votes

- ❑ **Modify Quota: *not a viable option (unanimous)***

- ❑ Recommended communication to Dairy Industry. Present written communication via the CDFA Dairy Review, a concise summary of the QRC decision, rationale, and discussion of the process. The detailed support documents showing: (1) the QRC members conclusions from the August 9, 2007 meeting; (2) research and analysis presented in the July 27, 2007; should be made available through the CDFA website.

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These conclusions were based on extensive discussion and evaluation by members of the QRC with outstanding analytical and technical support from CDFA over the course of six meetings, May 23 through August 9, 2007.

- 1. The original purpose of Quota was to stabilize the pooling system.** Quota is a fixed \$1.70 spread (vs. variable) based on a 15 year average, again to stabilize the industry. Under the current formula any increase in class price revenue goes to the pool (shared by all quota and overbase producers). Under the former variable spread class 1 price increases went exclusively to quota holders.
- 2. Historically there has there has been a positive ROI and payback for having quota.** The duration of payback and ROI is based on the purchase price or basis of quota. Calendar 2007 examples at current milk prices demonstrate a return of 12 to 14% and a payback period of 7 to 8 years. Quota is recognized as an investment asset by financial institutions in evaluating the overall Producer operations.
- 3. Approximate Market value of quota :** June 2007: 2,192,000lbs SNF (daily) x \$492lb (average price of quota) = \$1,078,000,000. (averages for July \$496 and August \$495).
- 4. Compared to the old system, quota can have a positive or negative affect on pool revenue.** Some producers have low to no quota and are dissatisfied with the \$1.70 spread. Approximately \$11,500,000 (net of RQA) per month is allocated from the pool to quota holders and is not available for distribution to non-quota production (2007 numbers).

5. **Quota could just “go away” (retired) with no value to quota holders.** Although it is unlikely that quota would go away with no value in the “near future” (e.g. the next 5 years).
6. **Quota helps protect the pool.** If we (dairy producers) move to a referendum to change one aspect of quota/pooling, everything may be up for evaluation.
7. **Legislatively, it is technically possible to eliminate quota and retain pooling.**
8. **Quota adds complexity to our pricing structure** increasing the difficulty to understand the system.
9. **Changing the quota/pooling system** to mirror federal milk marketing orders would improve chances of passing federal legislation to pool class 1 milk from out-of-state sources.
10. **Without annual growth in class 1 and 2 milk utilization there is no more quota that can be issued.**

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1. Change Regional Quota Adjusters (RQAs):

- a. Eliminate RQAs (no change in \$1.70 quota differential) = 1 (QRC votes)
- b. Variable RQA (with a fixed spread) (based on class 1, 2, 3; process will need clarity on what will the overbase price be drawn on) = 1
- c. Eliminate RQAs but spread cost across quota holders = pool neutral = 111
- d. RQAs unchanged = 111111

2. Go back to pre 1994 variable spread between Quota and Overbase. Only Quota holders would get higher\lower Class 1, 2, 3 values.

- a. **NOT** a viable option: 111111111 (QRC votes)
- b. This **IS** a viable option: 11

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3. **Reinvigorate** Quota . Add more value by reconstructing Pool by expanding Classes of Milk. Include and reissue Quota.
 4. **Double** Quota but cut fixed differential in half from \$1.70 to \$0.85
 5. **Redistribute Quota** to ALL producers
 6. **Producer/Distributors** - Calculate value of milk that is covered by Exempt Quota, compare to historical levels. **Consider including it in Pool.**
 7. **Freeze the Overbase** going into the Quota Pool. Link Quota Pool only to Class 1, 2, and 3.
 8. **Raise the fixed differential** from \$1.70 to a higher level to encourage investment in Quota.
- NOT** viable options (3. through 8. above): 1111111111
- These **ARE** viable options (3.-8. above): 0

These conclusions were based on extensive discussion and evaluation by members of the QRC with outstanding analytical and technical support from CDFA over the course of six meetings, May 23 through August 9, 2007.

Any retirement of quota requires legislative approval.

1. Self-funding annuity method:

- a. The cash flow requirements of using an installment payout method would not require a debt instrument.
- b. The way the math could work is paying out quota on a fixed rate of return (say 6%) with the quota (\$1.70) differential no longer be paid. The differential would be used to retire quota; "\$11.5 million" per month will pay off \$1 billion in 10 years @ a rate of 5%. All producers would likely receive the Pool Blend Price.

2. Sunset on quota:

- a. Quota would continue for a 'period certain' (for example 8 or 10 years), then retired with no additional value paid to quota holders.
- b. During this period certain, quota would operate the same as at present. Quota holders would continue to have the \$1.70 spread and quota could still be bought and sold at prevailing market rates.

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3. Single Payout method (revenue bond funding). This is the preferred option for the quota holders but not financially viable to the pool.

- a. Lump sum payment to holders of quota @ 100% of market value (for example \$492 SNF lb).
- b. The method requires a debt instrument. All producers would receive the Pool Blend Price.
- c. Typical factors and costs in underwriting a revenue bond (using 100% of market value):
 - Underwriting costs: 2 to 5% of issuance - \$22,000,000 to \$50,000,000;
 - Underwriting risk factors: Payment certain? Guaranteed through state taxing authority? Guarantee there will be no change in the Pool; e.g. going to a Federal Order? How is the payment stream guaranteed to the bond holder?
 - Interest rates reflect risk = greater the risk, higher the rate and shorter the term. For example the lowest risk instruments (AAA+):
 - August 8, 2007 U.S. Treasury 10 year @ 4.81%; 30 year @ 4.96%.
 - High risk corporate bonds (< B- rated) of 10 to 20 years ('junk') are in the range of 9 to 11%.
 - Issuers can also provide a shorter term but still use a 20 year amortization. For example finance the entire bond in 2008 for \$1,090,000,000 @ 9% with a 5 year balloon. Ergo in 2013 the bond would require new financing.

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QRC Conclusions

Option 3: Retire Quota 3 of 3

3. Single Payout method (continued):

d. Below is a table using a total issuance amount of \$1,090,000,000. Most likely scenario would be rates of 9 to 10 %.

	Years			
Rate	5	10	15	20
0%	18,171,014	9,085,507	6,057,005	4,542,753
5%	20,574,567	11,563,907	8,621,713	7,195,239
6%	21,077,796	12,104,130	9,200,240	7,810,967
7%	21,588,471	12,658,852	9,799,572	8,452,780
8%	22,106,558	13,227,872	10,419,100	9,119,378
9%	22,632,021	13,810,963	11,058,151	9,809,360
10%	23,164,820	11,715,998	14,407,877	10,521,253

Amount based on 2,215,977 SNF Quota pounds at \$492 per pound. Monthly payment to repay \$1,090,260,811 loan.

e. Possible Scenario: a Quota retirement bond could be underwritten with a 5 to 10 year term @9 or 10% approximately \$11,500,000 to quota holders today. This means an additional withdrawal of \$2,300,000 (20% higher) to \$11,500,000 (double from today).

f. Translating some of these **costs per CWT**:

5yrs at 10% approximately \$0.6278 CWT

10yrs at 10% approximately \$0.3139 CWT



agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this chapter. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 605 of Title 15. Such loans shall not be in excess of such amounts as may be authorized by the agreements. (May 12, 1933, ch. 25, title I, § 8 (2), 48 Stat. 34; Apr. 7, 1934, ch. 103, § 7, 48 Stat. 528; as renumbered § 8b and amended Aug. 24, 1935, ch. 641, § 4, 40 Stat. 753; June 3, 1937, ch. 296, § 1, 50 Stat. 246.)

VALIDITY OF SECTION AFFIRMED

Act June 3, 1937, ch. 296, § 1, 50 Stat. 246, affirmed and validated, and reenacted without change the provisions of this section. See note to section 601 of this title.

CODIFICATION

The provisions now appearing in this section, except the first sentence, were originally enacted as part of section 8, subsection 2, of the act of May 12, 1933, cited to the text, and formerly appeared as section 608 (2) of this chapter.

The act of August 24, 1935, cited to the text, designated said subsection 2 as section 8b and changed the first sentence to read as it now appears in the text.

TERMINATION OF APPLICATION TO SUGAR

Provisions of this section ceased to apply to sugar on Sept. 1, 1937. See section 1180 of this title.

§ 608c. Orders regulating handling of commodity—
(1) Issuance by Secretary.

The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this chapter as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

(2) Commodities to which applicable.

Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, and Idaho, and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops, honeybees and naval stores as included in sections 91-99 of this title and standards established thereunder (including refined or partially refined oleoresin).

(3) Notice and hearing.

Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend

to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

(4) Finding and issuance of order.

After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity.

(5) Milk and its products; terms and conditions of orders.

In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers

and associations of producers, on the basis of their marketings of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (1) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (2) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(6) Other commodities; terms and conditions of orders.

In the case of fruits (including pecans and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, and Idaho, and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, hops, honeybees, and naval stores as included in sections 91-99 of this title and stand-

ards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others.

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quantity thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

(7) Terms common to all orders.

In the case of the agricultural commodities and the products thereof specified in subsection (2) orders

shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 610 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

(8) Orders with marketing agreement.

Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 608b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: *Provided*, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such

marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

(9) Orders with or without marketing agreement.

Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines;

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

policy of this chapter will be better achieved thereby (i) the commodities of the same general class and used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of subsections (6) and (7) of this section.

(3) Notice and hearing.

Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

(4) Finding and issuance of order.

After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity.

(5) Milk and its products; terms and conditions of orders.

In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers:

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least

three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, (d) a further adjustment to encourage seasonal adjustments in the production of milk through equitable apportionment of the total value of the milk purchased by any handler, or by all handlers, among producers on the basis of their marketings of milk during a representative period of time, which need not be limited to one year; (e) a provision providing for the accumulation and disbursement of a fund to encourage seasonal adjustments in the production of milk may be included in an order; and (f) a further adjustment, equitably to apportion the total value of milk purchased by all handlers among producers on the basis of their marketings of milk, which may be adjusted to reflect the utilization of producer milk by all handlers in any use classification or classifications, during a representative period of one to three years, which will be automatically updated each year. In the event a producer holding a base allocated under this clause (f) shall reduce his marketings, such reduction shall not adversely affect his history of production and marketing for the determination of future bases, or future updating of bases, except that an order may provide that, if a producer reduces his marketings below his base allocation in any one or more use classifications designated in the order, the amount of any such reduction shall be taken into account in determining future bases, or future updating of bases. Bases allocated to producers under this clause (f) may be transferable under an order on such terms and conditions, including those which will prevent bases taking on an unreasonable value, as are prescribed in the order by the Secretary of Agriculture. Provisions shall be made in the order for the allocation of bases under this clause (f)—

(i) for the alleviation of hardship and inequity among producers; and

(ii) for providing bases for dairy farmers not delivering milk as producers under the order upon becoming producers under the order who did not produce milk during any part of the representative period and these new producers shall within ninety days after the first regular delivery of milk at the price for the lowest use classification specified in such order be allocated a base which the Secretary determines proper after considering supply and demand conditions, the development of orderly and efficient marketing conditions and to the respective interests of

producers under the order, all other dairy farmers and the consuming public. Producer bases so allocated shall for a period of not more than three years be reduced by not more than 20 per centum; and

(iii) dairy farmers not delivering milk as producers under the order upon becoming producers under the order by reason of a plant to which they are making deliveries becoming a pool plant under the order, by amendment or otherwise, shall be provided bases with respect to milk delivered under the order based on their past deliveries of milk on the same basis as other producers under the order; and

(iv) such order may include such additional provisions as the Secretary deems appropriate in regard to the reentry of producers who have previously discontinued their dairy farm enterprise or transferred bases authorized under this clause (f); and

(v) notwithstanding any other provision of this chapter, dairy farmers not delivering milk as producers under the order, upon becoming producers under the order, shall within ninety days be provided with respect to milk delivered under the order, allocations based on their past deliveries of milk during the representative period from the production facilities from which they are delivering milk under the order on the same basis as producers under the order on the effective date of order provisions authorized under this clause (f); *Provided*, That bases shall be allocated only to a producer marketing milk from the production facilities from which he marketed milk during the representative period, except that in no event shall such allocation of base exceed the amount of milk actually delivered under such order. The assignment of other source milk to various use classes shall be made without regard to whether an order contains provisions authorized under this clause (f). In the case of any producer who during any accounting period delivers a portion of his milk to persons not fully regulated by the order, provision shall be made for reducing the allocation of, or payment to be received by any such producer under this clause (f) to compensate for any marketings of milk to such other persons for such period or periods as necessary to insure equitable participation in marketings among all producers. Notwithstanding the the provisions of subsection (12) of this section and the last sentence of subsection (19) of this section, order provisions under this clause (f) shall not be effective in any marketing order unless separately approved by producers in a referendum in which each individual producer shall have one vote and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection (16)(B) of this section. Disapproval or termination of such order provisions shall not be considered disapproval of the order or of other terms of the order.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection, providing a method for

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MINOR CIVIL DIVISIONS IN THE STATE OF VERMONT—Continued

	Freight zone (miles)
Rutland city	221-225
Rutland town	221-225
Sherburne town	226-230
Shrewsbury town	211-220
Sudbury town	221-225
Tinmouth town	201-210
Wallingford town	201-210
Wells town	201-210
West Haven town	201-210
West Rutland town	211-220

COUNTY IN THE STATE OF VIRGINIA

Clarke	251-260
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MINOR CIVIL DIVISIONS IN THE STATE OF WEST VIRGINIA

BERKELEY COUNTY	
Arden district	241-250
Falling Waters district	231-240
Gerrardstown district	251-260
Hedgesville district	241-250
Martinsburg district	241-250
Mill Creek district	251-260
Opequon district	241-250
JEFFERSON COUNTY	
Charles Town district	241-250
Harpers Ferry district	241-250
Kabletown district	251-260
Middleway district	241-250
Shepherdstown district	241-250

[26 FR 10859, Nov. 21, 1961. Redesignated at 26 FR 12752, Dec. 30, 1961]

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.

1004.1 General provisions.

DEFINITIONS

- 1004.2 Middle Atlantic marketing area.
- 1004.3 Route disposition.
- 1004.4 Plant.
- 1004.5—1004.6 [Reserved]
- 1004.7 Pool plant.
- 1004.8 Nonpool plant.
- 1004.9 Handler.
- 1004.10 Producer-handler.
- 1004.11 Dairy farmer.
- 1004.12 Producer.
- 1004.13 Producer milk.
- 1004.14 Other source milk.
- 1004.15 Fluid milk product.
- 1004.16 Fluid cream product.
- 1004.17 Filled milk.
- 1004.18 Exempt milk.

- 1004.19 Federation.
- 1004.20 Cooperative association.
- 1004.21 Product prices.
- 1004.22 Commercial food processing establishment.

HANDLER REPORTS

- 1004.30 Reports of receipts and utilization.
- 1004.31 [Reserved]
- 1004.32 Other reports.

CLASSIFICATION OF MILK

- 1004.40 Classes of utilization.
- 1004.41 Shrinkage.
- 1004.42 Classification of transfers and diversions.
- 1004.43 General classification rules.
- 1004.44 Classification of producer milk.
- 1004.45 Market administrator's reports and announcements concerning classification.

CLASS AND COMPONENT PRICES

- 1004.50 Class and component prices.
- 1004.51 Basic formula prices.
- 1004.52 Location differentials to handlers.
- 1004.53 Announcement of class prices and component prices.
- 1004.54 Equivalent prices or indexes.

DIFFERENTIAL POOL AND HANDLER OBLIGATIONS

- 1004.60 Handler's value of milk for computing uniform prices.
- 1004.61 Computation of weighted average differential price, weighted average differential price for base milk, and producer nonfat milk solids price.
- 1004.62 Computation of uniform price.
- 1004.63 Announcement of weighted average differential price, weighted average differential price for base milk, nonfat milk solids price and producer nonfat milk solids price.

PAYMENTS FOR MILK

- 1004.70 Producer-settlement fund.
- 1004.71 Payments to the producer-settlement fund.
- 1004.72 Payments from the producer-settlement fund.
- 1004.73 Value of producer milk.
- 1004.74 Payments to producers and to cooperative associations.
- 1004.75 Location differentials to producers and on nonpool milk.
- 1004.76 Payments by a handler operating a partially regulated distributing plant.
- 1004.77 Adjustment of accounts.
- 1004.78 Charges on overdue accounts.
- 1004.79 Direct delivery differential.

pursuant to §1004.9(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §1004.43(e) and other source milk allocated to Class I pursuant to §1004.44(a)(8) and (a)(12) and the corresponding step of §1004.44(b), except such other source milk that is excluded from the computations pursuant to §1004.60(f) and (h);

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of his receipts of Class I milk from pool plants, cooperative associations as handlers pursuant to §1004.9(b), and other order plants assigned to such disposition.

[40 FR 18753, Apr. 30, 1975, as amended at 56 FR 5337, Feb. 11, 1991; 56 FR 61352, Dec. 3, 1991; 58 FR 27783, May 11, 1993]

§1004.86 Deductions for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, making payments directly to producers for milk (other than milk of his own production) pursuant to §1004.74(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify or establish the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producer pursuant to §1004.74(a) as are authorized by such producers on or before the 18th day after the end of each month and pay

such deductions to the cooperative rendering such services.

[56 FR 61352, Dec. 3, 1991]

BASE-EXCESS PLAN

§ 1004.90 Base milk.

Base milk means milk received from a producer by a pool handler which is not in excess of such producer's daily base computed pursuant to §1004.92 multiplied by the number of days in such month on which such producer's milk was so received: *Provided*, That with respect to any producer on every-other-day delivery, the day of nondelivery prior to a day of delivery, although such prior day is in the preceding month, shall be considered as a day of delivery for purposes of this paragraph.

§ 1004.91 Excess milk.

Excess milk means milk received from a producer by a pool handler which is in excess of base milk received from such producer during the month.

§ 1004.92 Computation of base for each producer.

For each month of the year, the market administrator shall compute, subject to the rules set forth in §1004.93, a base for each producer described in paragraphs (a) through (e) of this section by dividing the applicable quantity of milk receipts specified in such paragraph by 153 (by 154 in the case of a producer on every-other-day delivery schedule who delivered August 1) less the number of days, if any, during the applicable base-forming period of August through December for which it is shown that the day's production of milk of such producer was not received by a pool handler as described in the applicable paragraphs (a) through (e) of this section under which such producer's base is computed: *Provided*, That in no event shall the number of days used to compute a producer's base pursuant to this section be less than 120.

(a) For any producer, except as provided in paragraphs (b) through (f) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the immediately preceding months of August through December.

(b) Except as provided in paragraph (c) of this section, for any producer whose milk was received at a plant which first became a pool plant after the beginning of the preceding August-December period, which plant was a pool plant for at least 120 days during such period, the quantity of milk receipts to be used in the computation of such producer's base shall be the total pounds of milk received from such dairy farmer at such plant during the entire August-December period.

(c) For any producer who on August 1 was an Order 2 (New York-New Jersey) producer and who held such status in all or part of the 2 months of August and September and who otherwise was a producer only under this part for all of the remaining August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer by pool handlers under both orders throughout the August-December period.

(d) For any producer whose milk was received during the preceding August through December period at a plant which became a pool plant pursuant to §1004.7(a) during or after such August through December period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during such August-December period by pool handlers as producer milk and at such plant as a nonpool plant.

(e) [Reserve]

(f) Any producer who made no qualifying milk deliveries during the base-forming period of August through December, or who relinquishes his established base pursuant to §1004.94, shall have a base reflecting the percentage of his average daily deliveries of producer milk each month as set forth in the following table. A new base is earned on the basis of his milk deliveries during the subsequent August through December period.

Month	Percentage of production as base
January and February	60
March through June	50
July	60
August through November	70
December	60

[40 FR 18753, Apr. 30, 1975, as amended at 49 FR 44987, Nov. 14, 1984; 56 FR 5337, Feb. 11, 1991]

§ 1004.93 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to paragraphs (a) through (e) of §1004.92 (except as provided in paragraph (f) of said section) shall be effective for the subsequent months of March through February, inclusive.

(b) A base computed pursuant to paragraphs (a) through (e) of §1004.92 may be transferred only in its entirety to another dairy farmer and only upon discontinuance of milk production because of the entry into military service of the baseholder.

(c) Base transfers shall be accomplished only through written application to the market administrator on forms prescribed by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, except as provided in paragraph (e) of this section, the entire base only is transferable and only upon receipt of such application signed by all joint holders.

(d) If a producer operates more than one farm and milk is received from each at a pool plant or by a cooperative association in its capacity as a handler pursuant to §1004.9(b) or (c), he shall establish a separate base with respect to producer milk delivered from each such farm: *Provided*, That if such farms and herds are combined into one dairy farm, the separate bases may be combined into one base subject to approval of the market administrator.

(e) Only one base shall be allocated with respect to milk produced by one or more persons where a dairy farm is jointly owned or operated: *Provided*, That in the case of a base established jointly, if a copy of the partnership agreement setting forth as a percentage of the total interest of the partners in the base is filed with the market administrator before the end of the base-forming period, then upon termination of the partnership agreement each partner will be entitled to his stated share of the base to hold in his own

right or to transfer in conformity with the provisions of paragraph (b) or (c) of this section (including transfer to a partnership of which he is a member). Such termination of partnership shall become effective as of the end of any month during which an application for such division of base signed by each member of such partnership is received by the market administrator.

(f) Two or more producers with bases may combine such bases upon the formation of a bona fide partnership operating from one farm. Such a combination shall be considered a joint base under paragraph (e) of this section.

(g) Subject to approval by the market administrator, the name of the baseholder may be changed to that of another member of the baseholder's immediate family but only under circumstances where the base would be applicable to milk production from the same herd and on the same farm.

§ 1004.94 Relinquishing a base.

A producer holding an established base can, upon notification to the market administrator, relinquish his established base and be paid pursuant to the provisions of § 1004.92(f) beginning with the first day of the month in which such notification is received by the market administrator and extending until March 1, next.

§ 1004.95 Announcement of base.

On or before February 25 of each year, the market administrator shall notify each producer, the handler receiving his milk and the cooperative association of which he is a member of the daily base established by such producer.

PART 1005--MILK IN THE CAROLINA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1005.1 General provisions.

DEFINITIONS

1005.2 Carolina marketing area.
1005.3 Route disposition.
1005.4 Plant.
1005.5 Distributing plant.
1005.6 Supply plant.

1005.7 Pool plant.
1005.8 Nonpool plant.
1005.9 Handler.
1005.10 Producer-handler.
1005.11 [Reserved]
1005.12 Producer.
1005.13 Producer milk.
1005.14 Other source milk.
1005.15 Fluid milk product.
1005.16 Fluid cream product.
1005.17 Filled milk.
1005.18 Cooperative association.
1005.19 Commercial food processing establishment.
1005.20 Product prices.

HANDLER REPORTS

1005.30 Reports of receipts and utilization.
1005.31 Payroll reports.
1005.32 Other reports.

CLASSIFICATION OF MILK

1005.40 Classes of utilization.
1005.41 Shrinkage.
1005.42 Classification of transfers and diversions.
1005.43 General classification rules.
1005.44 Classification of producer milk.
1005.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1005.50 Class prices.
1005.51 Basic formula price.
1005.52 Basic Class II formula price.
1005.53 Plant location adjustments for handlers.
1005.54 Announcement of class prices.
1005.55 Equivalent price.

UNIFORM PRICE

1005.60 Handler's value of milk for computing uniform price.
1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
1005.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1005.70 Producer-settlement fund.
1005.71 Payments to the producer-settlement fund.
1005.72 Payments from the producer-settlement fund.
1005.73 Payments to producers and to cooperative associations.
1005.74 Butterfat differential.
1005.75 Plant location adjustments for producers and on nonpool milk.
1005.76 Payments by handler operating a partially regulated distributing plant.
1005.77 Adjustment of accounts.
1005.78 Charges on overdue accounts.

shipments shall be calculated by adding the total volume of shipments for the seasons they did ship red seedless grapefruit, divide by the number of seasons, divide further by 33. New handlers with no record of shipments could ship size 48 and 56 red seedless grapefruit as a percentage of total shipments equal to the percentage applied to other handlers' average week; once such handlers have recorded shipments, their average week shall be calculated as an average of total shipments for the weeks they have shipped red seedless grapefruit during the current season. When used in the regulation of red seedless grapefruit, the term season means the weeks beginning the third Monday in September and ending the first Sunday in the following May. The term regulation period means the 11 weeks beginning the third Monday in September and ending the first Sunday in December of the current season.

(b) When a size limitation restricts the shipment of a portion of sizes 48 and 56 red seedless grapefruit during a particular week as provided in § 905.52, the committee shall compute the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by each handler by multiplying the handler's calculated average week shipments of such grapefruit by the percentage established by regulation for red seedless grapefruit for that week.

(c) The committee shall notify each handler of the quantity of size 48 and 56 red seedless grapefruit such handler may handle during a particular week.

(d) During any regulation week for which the Secretary has fixed the percentage of sizes 48 and 56 red seedless grapefruit, any person who has received an allotment may handle, in addition to their total allotment available, an amount of size 48 and 56 red seedless grapefruit up to 10 percent greater than their allotment. The quantity of the overshipment shall be deducted from the handler's allotment for the following week. Overshipments will not be allowed during week 11. If the handler fails to use his or her entire allotment, the under shipment is not carried forward to the following week.

(e) Any handler may transfer or loan any or all of their shipping allotment (excluding the overshipment allowance) of size 48 and 56 red seedless grapefruit to any other handler. Each handler party to such transfer or loan shall promptly notify the committee so the proper adjustment of records may be made. In each case, the committee shall confirm in writing all such transactions, prior to the following week, to the handlers involved. The committee may act on

behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotments.

Dated: December 24, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-33268 Filed 12-30-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 1004, 1005, 1007, 1011, and 1046

[DA-96-15]

Milk in the Middle Atlantic, Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville Marketing Areas; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document terminates the base-excess payment plan provisions of the Middle Atlantic, Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk marketing orders due to the expiration of legislative authority to incorporate base-excess plans in Federal milk marketing orders on December 31, 1996.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT:

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Nicholas_X_Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A

handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, the Agricultural Marketing Service has considered the economic impact of this action on small entities and believes that this rule could have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

This rule terminates the base-excess plan provisions of five Federal milk orders. Producers with earned base will no longer receive base prices as in the past, but will be paid at least the uniform price throughout the year for their hundredweight of milk.

Under a base-excess payment plan, a producer is paid a "base price" for "base milk" and an "excess price" for production in excess of base milk. During the base-paying period of a base-excess plan, base prices are higher than the uniform prices computed for those months, while the excess prices are below the uniform prices. Using a representative period of May 1996, the difference between the base and uniform prices in the five orders was not greater than \$0.26/cwt., while the difference between the uniform and excess prices ranged from \$0.45 to \$2.81/cwt.

The economic impact of the termination of base-excess plans is likely to be threefold. First, for those producers who have been most successful in shifting their herd's production from the spring to the fall, there will be a reduction in total revenue. The loss in revenue would be determined by multiplying the producer's total hundredweight of milk by the uniform price and subtracting that figure from the producer's base milk at the estimated base price plus the excess milk at the estimated excess price. This calculation would have to be computed for each month of the base-paying period. On the other hand, for those producers who have made no effort to shift production from the spring to the fall, there is likely to be an economic windfall at the difference between the uniform price multiplied by their total production and what the producer's milk would have earned using base and excess prices.

A second economic impact for producers under Orders 5, 7, 11, and 46 will be experienced by those producers who were planning to go out of business and sell their base at the end of the base-building period, but before the start of the base-paying period. These producers will lose the amount of money that they could have realized by selling their base. For example, during the 1995 base-building period, 5500 producers earned base in the Southeast market. The average daily base for a single producer was 2,933 lbs. Based on the average price per pound for base in 1995 (\$1.62/lb. based on figures obtained from the Market Administrator's office), an average producer in the Southeast could have obtained \$4,751.46 from the sale of such base in 1997.

The final effect of the base-excess plan termination is impossible to measure in advance of the facts. Under the base and excess plans in Orders 5, 7, 11 and 46, dairy farmers who were not on a market during the base-building period are discouraged from pooling their milk on the market during the base-paying period because they would only receive the excess price for their milk. Without a base and excess plan, however, there would be no such disincentive. Theoretically, therefore, it is possible that producers who are not normally associated with these markets will become associated with them during the flush production months to take advantage of a price difference between these generally deficit, high Class I utilization markets and the producers' normal, lower utilization, lower-priced market. To what extent the attachment of this additional milk will lower the uniform price in the 5 base-

excess plan markets cannot be determined at this time.

Regardless of the possible economic effects which may result from termination of seasonal base plans upon small entities, there is no alternative to this termination action since the underlying statutory authority expires on December 31, 1996.

In considering the impact of this action on small businesses, the termination of seasonal base plans will also cause a reduction in paperwork. Base-excess plans generate a large volume of paperwork for the Market Administrator's office, as well as for cooperative associations and handlers' with non-member supplies. Termination of such plans will place less of a regulatory burden on those responsible for recordkeeping, administration, and compliance with these provisions.

Statement of Consideration

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the orders regulating the handling of milk in the Middle Atlantic, Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas.

It is determined that notice of proposed rulemaking and public procedure thereon is impracticable, unnecessary and contrary to the public interest. The expiration of authority to incorporate seasonal base plans in Federal milk marketing orders on December 31, 1996, necessitates the termination of base-excess plan provisions.

The Department received several letters requesting that seasonal base plans be suspended, rather than terminated. While the Department considered suspending the provisions, we concluded that an order provision cannot be suspended once the underlying legislative authority for that provision has expired. Nevertheless, should Congress pass future legislation authorizing seasonal base plans, it could provide for an expedited procedure to reinstate the order provisions.

After consideration of all relevant material, and other available information, it is hereby found and determined that effective January 1, 1997, the provisions of each of the orders specified below do not tend to effectuate the declared policy of the Act:

List of Subjects in 7 CFR Parts 1004, 1005, 1007, 1011, and 1046

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1004, 1005, 1007, 1011, and 1046 are amended as follows.

1. The authority citation for 7 CFR Parts 1004, 1005, 1007, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

§ 1004.61 [Amended]

2. In § 1004.61, paragraph (b) is removed and reserved, and the section heading and introductory text are revised to read as follows:

§ 1004.61 Computation of weighted average differential price and producer nonfat milk solids price.

For each month the market administrator shall compute a "weighted average differential price" and a "producer nonfat milk solids price", as follows:

* * * * *

§ 1004.63 [Amended]

3. In § 1004.63, the words "the weighted average differential price for base milk and" are removed, and the section heading is revised to read as follows:

§ 1004.63 Announcement of weighted average differential price, nonfat milk solids price and producer nonfat milk solids price.

* * * * *

§ 1004.73 [Amended]

4. In § 1004.73, paragraph (a) introductory text is amended by removing the word "base", paragraph (a)(1) is amended by removing the phrase "for base milk computed pursuant to § 1004.61(b)" and the word "base", and paragraph (b) is removed.

§ 1004.75 [Amended]

5. In § 1004.75, paragraph (a), the words "for base milk computed pursuant to § 1004.61(b)" are removed.

§§ 1004.90, 1004.91, 1004.92, 1004.93, 1004.94 and 1004.95 [Removed]

6. § 1004.90 and the undesignated centerheading preceding it, and §§ 1004.91 through 1004.95 are removed.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

§ 1005.32 [Amended]

7. In § 1005.32, paragraph (a) is removed and reserved.

§ 1005.61 [Amended]

8. In § 1005.61, paragraph (a) introductory text is amended by removing the words "of June through January", paragraph (a)(6) is amended by removing the words "for the months of June through January", paragraph (b)

is removed, and the section heading is revised to read as follows:

§ 1005.61 Computation of uniform price (including weighted average price).
* * * * *

§ 1005.62 [Amended]

9. In § 1005.62 paragraph (b) is revised to read as follows:

§ 1005.62 Announcement of uniform price and butterfat differential.
* * * * *

(b) The 11th day after the end of each month the uniform price pursuant to § 1005.61 for such month.

§ 1005.71 [Amended]

10. In § 1005.71, paragraph (a)(2)(i), the letter "(s)" at the end of the word "price(s)" is removed.

§ 1005.73 [Amended]

11. In § 1005.73, paragraph (a)(2) introductory text is amended by removing the letter "(s)" at the end of the word "price(s)" and the words "or base milk and excess milk", paragraph (c)(2) is amended by removing the word "appropriate" and the letter "(s)" at the end of the word "price(s)", paragraphs (d)(4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" everywhere it appears, and paragraph (d)(3) is removed and reserved.

§ 1005.74 [Amended]

12. § 1005.74 is amended by removing the letter "(s)" at the end of the word "price(s)".

§ 1005.75 [Amended]

13. In § 1005.75, paragraph (a) is amended by removing the words "and the uniform price for base milk".

§§ 1005.90, 1005.91, 1005.92, 1005.93, and 1005.94 [Removed]

14. § 1005.90 and the undesignated centerheading preceding it, and §§ 1005.91 through 1005.94 are removed.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.32 [Amended]

15. In § 1007.32, paragraph (a) is removed and reserved.

§ 1007.61 [Amended]

16. In § 1007.61, paragraph (a) introductory text is amended by removing the words "of June through January", paragraph (a)(6) is amended by removing the words "for the months of June through January", paragraph (b) is removed, and the section heading is revised to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price).
* * * * *

§ 1007.62 [Amended]

17. In § 1007.62, paragraph (b) is amended by removing the word "applicable" and the letter "(s)" at the end of the word "price(s)".

§ 1007.71 [Amended]

18. In § 1007.71, paragraph (a)(2)(i) is amended by removing the letter "(s)" at the end of the word "price(s)".

§ 1007.73 [Amended]

19. In § 1007.73, paragraph (a)(1) is amended by removing the phrase "or if the producer had no established base upon which to receive payments during the base paying months of February through May," paragraph (a)(2) introductory text is amended by removing the letter "(s)" at the end of the word "price(s)" and the words "or base milk and excess milk", paragraph (d)(2) is amended by removing the word "appropriate" and the letter "(s)" at the end of the word "price(s)", paragraphs (f)(4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" and the word "(are)" wherever they appear, and paragraph (f)(3) is removed and reserved.

§ 1007.74 [Amended]

20. In § 1007.74, the letter "s" at the end of the word "prices" and the words "for base and excess milk" are removed.

§ 1007.75 [Amended]

21. In § 1007.75, paragraph (a) is amended by removing the phrase "and the uniform price for base milk".

§§ 1007.90, 1007.91, 1007.92, 1007.93, and 1007.94 [Removed]

22. § 1007.90 and the undersigned centerheading preceding it, and §§ 1007.91 through 1007.94 are removed.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

§ 1011.32 [Amended]

23. In § 1011.32, paragraph (a) is removed and reserved.

§ 1011.61 [Amended]

24. In § 1011.61, paragraph (a) introductory text is amended by removing the words "of July through February", paragraph (b) is removed, and the section heading is revised to read as follows:

§ 1011.61 Computation of uniform price (including weighted average price).
* * * * *

§ 1011.62 [Amended]

25. In § 1011.62 paragraph (b) is amended by removing the word "applicable" and the letter "s" at the end of the word "prices".

§ 1011.71 [Amended]

26. In § 1011.71, paragraph (a)(2)(i) is amended by removing the letter "s" at the end of the word "prices".

§ 1011.73 [Amended]

27. In § 1011.73, paragraph (a)(2) introductory text is amended by removing the phrase "or base milk and excess milk" and the letter "(s)" at the end of the word "price(s)", paragraph (c)(2) is amended by removing the word "appropriate" and the letter "(s)" at the end of the word "price(s)", paragraphs (d) (4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" wherever it appears, and paragraph (d)(3) is removed and reserved.

§ 1011.74 [Amended]

28. In § 1011.74, the letter "(s)" at the end of the word "price(s)" is removed.

§ 1011.75 [Amended]

29. In § 1011.75, paragraph (a) is amended by removing the words "and the uniform price for base milk".

§§ 1011.90, 1011.91, 1011.92, 1011.93, and 1011.94 [Removed]

30. § 1011.90 and the undesignated centerheading preceding it, and §§ 1011.91 through 1011.94 are removed.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.32 [Amended]

31. In § 1046.32, paragraph (d) is removed and reserved.

§ 1046.61 [Amended]

32. In § 1046.61, paragraph (a) introductory text is amended by removing the words "of July through February", paragraph (b) is removed, and the section heading is revised to read as follows:

§ 1046.61 Computation of uniform price (including weighted average price).
* * * * *

§ 1046.62 [Amended]

33. In § 1046.62, paragraph (b) is amended by removing the word "applicable" and the letter "(s)" at the end of the word "price(s)".

§ 1046.71 [Amended]

34. In § 1046.71, paragraph (a)(2)(i) is amended by removing the word

“applicable” and the letter “(s)” at the end of the word “price(s)”.

§ 1046.73 [Amended]

35. In § 1046.73, the last sentence in paragraph (a) is removed, paragraph (b) introductory text is amended by removing the letter “(s)” at the end of the word “price(s)” and the words “or base milk and excess milk”, paragraphs (d) (4) and (5) are amended by removing the letter “(s)” at the end of the word “rate(s)” everywhere it appears, and paragraph (d)(3) is removed and reserved.

§ 1046.74 [Amended]

36. In § 1046.74, the letter “(s)” at the end of the word “price(s)” is removed.

§ 1046.75 [Amended]

37. In § 1046.75, paragraph (a) is amended by removing the phrase “and the uniform price for base milk”.

§§ 1046.90, 1046.91, 1046.92, 1046.93, and 1046.94 [Removed]

38. § 1046.90 and the undesignated centerheading preceding it, and §§ 1046.91 through 1046.94 are removed.

Dated: December 23, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-33000 Filed 12-30-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

{INS. No. 1827-96}

RIN 1115-AE69

Administrative Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: In accordance with section 442(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), this final rule adds a new paragraph to the administrative deportation proceedings regulation. The new paragraph explains how the Immigration and Naturalization Service (Service) will conduct administrative deportation proceedings without immigration court hearings for certain aliens convicted of aggravated felonies in light of two recent statutory changes. The Service is promulgating

this final rule to comply with the statutory requirement that the Service publish an implementing regulation by January 1, 1997. The final rule states that the Service will continue to process aliens under the current regulation until March 3, 1997, and will suspend administrative deportation proceedings from March 3, 1997, until the effective date of the implementing regulations for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT:

Leonard C. Loveless, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536, Telephone (202) 514-2865.

SUPPLEMENTARY INFORMATION: Section 130004(a) of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, created a new section 242A(b) of the Act, 8 U.S.C. 1252a(b), to provide for the deportation without an immigration court hearing of certain aliens convicted of aggravated felonies. On August 24, 1995, the Service published a final rule at 60 FR 43954 to create 8 C.F.R. 242.25 that implemented section 242A(b) of the Act. Section 442 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) modified section 242A(b) and required that the Attorney General publish implementing regulations by January 1, 1997, to take effect 60 days after publication.

On September 30, 1996, however, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208. Section 304(c) of the IIRIRA, effective April 1, 1997, further amended administrative deportation proceedings by nullifying some of the amendments made by the AEDPA and by renumbering the statutory section from section 242A(b) of the Act to section 238(b).

The AEDPA amendments would require significant changes in operational procedures and forms that are not worthwhile, given that those amendments will be effective only for approximately 1 month. For example, the AEDPA added the requirement that administrative deportation proceedings be “conducted in, or translated for the alien into, a language the alien understands.” This provision would require the Service to translate all documents used in the proceedings, rather than only the Form I-851, Notice of Intent to Issue Final Administrative Deportation Order. (Current translation and explanation requirements are set forth in 8 CFR 242.25(b)(2)(iv)). Since

the IIRIRA has eliminated the statutory translation requirement, it would be unduly burdensome to implement this requirement for 1 month.

Accordingly, as a policy matter, the Service has determined that these implementing regulations will simply announce a suspension of the operation of administrative deportation proceedings, which includes the issuance of both Form I-851 and Form I-851A, Final Administrative Order of Deportation, until the implementing regulations for the IIRIRA, under separate notice of proposed rulemaking, are effective. The Service will continue to process aliens under the current version of 8 CFR 242.25 until March 3, 1997. From that date until the IIRIRA amendments to administrative deportation take effect, the Service will cease all administrative deportation proceedings. During that period, aliens otherwise amenable to administrative deportation will be placed instead in regular deportation proceedings before an immigration judge. This change does not affect the enforceability of administrative deportation orders previously entered.

The Service has determined that the publication of this rule as a final rule is based upon the “good cause” exceptions found at 5 U.S.C. 553(b)(3)(B). The Service has determined that public notice and comment on this rule is impracticable because of the January 1, 1997, statutory deadline for publishing a final rule. In addition, public notice and comment is unnecessary because the final rule makes no change that affects an individual’s rights. It simply continues until March 3, 1997, the existing rules governing administration deportation. On that date, the Service will suspend administrative deportation proceedings, and proceed under existing regulations governing regular deportation proceedings. Since there will be public notice and comment on the IIRIRA amendments to administrative deportation proceedings, public notice and comment on this final rule is unnecessary.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because the affected parties are individual aliens who have been ordered deported from the United States.

Summary of statements on Quota:

- “In 2014 Congress provided a necessary prerequisite for correcting this condition when it re-authorized the language in the 1996 Farm Bill allowing the USDA to promulgate a California FMMO while **retaining** the California state quota program.” Exhibit 19, Page 5, Written Testimony of Elvin Hollon.
- “That Congressional authorization makes clear that a California FMMO will have all the benefits and characteristics of the other ten FMMO’s, while **maintaining** the unique California system of sharing milk sales revenues through the state quota program.” Exhibit 19, Page 5, Written Testimony of Elvin Hollon.
- “The definition of the California marketing area follows directly from the language of the 2014 farm bill (the Agricultural Act of 2014) which specifically links the quota **authorization** to a petition for a marketing order for the ‘state of California.’” Exhibit 34, Page 4, Written Testimony of Tom Wegner.
- “In fact, paramount to any consideration of a California federal milk marketing order (FMMO) was the assurance that the quota program would **not in any way be diminished or affected**. Congress recognized this and in the 2014 Farm Bill language dealing with the promulgation of an FMMO in California directed that the marketing order provisions **allow for the continuation of the quota program** in California.” Exhibit 42, page 2, Written Testimony of Eric Erba.
- “The language from Congress makes it clear that the quota program **should have the right to exist** within the framework of a FMMO.” Exhibit 42, page 24, Written Testimony of Eric Erba.
- “In fact, paramount to any consideration of a California federal milk marketing order (FMMO) was the assurance that the quota program would **not in any way be diminished or affected**. Congress recognized this and in the 2014 Farm Bill language dealing with the promulgation of a FMMO in California directed that the marketing order provisions **allow for the continuation** of the quota program in California.” Exhibit 54, pages 6–7, Written Testimony of Lon Hatamiya, “The Economic Importance of the California Dairy Quota Program.”
- “In order to best ‘recognize quota value,’ **the full economic value must be determined and maintained**.” Exhibit 54, page 7, Written Testimony of Lon Hatamiya, “The Economic Importance of the California Dairy Quota Program.”
- “So Congress knew what the system was and it authorized this hearing, and it authorized a Federal order that **incorporates** quota...” Opening Statement of Marvin Beshore, September 25, 2015, transcript page 767, lines 14–16.

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The Agricultural Act of 2014 and Prospects for the California Milk Pool Quota Market

Daniel A. Sumner and Jisang Yu

We find that the Agricultural Act of 2014 has mixed effects on the market for California milk pool quota. First, the new Margin Protection Program (MPP) likely lowers the expected price of quota by increasing future expected dairy profitability. However, the MPP likely mitigates temporary declines in the price of quota by increasing liquidity during financial stress. The proposed federal milk marketing order for California would also have mixed effects on the price of quota. Higher minimum prices cause slightly lower farm profits and thereby raise quota prices. However, de-pooling would reduce the amount of milk eligible for the pool and shift down the demand for quota causing a lower price. Finally, by reducing the perceived quota policy risk, the farm bill contributed to the rise in the price of quota in 2014.

Key words: Agricultural Act of 2014, MPP, California milk marketing order, California dairy quota, farm bill, dairy policy

After years of economic fluctuations U.S. dairy policy changed substantially with the Agricultural Act of 2014. These policy changes may affect markets nationwide and globally. California dairy farms have recently faced even more economic turmoil than those in most of the rest of the United States. As a result, in addition to supporting changes to federal dairy policy, many producers, processors and others, have suggested changes in California state milk pricing regulations.

California has had its own separate state milk marketing order since the 1930s. The California Department of Food and Agriculture (CDFA) operates a classified price and revenue pooling program that, while similar in many ways to the federal milk marketing order (FMMO) system, also has significant differences. One difference is that a portion of the pooled revenue under the California order is distributed to dairy producers in proportion to the ownership of California milk pool quota. California and the FMMOs also differ in how they set minimum prices by end use class. California minimum prices have often been well below the federal minimums, especially for the non-fat milk

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component used in cheese production. This deviation in milk prices stimulated renewed interest in California shifting to the FMMO system. In response, the Agricultural Act of 2014 specifically provides that California may join the FMMO system while maintaining some form of a California pool quota program.

This paper focuses on how the Agricultural Act of 2014 is likely to affect the market for and the value of California milk pool quota. The potential shift to the FMMO system is one influence on the quota market, but the removal of price supports and the adoption of the Margin Protection Program for Dairy Producers (MPP) also have the potential to influence the value of quota.

It is important to understand at the outset that the California milk pool quota program is distinct from typical agriculture quota programs since the quota does not impose any production or marketing limits. Total quantity of the quota asset and the flow returns have been fixed since 1994 by the state. The quota is strictly a financial asset that provides fixed monthly flow returns to "quota" owners. The quota asset is freely tradable among dairy producers in California.

About \$13 million dollars, about 2% of California milk revenue, is distributed through the milk pool quota system each month. The capital value of this quota is currently about \$1.1 billion. Thus dairy farmers have significant wealth and potential for financial losses when dairy policy changes in ways that may affect the quota market. Given the long history of the quota program and the stability of returns changes in quota returns or operations are highly controversial and major issues for farmers considering changes in the marketing order.

The Agricultural Act of 2014 and California Federal Milk Marketing Order

First consider the provision for California to join the federal marketing order system. Section 1410(d) of the Agricultural Act of 2014 amends section 143(a) of the Federal Agricultural Improvement and Reform Act of 1996 by eliminating its time limitation of final amendments so that California can still be included in a separate FMMO even though the original deadline passed years ago. Section 143(a) of the 1996 Act states: "The order covering California shall have the right to re-blend and distribute order receipts to recognize quota value." This provision, which is now operative again, allows California to join FMMO and maintain a quota system of distributing milk pool revenue, but is silent on precisely how that might be done.

Even though they are similar, there are complications in actually shifting from the California rules to the FMMO rules. In our analysis below, we highlight implications of two differences between the California and FMMO systems that have been the focus of much discussion (Newton, Thraen, and Novakovic (2014)). Most important are the differences in the milk pricing formulas themselves. Differences in rules regarding de-

pooling, which means withdrawals from the pool of processing plants, can also have significant implications.

The regulated minimum prices of the solid-not-fat component for milk entering FMMO Class III and California Class 4b (milk used for cheese) have diverged widely in recent years with the California price much lower than the federal price. The value attributed to whey has been much lower in the California Class 4b price compared to that under the federal system. We show below that economic prospects for dairy investments have the potential to affect the market for quota, therefore higher milk prices in California under a federal order may be expected to affect the price of quota.

Under the FMMO milk processing plants typically have more flexibility to “de-pool” and “re-pool” than they have under the California milk marketing order. Under the federal system, plants processing dairy products such as cheese, dry milk powder or butter can be de-pooled and not be subject to the minimum prices of marketing order. Under prevailing quota rules only producers delivering to plants in the pool may withdraw additional revenue from pool. Therefore, the potential for de-pooling under a FMMO for California would be likely to imply adjustments to which farms would own quota.

Under the MPP a dairy producer receives indemnity whenever the national all-milk price minus a national feed price index falls below that farm’s selected coverage level. We do not yet know how lucrative the MPP will be (Balagtas, Sumner, and Yu (2013), and Bozic et al. (2014)). However, the program is likely to increase expected profitability and the liquidity of dairy producers, due to subsidy and insurance aspects of the program.

Statistics released by Farm Service Agency in January 2015 show 69% of California dairy farms enrolled in the MPP and 35% of those who enrolled chose to buy coverage above the minimum for 2015 (USDA FSA (2015)). The enrollment is high enough to potentially affect the demand for quota. We show how changes in the long run expected profitability and the short run liquidity affect the demand for quota.

With this background we turn to considering implications for the market for quota.

The Capital Value of Farm Program Benefits

Several studies have found high rates of return for Canadian milk quota, which limits the production or marketing of milk (Moschini and Meilke (1988), Barichello (1996), and Nogueira et al. (2012)). Capital value of quota depends on the flow of returns defined by farm programs, the risk of quota in the context of the portfolio of farm assets, and the policy default risk in the program. Barichello (1996) and Alston (1992) emphasize how studies of quota can shed light on capitalization of government program benefits in general.

Sumner and Wolf (1996) showed that unlike most other quota programs, California milk pool quota does not limit milk production or marketing, but only determines an additional revenue flow and in that sense is a financial asset tradable among California dairy farms with no effective limit on productions or marketings. Since the quota asset is a tradable financial asset with fixed flow returns, it is also different from other infra-marginal payments that deter exit decisions of firms. Exit deterrence is very unlikely since most of dairy farmers including quota owners are above marginal level. And even for infra-marginal farmers, their internal valuations of quota need to be a lot greater than the market price of quota to deter exit decisions since the quota asset is a tradable asset. Regarding exit deterrence and infra-marginal payments, de Gorter, Just, and Kropp (2008) provide an illustrative theoretical framework and empirical evidence on the old Milk Income Loss Contract program.

Sumner and Wilson (2005) show that by having returns that are either not correlated with or vary inversely with returns to farm investments, investment in quota lowers the variability of the typical portfolio of dairy farms in California and thus, the producers pay extra for quota. The plausible alternative explanation of the high rate of return for dairy quota is policy default risk. Wilson and Sumner (2004) specify the price of quota as a function of expected flow return, liquidity of dairy farmers, and policy events, and find evidence supporting the importance of these explanators and of policy default risk.

The Flow Return and Market Price of California Milk Pool Quota

Buyers contribute revenue to the milk pool based on minimum prices for each end use class. Before that pooled revenue is distributed per unit of milk marketed, quota owners draw revenue from the pool for each unit of quota they own. Thus, the weighted average (blend) price that farms receive per unit of milk is total pool revenue (after deducting some relatively small allowances) minus payment to quota owners over total quantity of milk supplied to the pool.

Since 1994 the flow return to dairy quota has been fixed and so has been (approximately) the quantity of quota. The pool revenue, R_i of a farm i that owns Q_i pounds of pool quota is

$$R_i = PM_i + FQ_i$$

where M_i is the quantity of milk supplied to the pool and flow returns to quota, F , are only paid up to the amount of M_i for farm i . In other words, farms cannot receive payments on more milk than they market through the pool. Also, note that the payments



are based on the SNF component of the quota milk. The weighted average (blend) price, P , is defined as

$$P = \frac{R - FQ}{M}$$

where R , Q , and M are the pool-wide totals of the terms defined above for individual farm, i , (Wilson and Sumner (2004)).

The flow return per unit of quota has been fixed at \$0.195 per pound of solid-non-fat (SNF) per day, which is approximately equivalent to the annual return of \$71 per pound of SNF. However, the capital value of quota varies with the *expected* future capital gains, (including expectations about program changes), and the relevant discount rate applicable to future returns. Expected flow returns could differ from the historical return if the program provision changes. Determinants of this capital value are discussed in more detail in the next section.

There is an active market in quota and prices of sales of quota are recorded each month by the CDFA. Several dozens of farms buy or sell quota each year, and the market is active every month. Figure 1 shows California milk pool quota prices per pound of SNF from January 1994 through September 2014. Prices of quota have been highly variable even though the flow return itself has not changed.

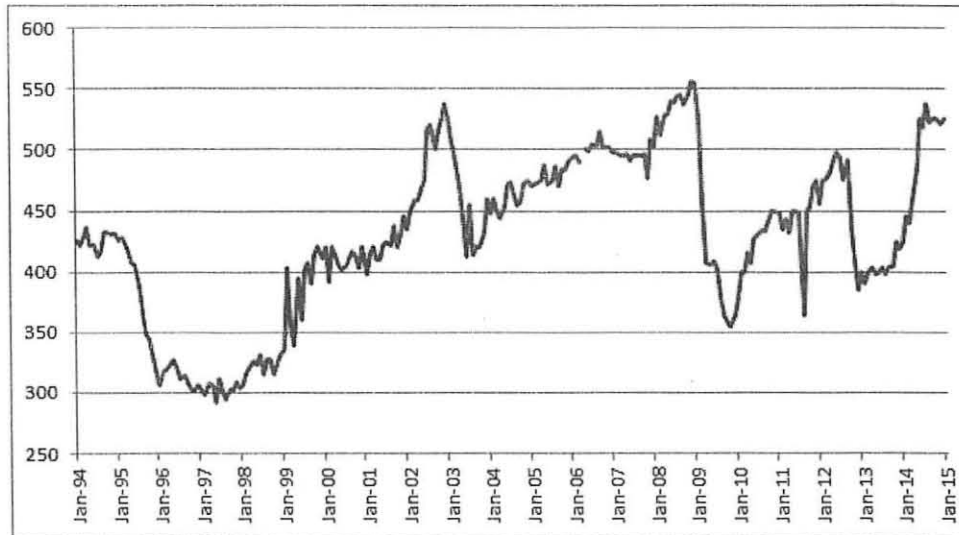


Figure 1. The Market Price of California Milk Pool Quota Varies Substantially from Month to Month

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How Potential Policy Changes Affect the Market for Quota

We characterize the individual willingness to pay for a unit of milk pool quota, with a simple net present value model:

$$WTP_i = \sum_{n=0}^{N_i} \frac{F}{(1+r_i)^n} \quad (1)$$

where F is again the fixed flow return to quota, r_i is the subjective discount rate of the individual i , and N_i is the subjective time horizon of the quota program of the individual i . We treat expectation of future F as fixed and assign the changes in the quota demand to r_i and N_i .

The subjective discount rate, r_i ; is an increasing function of the expected rate of return from alternative investments, π_i , which represents the opportunity cost of investment in quota. For the dairy producers, the most relevant driver of π_i is the expected rate of return to investments in dairy farming (cows, barns, equipment, etc.), which is a decreasing function of the rate of dairy investment, I_i . As the farmer shifts capital from quota ownership to the investments in dairy farm assets he faces a declining rate of return, which limits the size of the farm at some stage. Dairy producers face upward sloping supply functions for access to capital, which indicates that I_i is a decreasing function of the quantity of quota, Q_i , that individual i owns. Increasing the investment in quota lowers investments in farm assets and hence raises the rate of return from dairy farming and the subjective discount rate for owning quota. The higher long run expected rate of return to dairy farming, π_i , the higher the subjective discount rate and the lower the price of quota given fixed flow returns.

The discount rate also depends on the farmer's liquidity at the time of decision about investment in quota which we denote as *liquidity* _{i} . Liquidity indicates the producer's immediate access to capital including cash flow. We expect the higher the *liquidity* _{i} , the lower the subjective discount rate and the higher the price of quota.

The third factor affecting the subjective discount rate is the risk premium a farmer assigns to quota, *risk premium* _{i} . The risk premium, which does not include policy default risk, indicates how investment in quota contributes to the variability of the portfolio of the dairy producer. We expect the less the quota investment contributes to the total variability of the farm investment portfolio, the more one would value the flow return from the quota investment. The less returns to quota are correlated with returns to dairy farm investments the more farmers would be willing to pay for quota.

Therefore, we express the subjective discount rate as

$$r_i = r(\pi_i(I_i(Q_i)), \text{liquidity}_i, \text{risk premium}_i) \quad (2)$$

which is increasing in the amount of quota demand, Q_i . Substituting (2) into (1), we denote the willingness to pay for quota for the individual i is increasing in $liquidity_i$ and decreasing in π_i and $risk\ premium_i$.

The time horizon, N_i , measures how long the individual i thinks the program will last in its current form. We represent a higher policy default risk, including expectations about negative changes in the flow return, or other program adjustments that lower the value of quota, as a smaller value of N_i .

Since payment of quota revenue accompanies milk revenue from the pool, producers receive no revenue for quota in excess of the milk they market through the pool. That means the maximum *aggregate* demand for quota is total pool milk marketed in California, which we denote as \bar{Q} . Consider the distribution of WTP_i per unit of quota for an individual farm and across farms. We assign a willingness to pay for quota to each unit of milk marketed through the pool in California. The function $f(x)$ defines the density of the quantity of milk with a willingness to pay of x for an associated unit of quota. Thus, the market demand for quota may be expressed as

$$D(P) = \int_P^{\infty} f(x)dx,$$

where P is the market price of quota and $D(P)$ is quantity of quota that elicits a willingness to pay greater than or equal to that price.

Figure 2 shows the distribution of willingness to pay for quota. In Figure 2, the area under the density function is equal to \bar{Q} . The quantity of milk changes from month to month, while the quantity of quota is essentially constant. The quantity of quota has recently been equivalent to about 20% of the milk marketed in the California pool. We illustrate in Figure 2 that the market price of quota is at approximately 80% quantile of the willingness to pay distribution, with area A in Figure 2 equal to the total quantity of quota in California.

We use the framework of Figure 2 to explore how the Agricultural Act of 2014 is likely to affect the demand for California milk pool quota and therefore the market price and capital value of quota. The Agricultural Act of 2014 authorized the implementation of the MPP nationwide, whereas it only states the permission for California to join the FMMO system while maintaining the own milk pool quota program.



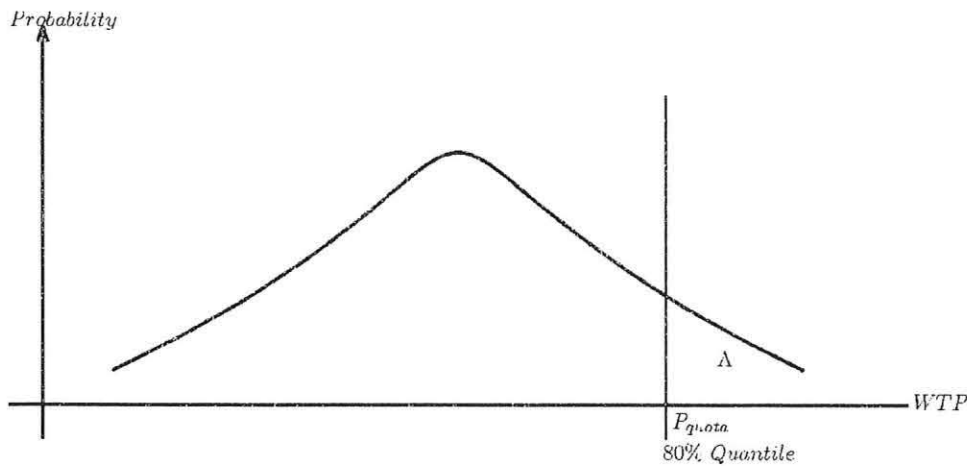


Figure 2. Distribution of the Willingness to Pay for California Milk Pool Quota

Expected Changes in the Price of California Milk Pool Quota from MPP

The MPP increases expected returns to dairy farm investments through the net subsidy element. To the extent that long run expected profit for the dairy operation increases due to the MPP, demand for quota falls. Willingness to pay for quota falls as dairy profitability, π_i , the opportunity cost of capital for investments in quota, increases.

Nicholson and Stephenson (2014) argue that the MPP may cause lower margins since dairy farms would not reduce production as much when dairy margins trigger the MPP indemnity payments. However, even if the MPP results lower margins, producers perceive dairy farming as more profitable with the MPP than otherwise due to its subsidy element. That means the impact on quota market also follows.

Through the insurance element, the MPP increases liquidity and access to capital in times of low dairy returns. The improvement of liquidity caused by the insurance element of the MPP has the opposite effect on the price of quota. With better access to liquidity, less quota is offered for sale in times of low returns from milk production. Dairy producers who would purchase quota but have a lack of liquidity and expensive credit will demand more quota under the MPP. Similarly, MPP reduces pressure to sell quota to raise capital when dairy cash flow is negative. In other words, MPP increases $liquidity_i$ in equation (2), which in turn implies that dairy producers apply a lower discount rate on the future flow return from the quota investment and would therefore be willing to pay more for quota. We expect MPP to keep the price of quota (and other assets owned by dairy farms) from falling as much during periods when farmer liquidity is low, such as during periods of low margins.

A third effect of MPP follows from the role of quota in the farm portfolio. MPP may substitute for quota in producers' risk management plans. As Wilson and Sumner (2005) discuss, the investments in quota may reduce risk of the full investment portfolio of dairy producers. MPP also reduces the risk in the portfolio of dairy producers by eliminating the lower tail of the milk to feed price margin distribution, which suggests the potential substitution between quota and MPP. In this case, the introduction of MPP increases the *risk premium*_{*i*} in equation (2) and raises the subjective discount rate r_i . The price of quota would therefore fall.

In sum, introduction of MPP has three distinct effects on the price of quota. First, improved liquidity from the insurance element is expected to keep the price of quota from falling especially in times of financial stress as observed in 2009 (Figure 1). Second, any increase in the long run expected profitability of dairy farming would reduce the long term demand for and the average price of quota. And, third, the general risk management value of the MPP substitutes for quota and also reduces demand for quota. Empirical examination of the magnitude of these impacts is underway using 20 years of monthly data on quota, milk, and feed prices, and county quota quantities.

Expected Changes in the Price of Quota from Including California in the Federal Milk Marketing Order System

We consider the case of a federal order for California that keeps many of the current features and continues to distribute pool revenue to quota owners who deliver to the pool. We focus on two specific changes. First we consider the increase in the average pool price that is the main motivation for considering a federal order. Second we consider the increase in availability of de-pooling, which is an option that may become attractive to some proprietary processors in California.

Increase in Minimum Prices

Establishing a FMMO for California would likely increase the regulated minimum milk prices received by California producers. If the increases in the minimum prices mean that the profitability in dairy farming increases, the price of quota should fall for the reasons outlined above. To summarize, if the increase in the minimum prices due to FMMO adoption implies an increase in the rate of return of investments in dairy farming, the increases in the minimum prices would increase π_i in equation (2). If California dairy farmers expect the return from investments in dairy farm assets to be higher, given their finite access to capital, they would invest more in farm assets and less in quota. Or, as we



can see from equation (2), the willingness to pay for quota falls as π_i increases and the demand for quota shifts inward.

However, it is not clear whether higher regulated prices would be perceived by quota owners as increasing the profitability of dairy farming. Under current marketing order, the market for milk in California clears at prices slightly above the minimum prices, especially for Class 4b, where regulated minimums are most below their federal counterparts. In recent years in California larger over order premiums are more commonly paid by proprietary cheese plants than by other plants. Given linkages across components and minimums across end use classes, determining the effects of raising minimum prices on revenue and profits is complicated, but a few simple considerations are helpful. If the higher minimum prices are binding in the market, quantity of milk demanded falls and less milk is sold into that end use class. Since California producers almost surely face elastic long run demands for cheese (and milk used for cheese), increasing the minimum prices would reduce total revenue and producer surplus. In this context, we must be careful to consider how the market for milk clears when prices are set above market equilibrium. Of several potential options, one is for excess milk to be shipped at a loss out of the marketing order region and a second is for cooperatives or some other organization to limit access to the market with supply restrictions.

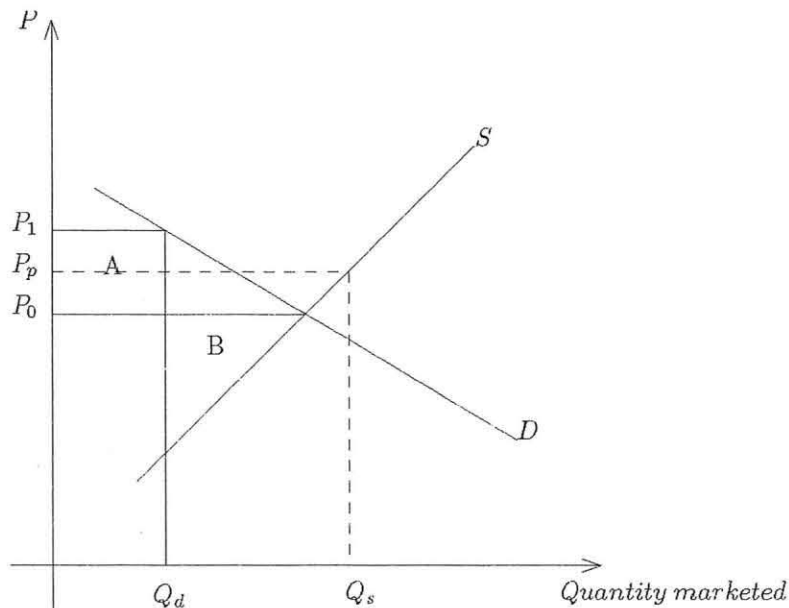


Figure 3. Increase in the Minimum Price of Milk and Industry Profit

Figure 3 illustrates a simple case of binding minimum prices. Before the higher minimum price, the market price is set where quantity demanded equals quantity supplied (at clearing price, P_0). If the demand elasticity facing milk from California is greater than 1.0, which is surely true because more than 90% of California milk is sold in national and global commodity markets, area A will be smaller than area B, and the producers lose from the new binding minimum price P_1 .

Moreover, unlike a monopoly supplier, the marketing order cannot control the quantity produced by individual farmers, which means that an increase in minimum prices leads to excess supply and, as noted above, the welfare effects depend on how the excess supply is handled. Individual farmers may face a perceived expected price with a probability of selling at the minimum price less than one. If we set the probability of milk selling at the minimum as the ratio of the market demand at the minimum price over the market supply at the perceived price, then the perceived expected price P_p satisfies

$$P_p = P_{min} \frac{D(P_{min})}{S(P_p)},$$

where we set a price of zero for milk not sold at the minimum price. We can then derive the possible range of the market supply at the equilibrium as

$$D(P_{min}) < S(P_p) < S(P_{min})$$

which clearly indicates the presence of excess supply. Extra losses occur from the excess supply $Q_s - Q_d$ in figure 3.

Under this example, California dairy farmers as a whole may expect lower profit under an FMMO. Lower rates of return to dairy investments on the farm, π_i , would lower the subjective discount rate for the capital value of quota, r_i , and raise the willingness to pay for quota. In that case, the price of California milk pool quota would rise because long term prospects for dairy farming fall.

De-pooling

Under the current California marketing order, all Grade A milk is subject to the minimum prices of the marketing order, so there is little incentive for a plant to leave the pool. Furthermore producers cannot receive quota benefits if their milk is delivered outside the pool. If de-pooling allows a plant to avoid paying minimum prices, raising minimum prices creates incentive for plants in California to de-pool so that they could pay their milk suppliers directly rather than indirectly through the pool.



Consider the potential effects of de-pooling under the assumption that milk supplied to de-pooled plants would not be eligible for quota returns. In that case, producers who wish to keep their quota would avoid delivering to de-pooled plants. Plants that wish to de-pool would need to offer incentives sufficient to compensate suppliers who own quota for selling their quota. In the context of our conceptual framework, the WTP_i would fall to zero if individual i decides to leave the pool. De-pooling would cause excess supply of quota in the market and the price of quota would fall. Those who previously valued quota more highly would need to find buyers who were unwilling to own additional quota at the prevailing price. Thus the price must fall to entice them to buy. Producers with quota may supply plants inside and outside the pool, so long as they supply to the pool a quantity not less than the amount of quota they own, but the same pressure on quota price applies. The price of quota falls with de-pooling, but the magnitude of the fall requires further data analysis. Data on the milk demanded by de-pooled plants and the milk produced by current quota owners who would shift to de-pooled plants are the key information to account for the magnitude of the fall in the price of quota.

Expected Changes in the Price of Quota from Changes in Policy Default Risk

Policy default risk represents the likelihood of a policy change that substantially lowers the return from policy-created assets. Sumner and Wilson (2005) conclude that the high rates of return to California milk pool quota could not be fully explained by high portfolio risk and default risk was a likely alternative. Wilson and Sumner (2004) provide empirical evidence supporting the importance of policy default risk for California milk pool quota. Nogueira et al. (2012) calculate the policy default risk for Canadian dairy quota and find the policy default risk increased until the Uruguay Round Agreement and decreased after the establishment of the World Trade Organization in 1994.

In the context of equation (1), we express policy risk as a lower N_i , which is the perceived time horizon over which quota returns are expected to last. Clearly, the willingness to pay is increasing in N_i . Therefore, a fall in N_i would shift the demand for quota inward and the price of quota would fall.

The provision in the Agricultural Act of 2014 that allows California to join FMMO without eliminating the current quota system likely caused a fall in the policy default risk, because it seems to provide for continuing quota even with a shift to a federal order. California producers who thought a federal order might be likely and would make the quota program vulnerable would have less concern after the legislation was signed into law. The rise in the price of quota in the spring and summer of 2014 is consistent with this hypothesis (Figure 1). Of course, the rise in price of quota is also consistent with

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temporarily high milk margins that created a temporary rise in liquidity without raising long run expectations of profitability.

Conclusion and Further Research

We have discussed on how policy changes in the Agricultural Act of 2014 may affect the demand for California milk pool quota and the price of quota. The immediate change from the legislation was the authorization of the MPP. We expect the MPP to decrease the average price of quota in the long run, but lead to smaller declines in the price of quota in periods of financial stress. Another likely response to the legislation was a fall in perceived policy default risk, which may have caused a rise in the price of quota. Thus, the immediate change from the legislation itself would be to increase the price of quota.

We have raised several issues concerning prospects for the price of quota under a transition to a federal milk marketing order for California. If California joins the FMMO system, minimum prices would likely rise. Contrary to some expectations, we suggest that higher pool minimums would lower the profitability of dairy farming in the long run and raise the demand for and price of quota. We show that de-pooling under a federal order for California would likely lower demand for and the price of quota.

This paper has raised many questions about the market for California milk pool quota after the Agricultural Act of 2014. One of the most interesting issues surrounding a proposed Federal order for California would be the Federal order's effect on the price of quota. This question affects the value of an asset owned by California dairy farms that is now worth about \$1.1 billion. Therefore, it is worthwhile to develop further empirical information on these questions, which is one of the topics of our current research using monthly and county data on quota prices and quantities along with relevant dairy market information.

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