

**Title 3. Food and Agriculture  
Milk Pooling Branch**

**15-DAY NOTICE OF MODIFICATIONS TO THE REGULATION TEXT  
AND  
DOCUMENTS ADDED TO THE RULEMAKING FILE**

**NOTICE IS HEREBY GIVEN** of proposed modifications to the originally proposed text relating to the action described in the Informative Digest published in the California Regulatory Notice Register on August 15, 2014 [Register 2014, No. 33-Z; Notice File No. Z-2014-0804-02] pertaining to the Milk Producers Security Trust Fund. Any person who wishes to comment on the proposed modifications may do so by submitting written comments postmarked beginning May 19, 2015 and ending June 3, 2015, to the person indicated in this Notice.

**NOTICE IS HEREBY GIVEN** that the California Department of Food and Agriculture, Milk Pooling Branch, has added the following document to the rulemaking file pursuant to the requirements of Government Code sections 11346.8 (d), 11346.9 (a) (1), and 11347.1:

1) Updated/Amended - Initial Statement of Reasons

The above listed document is available for public inspection at the Department's Gateway Oaks location: 2800 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833 from May 19, 2015 to June 3, 2015, between 8:00 a.m. and 4:30 p.m.

If any person wishes to submit comments regarding the modified text or the document added to the rulemaking file, written comments must be submitted to the Department postmarked from May 19, 2015, to June 3, 2015, to the following person:

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

All written comments received (or postmarked) by June 3, 2015, which pertain to the modified text or the document added to the rulemaking file, will be reviewed and responded to by Departmental staff as part of the compilation of the rulemaking file.

***Please Note:** Any written comments are to be limited to the recent modifications to the proposed text as shown in the enclosed document and/or the additional material to be added to the rulemaking file as described above. The Department of Food and Agriculture is not required to respond to comments received in response to this notice or other aspects of the proposed regulation.*

*Written comments already received for this proposal during the initial public notification period beginning August 15, 2014, and ending at 5:00 p.m., September 29, 2014, will become a part of the Department's official rulemaking file.*

A back-up contact person for general questions relating to the regulation process:

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David Hillis, Research Manager  
Department of Food and Agriculture  
Marketing Services  
1220 N Street  
Sacramento, CA 95814

Materials relating to this proposal may be found at the following Internet address:  
[www.cdfa.ca.gov/Regulations](http://www.cdfa.ca.gov/Regulations)

The modified text is shown as:

New Text = Bold and double underline  
Deleted Text = Bold, strikeout, and double underline

Written comments must address the modified text only.

3 CCR § 2100  
§ 2100. Definition of Beneficial Ownership Interest.

~~(a)~~ For purposes of Milk Producer Security Trust Fund (hereinafter “Fund”) coverage criteria for milk shipped by a producer to a handler, as set forth in Food and Agricultural Code Section 62580, the term “beneficial ownership interest” shall be defined as set forth in ~~(b)~~ (a) of this Section.

(a) Except as otherwise provided by law, any person or any other legally constituted business entity, or any form of cooperative ownership, shall be deemed to have a beneficial ownership *interest* in a handler by:

(1) Owning an interest in the stock, profits, losses, debt or equity of the handler, as evidenced by legal or regulatory documents, such as by-laws, financial instruments, securities, liens, accounting reports and statements, tax filings and forms, licenses and other comparable records; and

(2) Serving as an officer, director, partner, or manager of the handler or otherwise occupying a position with a handler that confers the authority to influence or create policy which affects the handler’s business decisions.

(b) For the purpose of determining cooperative beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their member’s milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.

(1) A cooperative shall possess a beneficial ownership interest in any handler or other cooperative in which it possesses an interest as set forth in subdivision (a).

(c) A beneficial ownership interest in a handler attributable to any person or legally constituted business entity as provided in subsection (a) shall also be attributable to anyone possessing a controlling interest in the entity.

~~(b) Except as otherwise provided by law, any person or any other legally constituted business entity, including but not limited to, a corporation, limited partnership, limited liability company, joint venture, association, or any other form of cooperative ownership, shall be deemed to have a beneficial ownership interest through owning an interest in a handler, as defined in Food and Agricultural Code Section 62521(d), in any form, such that they have any interest in the profits,~~

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losses, or equity of that handler, with the authority to influence or create policy which affects the handler's policies and business decisions.

~~(c) Authority to influence or create policy includes service in any discretionary capacity associated with a handler's policies and business decisions, and shall not be limited to service in an official capacity, such as a member of a Board of Directors, or employment as an officer or any administrative position.~~

~~(d) An individual possesses a beneficial ownership interest only if he/she owns a 10 percent or greater interest in the equity and/or profits and/or losses of a handler, with the exception that an individual who owns a 10 percent interest or greater interest as community property with his/her spouse shall be deemed to possess a beneficial ownership interest.~~

~~(e) A producer who has extended credit to a handler does not possess a beneficial ownership interest unless the terms of the agreement under which such credit was extended permit the producer to acquire a 10 percent or greater ownership interest in the handler in any form.~~

~~(f) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.~~

~~(1) A cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and/or profits and/or losses and/or equity capital or stock.~~

~~(2) A cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses, equity capital or stock.~~

~~(g) Producers and cooperative members specifically possess beneficial ownership interests, beyond the general provisions of (b) and (c) in this Section, in the following circumstances:~~

~~(1) A producer who is a member of a cooperative has a beneficial ownership interest in that cooperative.~~

~~(2) All members of a cooperative, including producers, additionally have beneficial ownership interest in any other cooperatives in which their cooperative has such an interest.~~

~~(3) All members of a cooperative, including producers, have a beneficial ownership interest in any handler in which their cooperative has a beneficial ownership interest.~~

~~(h) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.~~

~~(1) In addition to the general provisions of (b) and (c) in this Section, a cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and/or profits and/or losses and/or equity capital or stock.~~

~~(2) In addition to the general provisions of (b) and (c) in this Section, a cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses and/or equity capital or stock.~~

~~(i) For purposes of determining whether a corporation possesses a beneficial ownership interest, there are "S" corporations as defined and regulated by the Internal Revenue Service, and "C" corporations, which are all corporations other than "S" corporations.~~

~~(1) In determining whether an "S" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns~~

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~~or controls any of the "S" corporation's stock shall be deemed to be owned by the "S" corporation.~~

~~(2) In determining whether a "C" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns five percent or more of the "C" corporation's stock, regardless of class, shall be deemed to be owned by the "C" corporation.~~

~~(3) In addition to the general provisions of (b) and (c) in this Section, any beneficial ownership interest of a "C" corporation shall be attributed to any stockholder who owns a 5 percent or greater interest in any class of stock of the corporation.~~

~~(j) A "Controlled Group of Corporations" (hereinafter "CGC") is defined as any group of corporations, partnerships, joint ventures or any other business entities, where a common parent entity owns or controls the largest number of outstanding shares, or any other ownership interest, in each member of the group.~~

~~(1) In addition to the general provisions of (b) and (c) of this Section, if a CGC cumulatively owns, as the parent entity of any group of corporations, partnerships, joint ventures or other business entities, as defined in (j) of this Section, a 10 percent or greater interest in any handler derived from these entities, the CGC shall be deemed to have a beneficial ownership interest in that handler.~~

~~(2) In addition to the general provisions of (b) and (c) of this Section, if a producer or cooperative owns a 10 percent or greater interest in a handler, and that handler is also a member of a CGC, the producer or cooperative shall be deemed to have a beneficial ownership interest in all corporations, partnerships, joint ventures or other business entities of the CGC.~~

~~(3) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest of an "S" corporation shall be attributed to each stockholder of the corporation.~~

~~(4) Any beneficial ownership interest held by any common owner or subsidiary company of a CGC shall be considered as being held by each member of the group.~~

~~(k) A partnership, limited partnership, joint venture, estate or trust will be deemed to own any beneficial ownership interest attributed to any of its partners or beneficiaries.~~

~~(1) A beneficial ownership interest owned by a partnership shall be attributed to each partner of the partnership.~~

~~(2) Joint ventures and/or similar arrangements involving the participation of corporate participants shall be treated as partnerships.~~

~~(3) All participants in joint ventures and/or similar arrangements shall be treated as partners.~~

~~(4) In situations involving trusts and estates, where the beneficiaries have no rights to direct or influence the entity's decisions, these beneficiaries shall be treated like "C" corporation shareholders.~~

~~(l) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest owned by a Limited Liability Company (hereinafter "LLC") shall be attributed to each member of the company. Conversely, any beneficial ownership interest owned by a member of a LLC shall be attributed to the LLC.~~

Note: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 62580 ~~and~~ 62587, Food and Agricultural Code.