



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

Memorandum

To: Kathy Diaz, Director
Marketing Services Division

Date: April 30, 2024

From: Peter Weber, Staff Counsel
Legal Office

Place: Sacramento

Phone: (916) 654-1393

Subject: Producers Review Board Hardships

Question Presented:

What are the legal responsibilities of the Producers Review Board (PRB) when considering a request from a producer for a hardship variance from the Quota Implementation Plan (QIP)?

Short Answer:

When presented with a hardship variance request, the PRB should ascertain whether the technical prerequisites for a hardship variance have been met. The producer must first clearly explain their challenges and how they link to specific provisions of QIP, along with the specific relief requested. If these formalities are met, the PRB considers additional factors, such as whether the situation is beyond the producer's control and also the impact on the industry when considering whether to recommend the hardship variance. Finally, and perhaps most importantly, the PRB has a fiduciary obligation to the QIP's financial health and can deny a variance if it threatens program stability. Granting a hardship variance based solely on a dairy's financial performance falls short of fiduciary obligations. The PRB can recommend relief, request more information, or ask for an interview.

Discussion:

Historically, relying on the previous pooling plan's understanding of hardship variances was the legally safest course of action. However, recent litigation has prompted courts to interpret the QIP independently. They have clarified that the QIP stands alone and does not rely on the text of the former plan. (*Stop QIP Tax Coalition v. Cal. Dep't of Food & Agric.*, 2022 Cal. Super.). Further, the recent 5-year producer survey indicated that greater clarity is sought regarding hardships. Thus, we are providing an updated legal interpretation of QIP Section 500 hardship variances.

When presented with a hardship variance request, the PRB should ascertain whether the technical prerequisites for a hardship variance have been met. First, the QIP mandates that the producer submit the basis for which relief is requested, clearly articulating the challenges they face, and linking them to specific provisions of the QIP. Second, they must delineate the extent of the relief sought. Failure to meet these two formalities should preclude further consideration of the hardship variance request by the PRB.

If it is determined that the formalities have been met, the PRB, or a subcommittee thereof, should evaluate the request on its merits. Factors such as whether the situation is beyond the control of the producer, the producer's ability to remain in business without the granted relief, the impact on other California producers and the California dairy industry, the scale of the relief sought, the completeness of documentation provided or not provided, the historical understanding of hardship requests, and other relevant factors may be considered. Moreover, the PRB may consider facts that have not been presented and should leverage their personal experiences and extensive industry knowledge when assessing a hardship variance.

Notably, the PRB bears a fiduciary obligation to the QIP program, necessitating the exercise of utmost diligence and prudence in all decision-making processes. This fiduciary responsibility extends beyond the immediate concerns of the individual producers to the broader financial health and sustainability of the QIP program itself. The PRB must assess the potential impact of granting hardship variances on the program's fiscal stability, ensuring that any relief provided does not jeopardize the long-term viability of the QIP. They must carefully weigh the costs and benefits associated with granting variances, taking into account not only the immediate needs of the requesting producers but also the overarching goals of the program and the collective interests of all stakeholders involved in the California dairy industry. Granting a hardship variance based solely on a dairy's financial performance falls short of fiduciary obligations.

Once deliberated by the PRB, they may recommend specific relief. Alternatively, the PRB may abstain from offering a recommendation to the Secretary and instead request the applicant to submit additional information or documentation as deemed necessary. Further, they may request the applicant appear for an oral interview at a future meeting.

It is important to note that California conflict of interest laws apply to hardship variance reviews by the PRB. Therefore, if a PRB member's interests uniquely affect those of the industry, they should recuse themselves from the hardship variance discussion.

Legal Authority:

Article 5 of the QIP empowers the Secretary to issue hardship variances to the plan to Producers after consulting with the PRB. It stipulates:

“Producers may request relief from hardship to the Producer Review Board, include the basis for which the review is requested, and the extent of relief requested.

The Producer Review Board may request the applicant to submit additional information or documents as it deems necessary and appear for oral interview. The Producer Review Board shall submit its recommendation in writing to the Secretary, along with its findings. The recommendation shall include either support, denial or partial relief for the request, and indicate the extent of relief recommended and the effective date(s) for such relief.

The Producer Review Board recommendations shall be subject to approval or modification by the Secretary, who shall notify the producer in writing of the decision within 15 days after receiving the recommendations from the Producer Review Board.”

Furthermore, hardship is delineated in Article 1 as “Hardship’ means a challenge to the management and operation of a dairy due to the operation of this Plan.”

Under the previous pooling plan, effective until November 2018, hardships were predicated on conditions beyond the control of the Producer such as fire, flood, storms, and other acts of God, or from federal and State eradication programs for disease control. Additionally, the plan delimited the relief sought to eligibility, allocations, and assignment; producer-handler exemptions; transfer of bases quota; loss of production base or pool quota; or other matters related to the use of base or quota as specified in the pooling plan.