

UNOFFICIAL

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HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 4

DIVISION OF MARKETING

CHAPTER 60

MILK CONTROL RULES

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Historical note: Chapter 4-60 is based substantially upon Division of Milk Control License Fee Rule No. 9 [Eff 7/1/78; R 7/16/80]; Division of Milk Control Honolulu Price Rule No. 12 [Eff 6/16/79; R 7/16/80]; Division of Milk Control Honolulu Quota Rule No. 3 [Eff 12/1/70; R 7/16/80]; Division of Milk Control Hawaii License Fee Rule No. 6 [Eff 9/1/77; R 7/16/80]; Division of Milk Control Hawaii Price Rule No. 8 [Eff 6/16/79; R 7/16/80]; Division of Milk Control Hawaii Quota Rule No. 5 [Eff 6/16/79; R 7/16/80]

SUBCHAPTER 1

GENERAL PROVISIONS

§4-60-1 Definitions. Terms defined in section 157-1, HRS, when used in this chapter, shall be as defined in section 157-1, HRS. In addition, as used in this chapter:

"Branch" means the commodities branch.

"Buttermilk" or "Cultured buttermilk" is a fluid product resulting from the souring or treatment, by means of a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted skim milk. It contains not less than 8.25 per cent milk solids-not-fat.

"California price" means the minimum price per hundredweight for northern California class 1 market milk F.O.B. plant as published by the California Department of Food and Agriculture.

"Class I milk" is all fresh milk or fresh milk constituents utilized in fluid form for human consumption, which utilization shall include, but not be limited to, pasteurized milk, cream, half-and-half, whole milk, skim milk, buttermilk, flavored milk, flavored skim milk, reconstituted or recombined milk, and filled milk. All such fresh milk received by a processing plant shall be deemed to be utilized as

class I unless utilization in class II, in an excess pool or as plant shrinkage and route returns is are proven.

"Class II milk" is all fresh milk or fresh milk constituents utilized in non-fluid form for human consumption, which utilization shall include, but no be limited to, ice cream, ice cream mix, cottage cheese, and yogurt.

"Cream" is the 'fatty' liquid or semi-liquid separated from milk and contains not less than 18 per cent butterfat.

"Excess milk" is fresh milk in excess of the total class I and class II requirements of the milk shed and allowable plant shrinkage and route returns.

"Excess pool" means a special pooling technique to be used when fresh milk, produced in excess of the total class I and class II requirements of the market and allowable plant shrinkage and route returns, results in the milk or its constituents being either dumped at a complete loss or disposed of at its highest practical salvage value.

"Filled milk" is any milk, cream, or skim milk, whether fresh or recombined, to which has been added or which has been blended or compounded with any edible fats or oils other than butterfat so that the resulting product is in imitation or semblance of fresh, whole milk, cream, or skim milk.

"Flavored milk" or "Flavored skim milk" is a beverage or confection consisting of milk or skimmed milk, as the case may be, to which has been added a syrup or flavor made from wholesome ingredients.

"Fresh milk" or "Fresh" as used with reference to milk means the milk as drawn from cows which may or may not have been processed by homogenization, pasteurization, or standardization of butterfat content. It shall not include products produced by recombining dry milk constituents with water to produce a recombined or reconstituted milk product.

"Gross Value" means the total value of all milk as utilized and paid for.

"Half-and-half" is a product consisting of a mixture of milk and cream which contains not less than 10.5 per cent butterfat.

"Hawaii milk shed" means the county of Hawaii.

"Honolulu milk shed" means the county of Honolulu.

"License" means the authorization issued by the board or the manager to producers, producer-distributors, and distributors to operate their dairy enterprise in a milk shed pursuant to chapter 157, HRS, and rules adopted thereunder.

"License fee" means an assessment levied on each licensed milk producer, producer-distributor, or distributor to secure funds for the administration of chapter 157, HRS, in a milk shed.

"Lowfat milk" is milk from which a sufficient portion of butterfat has been removed to reduce its butterfat content to not less than .5 per cent and not more than 2 per cent.

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"Manager" means the manager of the commodities branch.

"Pasteurized milk" is fresh milk which has been treated by heating every particle of milk to a temperature of at least 145°F. and holding it at such temperature continuously for at least thirty minutes, or to at least 161°F. and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment.

"Plant shrinkage" means the loss of fresh milk occurring during the processing of milk or milk products and includes, but is not limited to, such items as leakage, spillage, and milk not fully recovered from vats, pipes, and processing equipment.

"Quota" means the amount of daily fresh milk production which a producer is allocated under chapter 157, HRS, and in accordance with the rules and regulations of the board. Quotas shall be expressed in terms of hundredweight of fresh milk.

"Raw milk" is fresh milk that has not been pasteurized.

"Recombined milk" or "Reconstituted milk" is a product resulting from the recombining of milk constituents with potable water and which complies with the standards for butterfat and solids-not-fat of whole milk.

"Recombined skim milk" or "Reconstituted skim milk" means a product which results from the recombining of skim milk constituents with potable water and which contains not less than 8.25 per cent solids-not-fat.

"Route return" means fresh milk returned from retail stores or by retail route customers.

"Service fee" means the amount of compensation paid to a producer-distributor or distributor for services rendered in withholding, collecting, and remitting license fees in a milk shed.

"Skim milk" or "Skimmed milk" is fresh milk from which a sufficient portion of butterfat has been removed to reduce its butterfat content to less than five-tenths per cent.

"Utilized" or "Utilization" - milk is considered to be utilized by a distributor or producer-distributor when processed and containerized for distribution.

"Whole milk" is the lacteal secretion of cows, practically free from colostrum, which contains not less than 8.25 per cent milk solids-not-fat and not less than 3.25 per cent butterfat. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87; am 10/4/97; am 12/26/97] (Auth: HRS §157-13) (Imp: HRS §151-1)

SUBCHAPTER 2

LICENSING AND LICENSE FEE RULES

§4-60-2 Granting, suspending and revoking licenses. (a) HRS §157-24(a) is made a part of this section. Upon finding that any grounds for denial exist, the board, prior to rendering a final decision, shall give reasonable notice to all interested parties and afford the license applicant an opportunity for hearing under section 91-9, HRS.

(b) HRS §157-24(b) is made a part of this section. Upon finding that any ground for suspension, revocation, or refusal to renew a license exists, the licensee may be so informed in writing and requested to voluntarily surrender the license in the case of either a suspension or revocation. The same procedure shall apply during the period of license renewal. Should the licensee refuse to voluntarily surrender the license, the licensee shall then be given reasonable notice and afforded an opportunity for hearing under section 91-9, HRS. [Eff 7/16/80; am and comp 12/1/85; comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-24)

§4-60-3 Records of licensees. Licensees shall maintain and make available such records and information as considered necessary by the board. [Eff 7/16/80; comp 12/1/85; comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-26)

§4-60-4 License fees for the Honolulu milk shed. (a) The board establishes the following schedule of license fees to be paid by licensees:

- (1) Each licensed producer shall pay a license fee of .632 of one percent of the gross value on all milk which the licensed producer delivers to a distributor or producer-distributor for processing;
- (2) Each licensed distributor or producer-distributor shall pay a license fee of .632 of one per cent of the gross value on all milk which the licensed distributor or producer-distributor receives from licensed producers for processing;
- (3) Each licensed producer-distributor shall pay a license fee of 1.264 per cent of the gross value on all milk produced by the licensed producer-distributor's dairy which the producer-distributor processes;
- (4) Each licensed distributor or producer-distributor who processed any recombinated, reconstituted or filled milk shall pay a license fee that is equivalent to the percentage value established in paragraph (2) converted to hundredweight on all of the milk processed; and

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- (5) Each licensed distributor or producer-distributor who receives milk produced elsewhere in the State of Hawaii from any source other than a licensed producer or producer-distributor shall pay a license fee of .632 of one per cent of the gross value on all whole milk received from the source or sources for processing or distribution.

(b) Within any milk shed, the board may suspend the collection of license fees or lower the license fee rate on the fifteenth day or at the end of any given month for the remainder of the current fiscal year if the board finds that the action will result in license fee collections sufficient to meet the expenditures necessary to administer chapter 157, HRS, within that milk shed for that fiscal year. [Eff 7/16/80; am 6/1/81; am and comp 12/1/85; comp 5/1/87; am 1/1/91] (Auth: HRS §157-13) (Imp: HRS §157-23)

§4-60-5 License fees for the Hawaii milk shed. (a) The board establishes the following schedule of license fees to be paid by licensees:

- (1) Each licensed producer shall pay a license fee of 1.263 per cent of the gross value on all milk which the licensed producer delivers to a distributor or producer-distributor for processing;
- (2) Each licensed distributor or producer-distributor shall pay a license fee of 1.263 per cent of the gross value on all milk which the licensed distributor or producer-distributor receives from licensed producers for processing;
- (3) Each licensed producer-distributor shall pay a license fee of 2.527 per cent of the gross value on all milk produced by the licensed producer-distributor's dairy which the licensed producer-distributor processes;
- (4) Each licensed distributor or producer-distributor who processes any recombined, reconstituted, or filled milk shall pay a license fee that is equivalent to the percentage value established in paragraph (2) converted to hundredweight on all the milk processed; and
- (5) Each licensed distributor or producer-distributor who receives milk produced elsewhere in the State of Hawaii from any source other than a licensed producer or producer-distributor shall pay a license fee of 1.263 per cent of the gross value on all whole milk received from the source or sources for processing or distribution.

(b) Within any milk shed, the board may suspend the collection of license fees or lower the license fee rate on the fifteenth day or at the end of any given month for the remainder of the current fiscal year if the board finds that the action will result in license fee collections sufficient to meet the expenditures necessary to

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administer chapter 157, HRS, within that milk shed for that fiscal year. [Eff 7/16/80; am 6/1/81; am and comp 12/1/85; comp 5/1/87; am 1/1/91] (Auth: HRS §157-13) (Imp: HRS §157-23)

§4-60-6 Withholding and remitting license fees. Distributors or producer-distributors shall withhold from any payments owing to a producer or producer-distributor for milk received, an amount equal to the license fee determined to be owing from that producer or producer-distributor and shall remit any withheld funds to the branch, together with the amount of the license fee determined to be owing from the distributor or producer-distributor not later than the fifteenth day of the month following delivery of milk. Itemization of the deductions and accounting for the remittances shall accompany the evidence of payments as required in subchapter 3. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-23)

§4-60-7 Service fees. No compensation shall be paid to distributors or producer-distributors for any services rendered in withholding, collecting, and remitting license fees as provided in sections 4-60-4, 4-60-5, and 4-60-6. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-23)

§4-60-8 Delegation of powers and authority regarding license fees. The board delegates all of its powers and authority under sections 4-60-4(b), 4-60-5(b), and 4-60-6 to the manager. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-11)

SUBCHAPTER 3

PRICE RULES

§4-60-9 Minimum prices in the Honolulu milk shed. (a) Minimum prices to be paid by distributors or producer-distributors to producers or producer-distributors for fresh milk produced for sale in the Honolulu milk shed are established on the basis of the utilization for class I milk, class I skim milk, and class II milk as provided in this section.

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(b) In the Honolulu milk shed, the minimum price per hundredweight for class I milk, based on milk with a butterfat content of 3.3 per cent, shall be established by order of the board based on the formula in subsection (e), provided that the minimum price per hundredweight for class I milk in the Honolulu milk shed shall remain at \$27.20 until the board establishes a new minimum price, by order, based on the formula in subsection (e). Any minimum price established by order of the board shall be subject to the approval of the governor and the notification requirements of section 157-33, Hawaii Revised Statutes.

If the statutory authority to establish the minimum price, by order based on a formula, is repealed on June 30, 1998, the minimum price of class I milk in the Honolulu milk shed, based on milk with a butterfat content of 3.3 per cent, shall be established at \$23.20 per hundredweight of milk, effective July 1, 1998. If the authority to establish the minimum price of class I milk in the Honolulu milk shed, by order based on a formula, is not repealed on June 30, 1998, the board or the manager shall continue to establish the minimum price by order based on the formula in subsection (e).

The minimum price for class I milk shall be increased by fourteen cents per hundredweight for each .1 per cent of butterfat above 3.3 per cent or shall be decreased by fourteen cents per hundredweight for each .1 per cent of butterfat below 3.3 per cent. The minimum price for class I skim milk utilized in filled milk is established at the class I price less fourteen cents per hundredweight for each .1 per cent of butterfat up to 3.3 per cent to allow for the required usage of any fat or oil other than butterfat. The cost of butterfat shall be on a formula basis determined by the branch and distributor or producer-distributor. The formula shall be predicated upon the monthly average price of imported butterfat delivered to the processing plant, less reasonable costs incurred by the distributor or the producer-distributor, and shall be purchased by the processor at the established butterfat cost. A minimum class I fresh skim milk price shall be paid for all milk produced over and above the class I milk utilized in all other class I products and shall be allocated pro rata to all quota holders up to their monthly quotas. A distributor or producer-distributor may utilize class I skim milk produced in excess of the total monthly quotas provided that it is paid for at the above established price.

(c) The minimum price for class II milk is established on a formula basis to reflect the cost to the distributor or producer-distributor of replacing the constituents contained in class II milk. The formula shall be predicated upon the monthly average price of imported milk constituents delivered to the processing plant, less reasonable costs incurred by the distributor or producer-distributor in making the constituents available and usable in class II uses. On or before the eighth day of each calendar month, each distributor or producer-distributor shall report its computed replacement cost for milk constituents for the previous month based on the

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factors in this subsection. The replacement costs and computations therefore shall be subject to audit by the branch. In its monthly report, the distributor or producer-distributor shall report the total pounds of fresh milk utilized in class II uses. The branch shall then compute the total value of all fresh milk utilized in class II uses by each distributor or producer-distributor based on their prior month's replacement costs and shall then pool the costs of all distributors and producer-distributors to determine an average price for all class II milk utilized. Payments to producers shall be based upon the class II price.

(d) Actual plant shrinkage and route returns up to but not to exceed one per cent of the total fresh milk received for processing shall be paid for at the fresh milk replacement cost, class II price, or on a negotiated formula basis.

(e) The formula for determining the minimum price per hundredweight of class I milk in the Honolulu milk shed shall be:

The minimum price per hundredweight of class I milk in the Honolulu milk shed equals the California price plus \$12.20.

(f) The board delegates all of its powers and authority under subsection (b) to the manager. By order and based on the formula in subsection (e), the manager may establish the minimum price for class I milk in the Honolulu milk shed subject to the approval of the governor and the notification requirements of section 157-33, Hawaii Revised Statutes. [Eff 7/16/80; am 2/1/81; am and comp 12/1/85; am and comp 5/1/87; am 7/1/91; am 4/14/97; am 12/26/97] (Auth: HRS §157-13, 157-31) (Imp: HRS §§157-31, 157-33)

§4-60-10 Minimum prices in the Hawaii milk shed. (a) Minimum prices to be paid by distributors or producer-distributors to producers or producer-distributors for fresh milk produced for sale in the Hawaii milk shed are established on the basis of the utilization for class I milk, class I skim milk, and class II milk as provided in this section.

(b) The minimum price for class I milk is established at \$23.53 per hundredweight (50.59 cents per quart) of milk, based on milk with a butterfat content of 3.3 per cent. The minimum price for class I milk shall be increased by seven cents per hundredweight for each .1 per cent of butterfat above 3.3 per cent up to and including 3.5 per cent or shall be decreased by seven cents per hundredweight for each .1 per cent of butterfat below 3.3 per cent. Minimum price for class I skim milk utilized in filled milk is established at the class I price less seven cents per hundredweight for each .1 per cent of butterfat up to 3.3 per cent to allow for the required usage of any fat or oil other than butterfat. A minimum class I fresh skim milk price shall be paid for all milk produced over and above the class I milk utilized in all other class I products and will be allocated pro rata to all quota holders up to §4-60-10

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their monthly quotas. A distributor or producer-distributor may utilize class I skim milk produced in excess of the total monthly quotas provided that it is paid for at the above established price.

(c) The minimum price for class II milk is established on a formula basis to reflect the cost to the distributor or producer-distributor of replacing the constituents contained in class II milk. The formula shall be predicated upon the monthly average price of imported milk constituents delivered to the processing plant, less reasonable costs incurred by the distributor or producer-distributor in making the constituents available and usable in class II uses. On or before the eighth day of each calendar month, each distributor or producer-distributor shall report its computed replacement cost for milk constituents for the previous month based on the factors in this subsection. The replacement costs and computations therefore shall be subject to audit by the branch. In its monthly report, the distributor or producer-distributor shall report the total pounds of fresh milk utilized in class II uses. The branch shall then compute the total value of all fresh milk utilized in class II uses by each distributor or producer-distributor based on their prior month's replacement costs and shall then pool the costs of all distributors and producer-distributors to determine an average price for all class II milk utilized. Payments to producers shall be based upon the class II price.

(d) Actual plant shrinkage and route returns up to, but not to exceed one per cent of the total fresh milk received for processing shall be paid for at the fresh milk replacement cost, class II price or on a negotiated formula basis. [Eff 7/16/80; am 2/1/81; am and comp 12/1/85; am and comp 5/1/87; am 7/1/91; am 1/1/92; am 10/1/92] (Auth: HRS §157-13) (Imp: HRS §157-33)

§4-60-11 Determination of utilization for payment. (a) In determining utilization of fresh milk for payment purposes, the quotas of each producer or producer-distributor shall be the basic guide in determining each producer's or producer-distributor's share of the class I requirements in the market. Class I requirements in any given month shall be prorated to quota holders to determine their share of class I utilization. Fresh milk produced and delivered in excess of total class I demand and declared to be class II or excess milk shall be paid for in a descending order. The monthly prorations for payment purposes, while serving to allocate class I requirements to all quota holders, shall not change the allocated quotas. Subsections (b) to (i) shall be used in making the prorations.

(b) If total class I utilization equals the total of the quotas allocated in the Honolulu milk shed or Hawaii milk shed, each producer or producer-distributor in its respective milk shed, shall be paid a class I price for production delivered.

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(c) If, in a given month, total class I utilization is less than the total of the

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quotas in the Honolulu milk shed or Hawaii milk shed, each producer or producer-distributor, in its respective milk shed, shall receive a share of the total class I utilization based on total monthly production delivered within the producer or producer-distributor's quota.

(d) If, in a given month, total class I utilization is more than the total of the quotas in the Honolulu milk shed or Hawaii milk shed, each producer or producer-distributor, in its respective milk shed, shall receive a class I price for all milk produced and delivered within the producer or producer-distributor's quota and the remaining class I milk shall be distributed on a pro rata basis to all producers and producer-distributors with over quota production.

(e) If any producer or producer-distributor's total monthly fresh milk production delivered is less than the producer or producer-distributor's total monthly allocated quota, the pro rata share of the total class I utilization for the month shall be based on the producer or producer-distributor's total production delivered. Distribution of all milk utilized in class I pro rata shall be for milk produced and delivered within quota and the result of this formula of payments shall be a same blend price for each licensed producer or producer-distributor for milk produced and delivered within the producer or producer-distributor's total monthly quota.

(f) Fresh milk received from sources other than licensed producers or licensed producer-distributors within the State of Hawaii shall be considered as excess milk if there is adequate production from licensed producers or licensed producer-distributors to meet class I and class II requirements. If adequate fresh milk is produced to meet all class I but not class II requirements, then that fresh milk from other sources shall be deemed class II. If there is inadequate production to meet class I requirements, then that fresh milk from other sources shall be deemed class I.

(g) In computing utilization of milk, a distributor or producer-distributor may claim as plant shrinkage and route returns actual losses up to, but not to exceed, one per cent of the total amount of fresh milk received for processing, and payment therefore to producers or producer-distributors shall be at the class II price. Payment by distributors or producer-distributors for plant shrinkage and route returns in excess of one per cent of the total amount of fresh milk received for processing shall be made at class I price.

(h) To be considered as excess milk for pricing purposes, excess milk shall be of acceptable grade for all class I or class II use and shall have been made available for utilization. Excess milk may be disposed of by the distributor or producer-distributor in a manner that will realize the highest practical salvage value. Before disposing of excess milk by dumping or otherwise, the distributor or producer-distributor shall notify the branch and a representative of the branch shall

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certify such disposal. To establish a price to be paid producers or producer-distributors for excess milk within the excess pool, the following procedures shall prevail:

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- (A) Each distributor or producer-distributor, in each month's monthly report to the branch, shall report the volume and the salvage value of milk constituents, if any, of excess milk disposed of at the plant.
- (B) The branch shall combine all the salvage values of milk constituents reported in subparagraph (a) as received from the various distributors and producer-distributors. The total of all salvage values shall then be divided by the total of the volume of excess milk reported in subparagraph (a) to determine the price per hundredweight of said excess milk and, on the basis of this price, the branch shall compute the obligation of distributors and producer-distributors to producers of excess milk.

(i) Whenever a distributor or producer-distributor rejects whole milk for any reason, a detailed accounting shall be submitted on a form prepared by the branch. Before disposing of rejected milk by dumping or otherwise, the distributor or producer-distributor shall notify the appropriate producer and the branch of the planned rejection and a representative of the branch shall certify to the disposition made of such rejected milk. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-33)

§4-60-12 Method of payment. Payment to producers and producer-distributors under this chapter shall be made as follows:

- (1) Each distributor or producer-distributor shall determine the total quantity of fresh milk and its butterfat content received from each producer or producer-distributor for each calendar month;
- (2) The information for the month immediately preceding as set forth in paragraph (1) together with other information required by the branch, shall be submitted to the branch on forms provided by the branch, not later than the end of the eighth day of each month;
- (3) The branch shall determine for each producer and producer-distributor the portion of the fresh milk delivered for which the producer and producer-distributor shall be paid class I price; the portion for which the producer and producer-distributor shall be paid class I fresh skim milk price; the portion for which the producer and producer-distributor shall be paid class II price; the portion for which §4-60-12

the producer and producer-distributor shall be paid excess pool price; less proven plant shrinkage and route returns, as the case may be, compute the value of the milk in each classification with proper adjustment for butterfat differential; and report the information to each distributor and producer-distributor not later than the end of the

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fifteenth day of the month;

- (4) Payments for fresh milk delivered in a given month shall be made to producers, producer-distributors or dairy cooperatives during the subsequent month as follows: A first payment of approximately fifty per cent of the total amount owed by the end of the tenth day of the month and the balance of the amount owed, as computed by the branch in paragraph (3) less authorized deductions, by the end of the twentieth day of the month. Evidence of such payment shall be filed with the branch by the twenty-fifth day of the month; and
- (5) The branch shall compute each distributor and producer-distributor's obligation to a special trustee account known as the "Producers' Settlement Fund," which fund shall be administered by the branch and from which the branch shall make distribution and adjustment payments to distributors or producer-distributors to effectuate a marketwide pooling of milk produced for use in the Honolulu milk shed and Hawaii milk shed as follows:
 - (A) Value of plant utilization of milk. Multiply the volume of fresh milk reported by each distributor or producer-distributor as utilized in class I, in class II, and in the excess pool, if any, with proper adjustments for butterfat differential, plant shrinkage and route returns, by the appropriate price to determine the value of the plant utilization of milk;
 - (B) Amount owed producers for milk. Add the amounts owed to producers and producer-distributors by a distributor or producer-distributor as determined in paragraph (3) to determine the total amount owed to producers or producer-distributors for fresh milk delivered to said distributor or producer-distributor; and
 - (C) Computing producers' settlement fund. Compare the value of the plant utilization, as determined in subparagraph (A) above, with the total amount the distributor or producer-distributor owes producers and producer-distributors for fresh milk delivered, as determined in subparagraph (B) above. If the total of plant utilization, subparagraph (A) exceeds the distributor or producer-distributor's obligation to producers

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and producer-distributor, subparagraph (B), the distributor or producer-distributor shall pay the difference into the producers' settlement fund. If the distributor or producer-distributor's obligation to producers and producer-distributors, subparagraph (B), exceeds the value of plant utilization, subparagraph (A), the distributor or producer-distributor shall be paid the difference from the producers'

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settlement fund. Payments by distributors and producer-distributors into the producers' settlement fund shall be made by the eighteenth day of the month following delivery of milk and payments from the fund to distributors and producer-distributors shall be made therefrom by the twenty-eighth day of said month. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-33)

SUBCHAPTER 4

GENERAL PROVISIONS

§4-60-13 Milk production quotas in the Honolulu milk shed. (a) The board establishes the total daily production quota for the Honolulu milk shed at 3507.930 hundredweight or 4078.988 cans per day. The following is the pro rata distribution of the quota increase by licensed producers on April 1, 1989. The branch shall provide an annual report listing all licensed producers and their assigned quotas at the end of each fiscal year which reflects all quota increases and transfers granted within the milk shed during that year and shall become part of this section.

<u>DAIRY NAME</u>	<u>DAILY QUOTA</u>	
	<u>(cwt)</u>	<u>cans</u>
Costa, Louis Dairy	125.618	146.067
Ferreira Dairy	52.109	60.592
Freitas, George Dairy	214.289	249.173
Huanui Dairy	118.085	137.308
Kaimi Farm	130.594	151.854
Lucky S Dairy	52.462	61.002
Maunawili Dairy	141.026	163.984
Meadow Gold Farms	596.525	693.634
Mountain View Dairy	530.891	617.315
Toledo-Twin Pine Dairy	699.213	813.038
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U. H. Waialeale	12.508	14.544
Waimanalo Dairy, Inc.	660.318	767.812
Wayne's Dairy	174.292	202.665
TOTAL	3507.930	4078.988

(b) The production quotas established in subsection (a) do not guarantee that all of the milk produced thereunder shall be utilized as class I in the Honolulu

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milk shed. The established quota may be considered as a quantity measure representing a producer's share of the estimated annual class I requirements of the market. Each month the total class I usage in the market shall be allocated on a pro rata basis to all quota holders and payment to them shall be determined accordingly. It shall be recognized that the class I requirements of the market vary from day to day and from one season of the year to another. Milk production is also subject to daily and seasonal variation. Producers cannot adjust their production to meet day to day changes in demand but they can make adjustments in their production pattern to compensate for seasonal changes. Producers shall be aware of changes in demand and adjust their production practices to maximize their operating income. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87; am 4/1/89] (Auth: HRS §157-13) (Imp: HRS §157.31)

§4-60-14 Milk production quotas in the Hawaii milk shed. (a) The total daily production quota for the Hawaii milk shed shall be 621 hundredweight or 722.09 cans per day. The daily production quota shall be distributed pro rata to all licensed producers or producer-distributors in the Hawaii milk shed based on their assigned daily production quota at the end of the month prior to the effective date of this amendment. A licensed producer or producer-distributor may refuse, in writing, to accept all or part of their pro rata increase in daily production quota. Any quota increase that is refused shall be distributed pro rata to the remaining licensed producers or producer-distributors based on their new daily production quota. The branch shall provide the board with a report showing the distribution of the daily production quota at the next board meeting following the effective date if this amendment and an annual report listing all licensed producers and their assigned quotas at the end of each fiscal year which reflects all quota increases and transfers granted within the milk shed during that year. These reports to the board shall become part of this section and shall supercede and replace any prior dated reports which have been made part of this section.

(b) The production quotas established in subsection (a) do not guarantee that all of the milk produced thereunder shall be utilized as class I in the Hawaii milk shed. The established quota may be considered as a quantity measure representing
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a producer's share of the estimated annual class I requirements of the market. Each month the total class I usage in the market shall be allocated on a pro rata basis to all quota holders and payment to them shall be determined accordingly. It shall be recognized that the class I requirements of the market vary from day to day and from one season of the year to another. Milk production is also subject to daily and seasonal variations. Producers cannot adjust their production to meet day to day changes in demand but they can make adjustments in their production pattern to compensate for seasonal changes. Producers shall be aware of changes in demand and

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adjust their production practices to maximize their operating income. [Eff 7/16/80; am 9/1/81; am and comp 12/1/85; am and comp 5/1/87; am 9/1/89; am 10/1/92; am 1/30/93; am 10/4/97] (Auth: HRS §157-13) (Imp: HRS §157-31)

§4-60-15 Readjustment of quotas. (a) Quotas established pursuant to sections 4-60-13 and 4-60-14 may be forfeited by the producer or producer-distributor if the producer or producer-distributor fails to produce and deliver milk in accordance with the following:

- (1) A producer or producer-distributor shall produce and deliver not less than ninety per cent of the producer or producer-distributor's quota by the end of the ninety-day period immediately following the establishment of said quota. If the board increases established quotas because of increase in demand, the producers shall be given a six-month period after the effective date to increase their production and this section shall be suspended for this period;
- (2) Thereafter, during periods of insufficient milk production in the milk shed, any producer or producer-distributor who fails for two consecutive calendar months, during the period including December through August, to maintain average daily production at a minimum of ninety per cent of the producer or producer-distributor's established quota may be required by the board to forfeit any portion of quota that the producer or producer-distributor has failed to produce and deliver, unless such lesser production is required by operation of law or in writing by the board as a result of an estimated decrease in market requirements; and
- (3) For the purpose of this section, a condition of inadequate production in a given calendar month shall be deemed to exist when the total production and delivery of milk acceptable for Grade A use in the milk shed does not exceed the sum of the class I utilization and the class II utilization allowed for plant shrinkage as reported to the branch by the distributors and producer-distributors.

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(b) Quota forfeited pursuant to subsection (a) (2) may, at the discretion of the board, be retired from the milk shed, held in reserve for future use, or reallocated to other producers and producer-distributors.

- (1) If reallocated, the forfeited quota shall be distributed to producers and producer-distributors who are producing more than one hundred per cent of their production quota in the calendar month preceding the date of quota forfeiture. Quota shall be distributed in such a way that the production level of each eligible producer and producer-distributor

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equals one hundred per cent of its newly adjusted quota. If the forfeited quota is insufficient to accomplish this, it shall be distributed proportionally based on the percentage by which each producer's or producer-distributor's production exceeds its quota on the forfeiture date. Eligible producers and producer-distributors may refuse additional quota by submitting a written refusal to the branch.

- (2) All forfeited quota that remains after reallocation shall be held in reserve and reallocated, to producers or producer-distributors who later produce above established quota in the manner described in paragraph (1) or (3).
- (3) Producers and producer-distributors may request at any time an allocation of quota from the reserve when their production is above ninety per cent of quota or up to and including one hundred per cent of quota for the preceding calendar month and for any nine of the twelve months preceding the quota reallocation request. Before receiving reallocated quota, a producer or producer-distributor in this category shall submit to the board a written commitment to produce its share of the reallocated quota within six months of the reallocation effective date, along with a written plan of action indicating how the quota will be met. Quota shall be allocated in such a way that the recipients's production level is at or above ninety per cent of its newly adjusted quota. Failure to meet the newly adjusted quota within the six months shall result in forfeiture in accordance with subsection (a). The provision which requires production above ninety per cent of quota or up to and including one hundred per cent of quota for any nine of the twelve months before the quota reallocation date, may be waived for the first six months after the effective date of this subsection. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87; am 1/30/93] (Auth: HRS §157-13) (Imp: HRS §157-34)

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§4-60-16 Transfers. (a) The individual quotas established by the board to producers and producer-distributors listed in sections 4-60-16 and 4-60-14 shall be evidenced by a quota certificate which shall contain the following:

- (1) The name and business address of the producer or producer-distributor to whom issued;
- (2) The amount of quota allocated to the producer or producer-distributor expressed in hundredweight and cans of whole milk per day; and
- (3) Any additional information which the manager may designate.

(b) No assignment, sale, or other transfer of the quota or any part thereof or interest therein (including a security interest, as that term is defined in the Uniform Commercial Code, chapter 490, Hawaii Revised Statutes), shall be valid without prior written approval of the manager.

(c) Not less than ten days before the proposed effective date of any assignment, sale, or other transfer of the quota or any part thereof or interest therein, the transferor shall submit a request, on a form prepared by the manager, for approval together with such information as the manager may require concerning the details of the proposed transaction. Transfers by sale shall, when possible, become effective the first day of the month following approval.

(d) The manager shall, within a reasonable time after receipt of the request for approval, notify the transferor of approval or disapproval of said request.

(e) Upon approval of a transfer request, the following procedure shall apply:

- (1) The transferor shall present to the manager the transferor's quota certificate, properly endorsed by all parties to said transfer; indication whether the transfer is by sale, assignment, pledge as security, or otherwise; and the amount of the quota so transferred, expressed in terms of hundredweight and cans of whole milk per day;
- (2) Upon presentation of the quota certificate, the manager shall record, in a permanent record kept by the manager for this purpose, the names and addresses of the transferor and the transferee; the amount of the quota so transferred; whether the transfer is by sale, assignment, or otherwise; the number of the quota certificate presented; the number of any new quota certificate issued as set out in this section; and the effective date of such transfer;
- (3) After the recording, the manager, in the case of a sale or assignment, shall cancel the old quota certificate and issue a new quota certificate or quota certificates to the transferor or transferee or both, as the case may be. For other types of transfers not requiring immediate cancellation of the old quota certificate, such quota certificate

properly endorsed shall be returned to the transferor for transmittal to the transferee; and

- (4) The transferee, after the recording and upon the receipt of the quota certificate, shall acquire all of the rights of the transferor to that portion of the quota so transferred, free from any adverse claim or condition except as may have existed against the original quota certificate or as may be agreed upon by the parties to such transfer. Where the transfer is merely intended to convey a security interest to the transferee, the transferor may continue to produce the amount of the quota so transferred.

(f) From the daily production quota established, the manager shall periodically compile and distribute to all interested parties a listing of licensed producers and producer-distributors reflecting all interim quota transfers, increases, decreases, or other changes altering any individual quota or the total daily production quota as follows:

- (1) License number;
 - (2) Name and address of producers or producer-distributors;
 - (3) Daily quota in hundredweight and cans;
 - (4) Per cent of market held; and
 - (5) Effective date of change.
- (g) Upon loss of a quota certificate, the following procedure shall apply:
- (1) The holder of a quota certificate, within reasonable time after the certificate has been lost, stolen, or destroyed, shall notify the manager in writing of that fact and request the cancellation of the lost, stolen, or destroyed quota certificate and the issuance of a new quota certificate in its place;
 - (2) The manager may require satisfactory proof as to the circumstances concerning the loss, destruction, or wrongful taking of such quota certificate, and may require that the record quota certificate holder requesting the new quota certificate post an indemnity bond in an amount to be determined by the manager;
 - (3) If, in the opinion of the manager, the record quota certificate holder has complied in all respects with the requirements of paragraph (2) the manager shall cancel the lost, stolen, or destroyed quota certificate and shall issue to the owner thereof a new quota certificate in its place;
 - (4) Upon written notice to the manager by the owner that the quota certificate is missing, any attempted transfer of the quota represented by the missing quota certificate other than as provided, shall be void; and

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- (5) The recording of the cancellation and issuance of any new quota certificate pursuant to the provisions of paragraph (1) shall, where applicable, be in a manner provided for the transfer of quota certificate as set out in subsection (e). [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-34) (Imp: HRS §157-34)

§4-60-17 Delegation of powers and authority regarding quota transfers. The board delegates all of its powers and authority under section 4-60-16 to the manager, milk control branch. [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-13)

§4-60-18 Rule of construction. The production quotas established by this chapter shall not in any way be interpreted to restrict or burden any milk being transported in interstate commerce." [Eff 7/16/80; am and comp 12/1/85; am and comp 5/1/87] (Auth: HRS §157-13) (Imp: HRS §157-42)