

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

MARKETING ORDER FOR THE
PROMOTION OF GLOBE ARTICHOKE

Effective July 20, 1960
Incorporating Amendments through August 10, 2012

MARKETING ORDER FOR THE PROMOTION OF GLOBE ARTICHOKE

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**MARKETING ORDER FOR THE PROMOTION
OF GLOBE ARTICHOKEs, AS AMENDED**

ARTICLE I - DEFINITIONS

SECTION A. DEFINITION OF TERMS.

As used in this Marketing Order:

1. “**Department**” means the California Department of Agriculture.
2. “**Act**” means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code.
3. “**Person**” means any individual, partnership, corporation, association, or other business unit.
4. “**Artichokes**” means any and all strains of Globe artichokes produced in California.
5. “**Producer**” means any person within this State engaged in the business of producing, or causing to be produced, artichokes for marketing in any form.
6. “**Artichoke Advisory Board**” means the Board established pursuant to Section A, Article II of this Marketing Order, and hereinafter referred to as the Advisory Board.
7. “**Manager**” means a manager selected pursuant to Section K, Article II of this Marketing Order.
8. “**Area**” means the State of California.
9. “**Books and Records**” means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters related to this Marketing Order, of any producer directly affected by this Marketing Order.
10. “**Marketing Season**” and “**Fiscal Period**” are synonymous and mean a one-year period beginning July 1 of any calendar year and ending June 30 of the following year.

ARTICLE II - ADVISORY BOARD

SECTION A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF BOARD

1. An advisory board to be known as the California Artichoke Advisory Board, consisting of seven (7) members and three (3) floating alternates, is hereby established to assist the Department in administration of this Marketing Order. All of said members shall be producers of artichokes. The three (3) alternate members will be designated in priority to sit in the place of any absent members. *(Amended 8/10/2012)*

2. Membership on the Board shall be from California at-large and shall not be designated by district, county, or other subdivision of the state. However, in making appointments to the Board, the Department will give consideration to representation from the state's various production areas. *(Amended 8/10/2012)*

3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.

4. Beginning in 2013, the term of office of successors to the Board and alternates shall be for a period of four (4) years beginning June 1 of each odd-numbered year and ending May 31 of the next appropriate odd-numbered year, and until their successors are appointed and have qualified. *(Amended 8/10/2012)*

SECTION B. INITIAL ADVISORY BOARD

1. The initial members and their respective alternates of the Advisory Board shall serve from the effective date of this Marketing Order through May 31, 1961, and until their successors are appointed and have qualified.

2. Nominations of persons eligible to serve on the initial Advisory Board hereunder shall be received at the public hearing held on this Marketing Order.

3. The Department may appoint the initial members and their alternates from nominations obtained at such public hearing and such appointments shall be in accordance with the classifications set forth in Section A of this Article.

SECTION C. NOMINATION AND APPOINTMENT OF SUCCEEDING MEMBERS AND ALTERNATES OF THE ADVISORY BOARD

The Department may appoint members and alternates of the Advisory Board, other than those appointed to fill vacancies as provided in Section G of this Article, to succeed the initial members and alternates of the Advisory Board from nominations made as hereinafter provided. *(Amended 8/10/2012)*

1. Prior to the beginning of the marketing season in the next appropriate odd-numbered year, the Department shall request producers to submit, by mail, nominations of persons eligible to be appointed as members or alternate members of the Board. *(Amended 8/10/2012)*

2. All members and alternates of the Board shall serve at the pleasure of the Department. *(Amended 8/10/2012)*

3. Subsequent to receiving nominations, the Department shall conduct a vote of all eligible producers as a means to obtain an indication of producer preference among the nominees. Producers will be asked to select up to seven nominees on the ballot. The Department will then tally the ballots without regard to producer volume and use the results to help guide the appointments of the seven producer members and three producer alternates. The Department shall prioritize the alternates as first, second and third. *(Amended 8/10/2012)*

4. Any person appointed by the Department shall qualify by executing and filing forms as required by the Department. *(Amended 8/10/2012)*

5. Unless there are compelling reasons to the contrary, the nomination process shall be completed no later than May 15 of the next appropriate odd-numbered years. *(Amended 8/10/2012)*

SECTION D. FAILURE TO NOMINATE

In the event nominations are not made pursuant to Subsection 1, Section C of this Article, the Department may appoint the members of the Advisory Board for the ensuing term of office without regard to nominations, from such persons who are qualified as provided in Section E of this Article for appointment to the Advisory Board. *(Amended 8/10/2012)*

SECTION E. QUALIFICATION

Any person selected by the Department as a member or as an alternate member of the Advisory Board shall qualify by filing a written acceptance and any other required forms with the Department within fifteen (15) days after being notified of such selection. Any person selected as a producer member or alternate shall be a producer or shall represent producers.

SECTION F. ALTERNATE MEMBERS

An alternate member shall sit in the place of an absent producer member and when doing so shall have all the rights, powers, duties, and privileges of the member. In the event of the death, removal, resignation or disqualification of a member, an alternate shall act in his or her place until a successor is appointed and has qualified. Alternates shall serve in the order of their assigned prioritization. *(Amended 8/10/2012)*

SECTION G. VACANCIES ON ADVISORY BOARD

The Department shall fill any vacancy occasioned by the removal, death, resignation, or disqualification of any member or alternate member of the Board. In filling vacancies, the Department may consider the prioritization of the current alternates and/or recommendations submitted by the remaining members of the Board. *(Amended 8/10/2012)*

SECTION H. ORGANIZATION OF ADVISORY BOARD

1. The Advisory Board shall not perform any of its duties or exercise any of the powers herein granted while there are more than two (2) vacancies in its membership.

2. A majority of the members of the Advisory Board shall constitute a quorum. Any action of said Advisory Board shall require the concurring vote of a majority of the members of said Advisory Board.

3. The Advisory Board shall select a chairman from its membership, may select other officers, and may adopt necessary rules for the conduct of its meetings.

SECTION I. EXPENSES OF MEMBERS

No member or alternate member of the Advisory Board shall receive a salary from funds collected pursuant to this Marketing Order, but shall be entitled to his or her actual and allowable expenses incurred while engaged in performing his or her duties hereunder.

SECTION J. DUTIES OF ADVISORY BOARD

The duties of the Advisory Board shall be administrative only and shall include the following:

1. To administer this Marketing Order subject to the approval of the Department.
2. To recommend to the Department rules and regulations relating to this Marketing Order.
3. To receive and report to the Department complaints of violations of this Marketing Order.
4. To recommend to the Department amendments to this Marketing Order.
5. To assist the Department in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the Department in the administration of this Marketing Order.
6. To assist the Department in the collection of such necessary information and data as the Department may deem necessary to the proper administration of this Marketing Order.

SECTION K. AUTHORIZATION TO ENGAGE EMPLOYEES

Subject to the approval of the Department, the Advisory Board may employ necessary personnel, including a manager, fix their compensation and terms of employment, and incur such expenses to be paid by the Department from monies collected as herein provided, as is necessary and proper to enable the Advisory Board to perform its duties.

SECTION L. LIMITATION OF LIABILITY OF MEMBERS

The members of the Advisory Board, duly appointed by the Department, including employees of such Board, shall not be held responsible individually in any way whatsoever to any producer, canner, or any other person, for errors in judgment, mistakes, or other acts either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Advisory Board. The liability of the members of the Board shall be several and not joint, and no member shall be liable for the default of any other member.

ARTICLE III - SALES PROMOTION, MARKET DEVELOPMENT AND ADVERTISING

SECTION A. SALES PROMOTION, MARKET DEVELOPMENT AND ADVERTISING PLANS

1. The Board is hereby authorized to prepare and administer, subject to the approval of the Department, plans or activities for promoting the sale of artichokes or artichoke products produced and processed within the State for the purpose of maintaining present markets or creating new and larger markets for artichokes or artichoke products without reference to a particular private brand or trade name; provided, that such plans or programs make no use of false or unwarranted claims in behalf of artichokes or artichoke products nor disparage the quality, value, sale, or use of any other agricultural commodity.

2. In carrying out any sales promotion, market development or advertising plans, or other activities authorized in this Article, the Board, subject to the approval of the Department, may furnish educational materials and services, arrange for the performance of market service work, make available displays and other promotional materials, and make market surveys and analyses, or may undertake any other activity, consistent with the Act and this Marketing Order which the Board and the Department determine to be appropriate in maintaining present markets or creating new or larger markets for artichokes or artichoke products. In addition to the foregoing and as part of its sales promotion and market development authorization, the Board may present facts to, or negotiate with State, Federal, or foreign governmental agencies on matters which affect the marketing of artichokes or artichoke products produced within the State.

3. In order to carry out plans or activities authorized in this Article, the Board, subject to the approval of the Department, may enter into contracts with any person or agencies qualified to render services in formulating and conducting said plans or programs, and shall prepare a statement of the estimated costs of such plans or programs.

SECTION B. APPROVAL BY THE DEPARTMENT

Upon recommendation by the Advisory Board of any sales promotion, market development or advertising recommendation plans, or activities authorized by this Article to be made effective, and upon of the expenditures required by such plans, the Department may approve such plans and authorize the Board to incur expenditures in connection therewith.

ARTICLE IV - RESEARCH

SECTION A. DISTRIBUTION RESEARCH

The Advisory Board, with the approval of the Department, may conduct or arrange for any necessary or proper research studies relating to the distribution of artichokes or artichoke products. Such research may include but not be limited to the collection, analysis, and dissemination of data and information relating to storage, refrigeration, transportation, selling, distribution, or any other relevant marketing function performed for artichokes and artichoke products.

SECTION B. PRODUCTION AND PROCESSING RESEARCH

The Advisory Board may also conduct or arrange for, subject to the provisions of the Act and the approval of the Department, any necessary research studies relating to the production and processing of artichokes. Such research may include but not be limited to studies of cultural practices, pathological and entomological controls, harvesting methods, processing methods, or any other production or processing studies consistent with the purposes and objectives of this Marketing Order.

ARTICLE V - BUDGETS AND RATES OF ASSESSMENT

SECTION A. RECOMMENDATION OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD

Each season the Advisory Board shall recommend to the Department a budget setting forth the monies necessary for administration and enforcement of this Marketing Order, including expenditures for sales promotion, market development or advertising activities.

The Board may also recommend a combined rate of assessment for administration and advertising and sales promotion upon producers as authorized in Section 58926 of the Act, to provide adequate funds to defray the proposed expenditures and any necessary reserve as set forth in said budget, but the Board shall not have authority to recommend a rate of assessment on an acreage basis which is in excess of eight dollars (\$8.00) per acre of artichoke acreage in production prior to the holding of a referendum among artichoke producers in which either (1) sixty-five percent (65%) or more of those voting in said referendum and who are also producers of artichokes with fifty-one percent (51%) or more of the acreage of artichokes in production represented by those voting in said referendum, or (2) fifty-one percent (51%) or more of those voting in said referendum and who also are producers of artichokes with sixty-five percent (65%) or more of the acreage of artichokes in production represented by those voting in said referendum approve of an assessment rate in excess of eight dollars (\$8.00) per acre of artichoke acreage in production; provided, however, that in no event shall the assessment, or any part thereof levied on an acreage basis, be established hereunder in excess of ten dollars (\$10.00) per acre of artichoke acreage in production; and, provided, further, that such a referendum shall be held with respect to each increment or step in the assessment, or any part thereof levied on an acreage basis which may be recommended by the Board in excess of eight dollars (\$8.00) per acre to and including said maximum rate or limit, on an acreage basis, of ten dollars (\$10.00) per acre. In the event the Board finds the application of the assessment is more reasonable and feasible if applied, wholly or in part, upon units of the product marketed or prepared for market, the Board may recommend and the Department may approve use of such method; provided, a referendum similar to the referendum mentioned above in this Section shall be held with respect to the initial establishment of the assessment, or any part thereof on the basis of units of the product marketed or prepared for market and with respect to any increase in the assessment on such basis.

The assessment, or any part thereof, levied on an acreage basis, shall apply on all acres of artichokes from which artichokes are delivered or to be delivered by producers for market. The assessment, or any part thereof, levied on the units of the product marketed or prepared for market, shall apply on all units of the product marketed or prepared for market. The total assessment, including the part, if any, levied in whole or in part on the basis of units of the product marketed or prepared for market, shall in no event exceed the maximum permitted by the Act. (*Amended 8/22/74*)

SECTION B. APPROVAL OF BUDGET AND FIXING OF COMBINED RATE OF ASSESSMENT BY THE DEPARTMENT

1. If the Department finds that such budget and the recommended rate of assessment are proper and equitable and calculated to provide such amounts of money as may be necessary to properly carry out the provisions of this Marketing Order, it may approve the said budget and establish the rate of assessment applicable to each producer; provided, that in no event shall the rate of assessment so established exceed the maximum rates which may be recommended by the Board pursuant to Section A of this Article, in any marketing season within the duration of this Marketing Order.

2. The Board may recommend and the Department may approve the proportion of such combined assessment levied and collected which may be allocated for the sales promotion and for the administrative activities authorized by this Marketing Order; provided, that such allocations are consistent with Section 58927 of the Act.

SECTION C. COLLECTION OF ASSESSMENTS

1. Each producer subject to this Order shall be liable for the payment of any assessment recommended by the Board and established by the Department upon each acre of artichokes from which the producer harvests artichokes during the marketing season for which the assessment is fixed. The full amount of the assessment shall be for and on behalf of the producer. Each producer subject to this Order shall be liable for the amount of his or her individual assessment. Pursuant to Section 58936 of the Act, each producer shall remit to the Department assessment payments in accordance with administrative rules and regulations which the Board may recommend and the Department may issue and make effective.

2. Any assessment levied herein, in such specified amount as may be determined by the Department, pursuant to the provisions of this Marketing Order and the Act, shall constitute a personal debt of every person so assessed, and shall be due and payable to the Department at such times and in such manner as the Department may prescribe. In the event of failure of any person to pay any such assessment, upon the date determined by the Department may sign a complaint against such person or persons in a State court of competent jurisdiction for the collection thereof as provided in the Act. Pursuant to the provisions of Section 58930 of the act, the Department may add to any unpaid assessment a delinquent collection penalty not in excess of ten percent (10%) of such unpaid assessment.

SECTION D. DISPOSITION OF FUNDS

1. Any monies collected by the Department pursuant to the provisions of this Article shall be deposited in accordance with the provisions of the Act and shall be allocated to this Marketing Order and disbursed by the Department only for the necessary expenses incurred or approved by the Department with respect to this Marketing Order. Said disbursements or expenditures of money so deposited shall be made in accordance with rules and regulations prescribed by the Department.

2. Upon the termination of this Marketing Order by the Department, any and all monies remaining and not required by the Department to defray expenses incurred under this Marketing Order may be refunded by the Department, in accordance with the provisions of Section 58938 of the Act.

ARTICLE VI - GENERAL PROVISIONS

SECTION A. ADMINISTRATIVE RULES AND REGULATIONS

Upon recommendation by the Advisory Board, the Department may, in accordance with the provisions of the Act, establish such administrative rules and regulations as may be necessary to carry out the purposes and attain the objectives of this Marketing Order and of the Act. The provisions of Section 59111 of the Act relative to posting and mailing of notice and time of taking effect shall be applicable to any administrative rules and regulations established pursuant to this Article.

SECTION B. BOOKS AND RECORDS

Any and all persons subject to the provisions of this Marketing Order shall maintain books and records reflecting their operations under this Marketing Order and shall furnish to the Department or its duly authorized or designated representative, such information as may be from time to time requested by them relating to operations under this Marketing Order and shall permit the inspection by said Department or its duly authorized or designated representatives, of such portions of such books and records as relate to operations under said Marketing Order.

SECTION C. CONFIDENTIAL INFORMATION

Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Department or the Advisory Board to give legal advice thereupon, or by court order.

SECTION D. IMMUNITY

No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her tends to incriminate him or her or subjects him or her to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may be so required to testify or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by it.

SECTION E. APPEALS

Any person subject to the provisions of this Marketing Order may petition the Department to review any order or decision of the Advisory Board. Any such petition must be filed in writing, setting forth the facts upon which it is based. Pending the disposition of any appeal, the parties shall abide by the Order or decision of said Advisory Board, unless the Department shall rule otherwise. The Department may, if the facts stated show reasonable grounds, grant any such petition and may review or revise in any manner whatsoever any order or decision upon which an appeal is taken.

SECTION F. AGENTS

The Department may designate and authorize any person or persons, including officers or employees of the State Department of Agriculture, to act as its agent or agents with respect to any provisions of this Marketing Order.

SECTION G. APPROVAL

The exercise of the powers granted to the Advisory Board in its administration of this Marketing Order made effective in accordance with the provisions of the Act shall be subject to the approval of the Department.

ARTICLE VII - RELATION TO OTHER LEGISLATION

SECTION A. ANTI-TRUST LAWS

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Marketing Order and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding.

ARTICLE VIII - SEPARABILITY

SECTION A. SEPARABILITY

If any section, sentence, clause or part of this Marketing Order is for any reason held to be invalid, or the applicability thereof to any person, circumstance or thing is held to be invalid, such decision shall not affect the remaining portions of this Marketing Order.

ARTICLE IX - EFFECTIVE TIME AND TERMINATION

SECTION A. EFFECTIVE TIME

This Marketing Order shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act.

SECTION B. AMENDMENT, SUSPENSION, OR TERMINATION

Pursuant to the provisions of Section 59081 of the Agricultural Code, the Department may amend, suspend, or terminate this Marketing Order or any provisions thereof whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 of the Act, that this Marketing Order, or any provisions thereof, is contrary to or does not tend to effectuate the declared purposes or provisions of the Act, within the standards and subject to the limitations and restrictions therein imposed; provided, that such amendment, suspension, or termination shall not become effective until the expiration of the marketing season then current.

SECTION C. EFFECT OF AMENDMENT, SUSPENSION, OR TERMINATION

Unless otherwise expressly provided in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of this Marketing Order shall either (1) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of this Marketing Order not so amended, suspended, or terminated, or (2) release, condone, or dismiss any violation of this Marketing Order occurring prior to the effective time of such amendment, suspension, or termination, or (3) affect or impair any rights or remedies of the Department or of any person with respect to such violations.

SECTION D. CONTINUING POWER AND DUTY

If, upon the suspension or termination of this Marketing Order, there are any obligations arising thereunder, the final accrual or ascertainment of which requires further acts by any party hereto or any committee hereunder, or by any other person, the power or duty to perform such further acts shall continue notwithstanding such suspension or termination; provided, that any such acts required under the terms of this Marketing Order to be performed by any committee hereunder shall be performed by the members of such committee functioning at the effective time of such termination, or, if the Department shall so direct, by such other person, persons, or agency as the Department may designate.