

DEPARTMENT OF FOOD AND AGRICULTURE
Title 3 of the California Code of Regulations

**Notice of Proposed Rulemaking
45-Day Notice**

Notice is hereby given that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this notice as the contact person beginning August 15, 2014, and ending at 5 p.m. on September 29, 2014. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the insistence of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 407 of the Food and Agricultural Code, and to implement, interpret or make specific section 62580 of said code, the Department proposes to amend Section 2100, of the California Code of Regulations, Title 3, Chapter 3, Subchapter 4, Article 1, Eligibility for Coverage.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to amend section 2100, which establishes the definition of a *beneficial ownership*. This affects producers and handlers of milk and the matter of liability for producer payment during certain circumstances when a producer has or does not have a beneficial ownership interest in a handler. This proposal will provide for amending the regulations to align with the code and result in a streamlined and more efficient process for administering the Milk Producers Security Trust Fund.

Existing state law provides that the Department, for the purposes of protecting producers against loss of payment for bulk milk, and for the establishment of a system to provide payment security for producers, may adopt regulations that are reasonably necessary to carry out the provisions of the Food and Agricultural Code. In section 2100, with regard to the definition of a beneficial ownership interest, this proposal will seek to eliminate the 10% threshold as well as other requirements for establishing a beneficial ownership interest.

Objectives/Benefits

The broad objective of the proposed regulations is to ensure the financial integrity of the Milk Producers Security Trust Fund (MPSTF) by streamlining certain regulatory functions as performed by the department. Especially as related to the processing of claims made against the MPSTF, the proposed amended regulations will benefit the producers and handlers of milk by ensuring to the greatest extent that potential claims are evaluated for

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possible payment within the context of the governing statutes. This proposal, if adopted, may serve to restrict to a greater degree than at present, the payment of claims made against the MPSTF. This benefits the California dairy industry which provides for economic benefits to the people of this state including possible job creation opportunities. The continuous marketing of milk as an essential food nutrient promotes good health and wellness to the public. Therefore, the benefits derived from the proposed changes will create a positive impact to the health and general welfare of the people of California.

Based on an initial evaluation, the Department does not believe that the proposed regulations are inconsistent or incompatible with existing state or federal regulations.

FISCAL IMPACT STATEMENTS/DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Fiscal impact on public agencies including costs or savings to state agencies or cost/savings in federal funding to the state: None

Mandate on local agencies and school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The Department has made an initial determination that no statewide adverse economic impact will occur affecting the ability of California businesses to compete with businesses in other states. This determination was made based on the fact the Milk Producers Security Trust Fund, as a vehicle for protecting the interests of producers from loss of payment, is protected from claims from producers having a beneficial ownership interest in a handler receiving the producers milk.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, a representative private person or business would incur a reduced liability for assessments paid to the Milk Producers Security Trust Fund or a reduction in the value of acceptable financial instruments submitted to the Secretary to cover producer payment liabilities of handlers above the cash value held currently in the Milk Producers Security Trust Fund bank account. Also, producers who now qualify as having beneficial ownership in the handler they ship their milk to will now not have Trust Fund coverage if the handler defaults on their payments to producers for milk delivered. Historically, the Department has processed fewer than one claim per year against the trust fund.

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Amendment of these regulations will not affect to any significant degree:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California;
- (3) Affect the expansion of businesses currently doing business within California; or,
- (4) Affect the health and welfare of California residents, worker safety and the state's environment.

Benefits of the Regulation

For additional information on the benefit analysis of the proposed rulemaking, please see "Objectives/Benefits" under the Informative Digest/Policy Statement Overview.

Significant effect on housing costs: None.

Small Business Determination: The Department has determined that the proposed regulations may affect small businesses; In determining the frequency or distribution of small businesses among the handler licensees, the Department has calculated that fewer than 31% of the milk handlers would meet the definition of small business as contained in Government Code 11342.610.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The foregoing is based on the Department's evaluation of alternatives provided by industry groups representing both producers and handlers.

One alternative is retaining the 10% threshold as an essential element of the definition of beneficial ownership interest. The reasoning being an interpretation of "the Department's task of balancing a goal of equal raw product costs with a need to have provisions addressing individuals or entities who have a 'real' ownership stake in the handler(s) they work with." The Department is rejecting the retaining of a 10% ownership stake minimum threshold in determining beneficial ownership interest based on a plain language interpretation of the governing statutes and based on its desire to more effectively administer a claims process that ensures to the greatest extent possible the financial integrity of the MPSTF.

A second alternative proposed amended definition of beneficial ownership interest could be constructed as follows:

- 1) Eliminate any reference to 'debt' or 'lien' in constructing a definition based on dictionary references and an interpretation of the governing statute.

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- 2) Eliminate the two part requirement in the proposed definition and remove any reference to “occupying some role or office or position” based on an interpretation of the governing statutes.
- 3) Possibly introduce a 10% ownership interest threshold for “publicly-traded” handlers but not otherwise based on an interpretation of the governing statutes and based on the “practical safeguards” made present through “brokers, regulators, and stockholders.”

The Department is rejecting these suggestions based on a plain language interpretation of the governing statutes and based on its desire to more effectively administer a claims process that protects the interests of producers while ensuring the financial integrity of the MPSTF.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: John Lee, Department of Food and Agriculture, Milk Pooling Branch, 1220 N Street, Sacramento, California 95814, (916) 900-5012, FAX (916) 900-5340, E-mail: jlee@cdfa.ca.gov. In Mr. Lee’s absence, you may contact David Hillis, Marketing Division at (916) 900-5018. Questions regarding the substance of the proposed regulation should be directed to:

John Lee
Department of Food and Agriculture
Milk Pooling Branch
1220 N Street
Sacramento, CA 95814
jlee@cdfa.ca.gov
916-900-5012
916-900-5340 (FAX)

Written comments should include the author’s name and U.S. Postal Service mailing address in order for the department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/mkt/regulations.html).

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AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.