

# Policies

*for*

# Marketing Programs



**Karen Ross**  
Secretary of Food and Agriculture

**5<sup>th</sup> Edition**  
**October 2020**

California Department of Food and Agriculture

# POLICIES

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*for*

# MARKETING PROGRAMS

5<sup>th</sup> Edition

October 2020

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# *OVERVIEW OF MARKETING PROGRAM AUTHORITIES AND OVERSIGHT*

## *MARKETING PROGRAM FOUNDATION*

### *O10 OVERVIEW*

Marketing programs are instrumentalities of the State of California that enable agricultural producers and handlers to work together to maintain and expand both domestic and international markets for California agricultural commodities. The marketing program concept as it exists today originated with the California Marketing Act of 1937 (Division 21 of the Food and Agricultural Code), which authorized the California Department of Food and Agriculture (Department) to provide administrative direction and oversight for marketing programs' governance and operations. Commodity marketing has diversified under the many laws that have passed since 1937 to allow for a range of organizational structures. In alphabetical order, these include:

- Commissions
- Councils
- Marketing agreements
- Marketing orders

All marketing programs share the purpose of serving the industry and the public by helping producers and handlers manage issues that affect them. The government purposes in authorizing marketing programs are to stimulate the agricultural economy and ensure a continuous and abundant supply of food and agricultural products. To the extent that marketing programs fulfill these purposes, the wellbeing of California agriculture is inseparable from the wellbeing of consumers. Figure O10.1 below summarizes the benefits that marketing programs generate for the public and the industry. Because all affected parties stand to gain from marketing program activities, all represented agricultural producers and handlers must abide by relevant statutory provisions, and share the cost of implementing them.

Typically, marketing programs come into being as the result of public review and comment (public or legislative hearing) and a vote of the affected producers and/or handlers. They are self-supporting, paying their own operating costs as well as the costs of administrative direction and oversight provided by the Department. The State makes no subsidy payments to agricultural producers or handlers and appropriates no general state tax revenues to support marketing programs. All marketing programs are required by law to serve the public

interest. The Department's administrative direction and oversight support the ability of marketing programs to fulfill this mandate.

An industry board of directors governs each marketing program. Some marketing programs are required by law to have public members. All directors and chief executives serve as public officials and, thus, are required to participate in ethics training and comply with State laws regulating conflict of interest.

Figure O10.1

**EXAMPLES OF BENEFITS GENERATED BY MARKETING PROGRAMS**

Examples of Benefits to <b>the Public</b>		Examples of Benefits to <b>Agriculture</b> Generated by Marketing Programs
<i>Generated by Agriculture</i>	<i>Generated by Marketing Programs</i>	
<ul style="list-style-type: none"> <li>• Production of an abundant supply of agricultural products</li> <li>• Sales of ag-related products and services</li> <li>• Exports that help U.S. balance of trade</li> <li>• Jobs</li> <li>• Tax revenue</li> </ul>	<ul style="list-style-type: none"> <li>• Encouragement of agriculture's responsible stewardship of land, water, and marine resources</li> <li>• Health and nutrition research</li> <li>• Consumer education</li> <li>• Establishment of quality standards to ensure wholesome food supply</li> <li>• Implementation of State policy in support of industry-funded self-help programs</li> <li>• Enhanced contribution of agriculture industry to state economy</li> <li>• Research: more productive farming practices</li> <li>• Research: new food products and/or new farm product uses</li> </ul>	<ul style="list-style-type: none"> <li>• Representation of the State's continuing commitment to the agricultural industry</li> <li>• Economic viability of agriculture through coordination of collective action by farmers</li> <li>• Enhanced image of agricultural products grown in California</li> <li>• Expanded domestic and international markets for California farm products</li> <li>• Research to improve farming and handling practices</li> <li>• Market and economic research</li> <li>• Management of issues that affect the ability of California agriculture to compete nationally and internationally</li> </ul>

**020. ROLE OF THE SECRETARY OF FOOD AND AGRICULTURE**

State law places varying levels of responsibility for the proper functioning of marketing programs on the Secretary of Food and Agriculture. On behalf of the Secretary, the Department's Marketing Branch oversees and liaises with all marketing programs in accordance with applicable laws, regulations, and policies.

**030. TYPES OF MARKETING PROGRAMS**

The generic term "marketing programs" may refer to commissions, councils, marketing agreements, or marketing orders. Authorized activities may include inspection, promotion, education, research, and/or issues management. All marketing programs collect mandatory assessments from those directly affected and maintain offices and staff in various locations

around the state. A small number of programs provide assessment payers with the opportunity to request a refund of their assessments at the end of the season. Appendices M1 and C1 in this manual provide a comparison of the authorities of commissions, councils, marketing agreements, and marketing orders.

#### **O40. FUNCTIONS OF MARKETING PROGRAMS**

State laws authorize marketing programs to engage in and/or support research, promotion, consumer education, establishment of quality standards, inspection and regulations to prevent unfair trade practices. Antitrust law prohibits price fixing. As indicated in Figure O40.1, the dominant marketing program functions are research, promotion, education, and inspection. The actual range of activities varies from one marketing program to another, depending on the needs of each respective industry. Some engage in all categories of the activities listed in Figure O40.1 while others implement only one or two.

Figure O40.1 Examples of Marketing Program Functions			
RESEARCH	PROMOTION	EDUCATION	INSPECTION
<ul style="list-style-type: none"> <li>• Agricultural best practices</li> <li>• Environmental concerns</li> <li>• Food safety</li> <li>• Market research</li> <li>• Nutrition and health</li> <li>• Product quality analysis</li> </ul>	<ul style="list-style-type: none"> <li>• Product promotion and advertising in both domestic and international markets</li> <li>• Public relations</li> </ul>	<ul style="list-style-type: none"> <li>• Consumer, industry, and supply-chain education</li> <li>• Issues management</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of quality and grading standards</li> <li>• Third-party product inspection</li> <li>• Establishment of good agricultural practices (GAPs) and audits to help ensure a safe food supply.</li> </ul>

#### **O50. PURPOSE OF THE DEPARTMENT'S POLICIES**

On behalf of the Department, the Marketing Branch collaborated with the Marketing Program CEO Executive Committee to prepare these policies for convenient reference by Branch and program staff. These policies also introduce government officials, other interested parties, and/or members of the public to the concept and statutory roots of marketing programs as well as present day practices, rules, and administrative procedures.

#### **O60. COMPATIBILITY**

The remainder of this document is divided into two major parts: one that describes the Department's administrative direction and oversight of marketing orders, councils, and agreements (MOCAs) and one that describes the Department's administrative direction and oversight of commissions. In many cases, the procedures are similar if not identical. Division 21 of the California Food and Agricultural Code (FAC), also known as the



California Marketing Act, governs marketing programs in general and provides that the Secretary may issue marketing orders and enter into marketing agreements. Under Division 22 of the FAC, the Secretary administers and enforces law that governs councils and commissions. Unlike MOCAs, commissions are not advisory to the Secretary. The Secretary may, however, require some commissions to correct or cease activities or functions that are not in the public interest or exceed their statutory authority. For ease of reference by MOCAs and commissions, the Department has eliminated the need to name every procedural exception to its administrative direction and oversight by presenting separate and full policies pertaining to MOCAs and commissions, respectively.

*DEPARTMENT POLICIES*

*FOR MOCAs*

## *CHAPTER 1 - ADMINISTRATIVE DIRECTION AND OVERSIGHT*

### *M100 OVERVIEW*

Broadly stated, the responsibility of the California Department of Food and Agriculture (Department) is to provide assurances to both the agriculture industry and the public that its marketing orders, councils, and agreements (MOCAs) operate in accordance with the law. To this end, the Department Marketing Branch staff provide administrative direction and oversight year-round through their participation in MOCAs' activities, decision-making processes, and meetings. To promote compliance, the Department also notifies MOCAs of changes in applicable laws, regulations, and policies.

#### *M100.1 EXECUTIVE EMPLOYMENT AGREEMENT*

Every MOCA shall prepare an Executive Employment Agreement (Agreement) to be approved by the board of directors or the executive committee (if the committee has been delegated that authority by the board in the MOCA's policy manual). The MOCA must use the template in provided in Appendix M18 with any terms and conditions agreed to by the MOCA and the chief executive subject to approval by the Secretary. Prior to seeking review and approval by the board/executive committee, the draft Agreement should be submitted to the Marketing Branch for review. The Branch will perform an initial review and then forward the Agreement to the Marketing Division Director and Department's Legal Office for its review. Any necessary revisions will be provided to the chief executive and the chair for review. Once the Agreement is approved by the board/executive committee and signed by the MOCA's chief executive and the chair, the signed agreement must be submitted to the Marketing Branch for approval by the Secretary.

#### *M101 BOARD RESPONSIBILITY FOR MANAGEMENT OF MOCAs*

Every MOCA shall secure the services of a chief executive, either as an employee or contractor. The MOCA's board of directors is responsible for selecting a chief executive to administer the program. The final selection of a chief executive requires approval by the Secretary of Food and Agriculture.

##### *M101.1 Executive Search*

Except in the rare instance that an ideal candidate is already available, the Department expects all MOCAs to complete an executive search process prior to nominating a chief executive.

*M101.2 Vacancy in the Chief Executive Position*

In the absence of a chief executive, the Department expects the affected MOCA to hire or contract with a replacement in a timely manner. In the meantime, the Department assumes that the affected MOCA's board chairperson will serve as the acting chief executive (unless the MOCA has obtained Department approval for an alternative procedure). While exercising the functions of acting chief executive, the chairperson shall not have access to confidential and/or proprietary industry information that is garnered by the MOCA in the course of normal operations.

*M101.3 Potential for Additional Charges*

Due to the potential need for increased administrative direction and oversight in the absence of a chief executive, the Department expects any MOCA in these circumstances to budget appropriately so as to cover additional Marketing Branch charges.

*M101.4 Potential for Conflict of Interest*

The Department strongly discourages MOCAs from seeking management services from providers who may have conflicts of interest pursuant to the Political Reform Act and the rules of the Fair Political Practices Commission. If a potential conflict of interest exists, a legal analysis from the Department should be requested. In cases where a potential conflict of interest exists, the Department requires the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

- The MOCA hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process. See the confidentiality and indemnity agreement and affidavit template included as Appendix M2.

*M101.5 Employment Status of MOCA Employees*

The staff of MOCAs may be public agency employees or contractors. As such, they may apply for insurance and/or pension programs administered by the Public Employment Retirement System (PERS). Their employment, however, is not subject to civil service regulation.

*M101.6 Office Locations*

MOCAs maintain offices in various areas around the state. They are responsible for negotiating lease agreements for office space.

## **M102**    *ADVERTISING AND PROMOTION GUIDELINES*

The Department's "Advertising, Promotion and Communication Guidelines for Agricultural Commodity Programs" can be accessed on the Marketing Branch website at:

[www.cdfa.ca.gov/mkt/mkt](http://www.cdfa.ca.gov/mkt/mkt)

### **M102.1**    *Unsolicited Ad Ideas*

To avoid claims of an implied contract or obligation, the Department recommends that, if applicable, every MOCA include policy and procedures in its own manual to guide staff in the systematic and documented rejection of unsolicited suggestions for advertising. See Appendix M3 for a basic list of recommended policy manual contents.

## **M103**    *LEGAL COUNSEL*

The California Attorney General represents the State of California in judicial and administrative adjudicatory proceedings, including MOCAs. The first stop for MOCAs that need legal services is the Marketing Branch. The Branch coordinates requests for legal services by preparing and forwarding standard forms for this purpose to the Department's Legal Office. The Legal Office then determines whether to refer the matter to the Attorney General or to pursue the matter in-house. To reiterate, following the procedure outlined in Section M103.1, MOCAs must obtain approval from the Governor's Office and the Attorney General, through the Marketing Branch, prior to retaining outside legal counsel.

### **M103.1**    *Procedures for Requesting Legal Opinions*

Any MOCA may request legal advice or an official legal opinion from the Department's Legal Office by submitting a request in writing to the Marketing Branch. The Legal Office has discretion on whether or not to provide an official legal opinion. Upon receipt of the Legal Office's decision, the Marketing Branch immediately notifies the affected MOCA's chief executive.

### **M103.2**    *Acknowledgement of a MOCA's Request for Legal Opinion*

Within five working days, the Department acknowledges having received a request for a legal opinion. The Legal Office typically requires at least two weeks to prepare responses to such requests unless the MOCA specifies the need for an expedited response or the Legal Office determines that the matter requires immediate attention. The Department notifies the affected MOCA of a rejected request or any unexpected delay.

### **M103.3**    *Expedited Review of Personnel Issues*

The Department recognizes that sensitive personnel issues involving MOCA employees often require immediate attention. The response of board management to these situations in real time may subject the board and the Department to additional risk if the response is not proper, prompt or is incomplete. The Marketing Branch will

contact the Legal Office and the Equal Employment Opportunity (EEO) Office immediately upon receiving the request for assistance from a MOCA. If the assigned economist or branch chief is not available, the MOCA should contact the Department's General Counsel directly.

#### *M103.4 External Inquiries*

The Department's Executive Office (including the Legal Office, Legislative Office, and Public Affairs Office) notifies the Marketing Branch within two working days of having received inquiries or information requests regarding any specific MOCA(s). Upon receipt of this alert, the Marketing Branch notifies the affected MOCA(s) immediately regarding the nature of the inquiry and the information that the Executive Office either will or did provide in response. Whenever relevant, in keeping with the nature of the inquiry, either the Executive Office or the Marketing Branch consults with the appropriate MOCA chief executive(s) regarding the Department's response.

### *M104 LITIGATION NOTIFICATION*

The Department and all marketing programs are mutually responsible for immediate notification regarding filed lawsuits that affect either the State's marketing programs overall or a particular MOCA. All subpoenas pertaining to MOCAs must be personally served to the Department's Headquarter office.

In order to file a complaint, MOCAs must coordinate with the Department's Legal Office, and, if the Department determines to proceed with the complaint, the matter is referred to the Attorney General's Office.

### *M105 PUBLIC RECORDS REQUESTS*

The Marketing Branch refers any public records request it receives directly to the Department's Legal Office for processing. This includes all requests from the Legislature. If the request is from the Legislature, the Marketing Branch will also notify the Department's Legislative Office. The Marketing Branch also apprises the chief executive(s) of the affected MOCA(s) of these actions.

The Legal Office notifies the Marketing Branch and the MOCA of any public records request that the Department received directly.

The Legal Office is allowed up to 10 working days (with an extension of 14 additional days in specified unusual circumstances) to notify the requester whether disclosable records exist, the grounds for this determination, and the estimated date and time when the records will be made available.

#### *M105.1 Public Records Requests Received by MOCAs*

The chief executive of any MOCA that receives a public records request shall notify the Legal Office and Marketing Branch of such a request immediately. Immediately upon receipt, the public records request should be e-mailed to the General Counsel and

copied to the Legal Assistant. If the request is received via e-mail, forward the e-mail. If the request was received via the United States Postal Service (USPS), include a copy of the request along with the date-stamped envelope. The program should retain a copy of the request and begin collecting any responsive documents. Any subsequent correspondence received from the requester should be forwarded to the Legal Office immediately for reply.

MOCAs should not redact any information or alter responsive documents in any way. Any concerns about confidentiality or proprietary information should be summarized in the submission e-mail to the Legal Office. The staff attorney assigned to review the documents will address those concerns and redact confidential or proprietary information before the documents are released.

If more than ten days is needed to collect the responsive documents, inform the Legal Assistant via e-mail as soon as possible.

#### *M106 MOCA POLICY MANUALS*

The Department requires every MOCA to maintain and update, as needed, its own program policy manual and submit revisions and/or amendments for Department approval. A suggested list of elements for each MOCA's policy manual appears in Appendix M3.

#### *M107 ADMINISTRATIVE REVIEW*

The Department provides an ongoing review of MOCAs on three levels. These include:

1. Participation in all meetings of MOCAs Boards of Directors and Executive Committees, review and approval of minutes of each meeting and any motions made by a Board or Executive Committee that require separate approval by the Department. Monitoring MOCA activities to ensure compliance with State law.
2. A meeting between the program liaison assigned and the CEO/staff of the MOCA concerned to plan for the upcoming annual budget-setting meeting of the Board. This meeting (preferably at the MOCA office) provides an opportunity to ensure that all legal documents concerning the MOCA, such as contracts, related bid documentation, intellectual property documents, and certain personnel records, are current, the proposed budget (including the proposed assessment rate) and supporting documentation are adequate for Department approval, and that any extraordinary issues facing the MOCA or the commodity concerned are covered.
3. A set of Agreed-upon Procedures (AUP) is performed in conjunction with each annual financial audit. This AUP compliance audit is performed by the CPA firm selected by the program and approved by the Department. The AUP compliance audit compliments the annual financial audits. The AUP compliance audit examines the program's compliance

with the program's enabling law, Department policies and procedures and the program's own policies and procedures.

**M108**    *GRIEVANCE PROCEDURE*

The Department requires MOCAs to follow the grievance procedure outlined in Appendix M4

**M109**    *ANTITRUST COMPLIANCE*

**Introduction**

The following policy is designed to advise the boards, councils, and other entities created by Marketing Orders or by statute as to the importance of complying with state and federal antitrust laws. Board members and employees should have a basic understanding of antitrust laws and be informed on how those laws apply to them as violations can result in civil litigation or criminal prosecution. This document and the Antitrust Policy Agreement are designed to help boards and councils comply with antitrust law. Specific questions regarding the application of antitrust law to your specific board or council should be directed to the attorney assigned to your board or council.

**Antitrust Law**

The federal statutes which are applicable to trade organizations are the Sherman Act and the Federal Trade Commission Act. The Sherman Act prohibits contracts, combinations or conspiracies in restraint of trade or commerce. Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. Board or council members and employees have limited immunity (or limited exemption) from the Sherman Act.

The state statutes which are applicable to trade organizations are the Cartwright Act and the Unfair Practices Act. The Cartwright Act prohibits agreements among competitors to restrain trade, fix prices or production, or reduce competition. The Unfair Practices Act prohibits anticompetitive price discrimination. However, the Food and Agricultural Code Section 58655 provides that proof that an action carried out in compliance with the California Marketing Act or a marketing order is a complete defense in a proceeding brought for violation of the Cartwright Act and Unfair Practices Act

Authority differs somewhat from marketing order to marketing order and may permit board personnel to make recommendations to the Department on such matters as advertising and promotion, product quality standards, the prohibition of unfair trade practices and research and development projects. Marketing order and council personnel may agree among themselves on such recommendations without fear of antitrust prosecution. Conduct that falls outside the range of activities authorized by the marketing order or state and federal law may be subject to antitrust prosecution. Violations of the antitrust laws can have serious consequences for both the program and the Department, their employees and members. Members of boards and councils should be



careful when assembled for a meeting to not engage in any behavior that could be found to violate antitrust law, whether it be in discussions before, during, or after a formal meeting.

The antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Above all else, board or council members should be free to make independent business decisions based on the dictates of the market – not the dictates of the marketing order or council law.

Some activities by competitors are deemed so pernicious and harmful that they are considered *per se* violations – it does not matter whether the activities have a harmful effect on competition; the effect is presumed. These generally include price fixing, allocation of customers, markets or territories, bid-rigging, and some forms of boycotts. Agreements as to warranty duration, freight terms, or other factors that can directly impact price also are proscribed.

Other actions, such as standards development, certification programs, and relationships between distributors and suppliers generally are evaluated under the rule of reason – there is a balancing between the pro-competitive and anti-competitive aspects of the activities. The pro-competitive effects must outweigh the anti-competitive effects. These areas also should be approached with caution and legal guidance.

Please review and sign the Antitrust Policy Agreement included as Appendix M17. This Agreement provides specific examples of prohibited conduct that will assist you in complying with your legal obligations. These prohibitions are not exhaustive; any conduct that could have the effect of inhibiting free trade should be carefully considered and vetted through legal counsel.

#### *M110 BAGLEY-KEENE OPEN MEETING ACT*

The Bagley-Keene Open Meeting Act (Bagley-Keene) provides requirements for the proper noticing, agendaizing, and conduct of business at meetings of any multi-member State body created by statute or required by law to conduct official meetings. All board and committee meetings of MOCAs are subject to the notice requirements (including closed sessions held during regular meetings) of Bagley-Keene. Items involving pending litigation or sensitive personnel matters to be discussed in closed session should be reviewed by the Legal Office prior to issuance of the notice and agenda. Bagley-Keene also addresses the proper conduct and recording of business transacted at board or committee meetings. There are separate noticing requirements in Divisions 21 and 22 of the Food and Agricultural Code for teleconference meetings of MOCAs and commissions (ref. §§ 58853 and 63906).

A template for MOCA meeting notices and agendas is provided in Appendix M20. Guidelines for MOCAs to follow when noticing a meeting via teleconference or web-based application are provided in Appendix M21.

## CHAPTER 2 - PUBLIC HEARINGS AND VOTING<sup>1</sup>

### M200 OVERVIEW

The California Department of Food and Agriculture (Department) is responsible for conducting public hearings to receive testimony and evidence regarding the desire and willingness of affected producers and handlers to establish, make amendments to, and/or continue or reauthorize a marketing order, council, or agreement (MOCA). If applicable, the Department conducts referenda on, and tallies and certifies the voting results for, authorization of the following actions:

- Implementation
- Major amendment
- Continuation

In addition, the Department may conduct industry preference votes regarding nominations of industry volunteers whom the Department may then appoint to advisory boards.

### M201 PUBLIC HEARINGS

The Department conducts public hearings pursuant to Article 6 of the Marketing Act and individual council statutes to receive testimony and evidence regarding proposed new MOCAs, or the effectiveness of existing MOCAs. These hearings require a minimum of 30 days public notice, which the Department distributes via regular mail and by posting the notice on its website. The official notice:

- Announces the date, time, and location of the hearing; and
- States the subject matter to be considered
- States that the Department will receive testimony and evidence as to other necessary and relevant matters as contained in Article 7 of the Marketing Act (see Appendix M5).

#### M201.1 *Hearing Officer and Panel*

The hearing is conducted by a Hearing Officer, selected by the Department, who ensures an orderly process is followed to build a complete hearing record. At the beginning of the hearing, the Hearing Officer explains the purpose of the hearing, how the hearing will proceed, and introduces the Hearing Panel which usually consists of two Department economists. A Panel Member will then be sworn in and will introduce the

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<sup>1</sup> Sections M203 through M207 do not apply to marketing agreements.

Department's Hearing Exhibits. These exhibits provide the foundational information the Panel will use in its analysis of the hearing record. Testimony and evidence provided by witnesses builds upon the information introduced by the Department.

#### *M201.2 Witness Testimony*

Witnesses generally testify in the order in which they sign in. In the case of witnesses wishing to testify as a panel, this should be noted when signing in, including the names of each person included in the panel. In the case of a hearing called as a result of a petition, the petitioner will be the first witness. The Hearing Officer restricts all witnesses to speaking only about the call of the hearing. Because these are information-gathering hearings only, witnesses are not cross-examined. However, Hearing Panel Members may ask questions of the witnesses to seek clarification of their testimony.

For those unable to attend a hearing, written testimony may be submitted for the hearing so long as it is received by the Marketing Branch at least two business days prior to the date of the hearing. Written comments received after this time, but before the conclusion of the hearing, may be included in the hearing record by the Hearing Officer. All written comments received for hearings will be posted on the Marketing Branch's website and provided to all persons requesting copies.

Witnesses may offer their own prepared testimony or may respond to the testimony introduced by other witnesses. Also, at the end of the hearing, the Hearing Officer will allow persons who have previously testified to offer additional testimony or to respond to other witnesses' testimony.

#### *M201.3 Post-Hearing Briefs*

Before the close of each hearing, the Hearing Officer asks those in attendance whether there is a desire to provide for a filing period to allow witnesses testifying at the hearing to submit a post-hearing brief to amplify, clarify, or withdraw their testimony introduced at the hearing, or to respond to testimony introduced by other witnesses at the hearing. Any authorized post-hearing brief submitted to the Hearing Officer will be posted on the Marketing Branch's website.

#### *M201.4 Department Findings and Recommendation to the Secretary*

The Hearing Panel will analyze the hearing record (written comments submitted prior to the hearing, testimony and evidence presented at the hearing, and submitted by authorized post-hearing brief). The Panel completes written findings pursuant to Article 7 of the FAC and submits recommendations to the Secretary. The Department issues a notice of a decision within 45 days after the close of the hearing record.

## M202 VOTER ELIGIBILITY

Under the California Marketing Act, to be eligible to *fully* participate in a referendum, a producer or handler must:

- Be a current producer or handler.
- Have produced or handled and marketed the commodity in either:
  1. The preceding completed marketing season; or
  2. The current marketing season, provided that the harvest and delivery of the commodity to handlers is complete.

### M202.1 Voter Eligibility for New Producers or Handlers

The Department makes a good faith effort to give new producers and handlers affected by a MOCA, with no record of production or volume handled in the previous season, the right to vote. In those cases where volume is one of the voting eligibility criteria, the Department may qualify new producers or handlers to vote without weighting those votes by volume.

## M203 BLOC VOTING

“Bloc voting”, authorized by Section 58999 of the FAC, refers to the practice by an agricultural cooperative marketing association of casting votes on behalf of its members. The Department requires every cooperative that utilizes bloc voting to submit the following items:

- A copy of the cooperative’s by-laws granting authority for the cooperative to vote on behalf of its membership.
- An approved board motion indicating:
  1. That the cooperative is bloc voting on behalf of its members.
  2. The cooperative’s position regarding the specific referendum at hand.
  3. Whether individual members will be allowed to vote outside the bloc vote.
- A list of producers eligible to vote. If the referendum utilizes volume as a criterion for approval, the Department requires the *cooperative* to supply information regarding each producer’s volume in electronic format.

## M204 LIST MANAGEMENT

Typically, MOCAs maintain lists of producer and handler contact information but, in some cases, the Department or another public agency assumes this responsibility. If a MOCA supplies the list, the Department requires the MOCA chief executive to certify to the best of his or her knowledge that the official producer and handler records that they submitted contain names, addresses, and volume data, if applicable, that are current, accurate, and complete. Appendix M6 contains the certification form that the Department requires chief executives to sign. In instances when a

current producer list is not available, the Department may initiate a Notice to File process, pursuant to Section 58775 of the FAC, requiring all handlers of the affected commodity to report names, addresses, and volume information of producers from whom they receive product.

#### *M204.1 Electronic Format*

Whenever the Department has need for data on individual industry participants, the Marketing Branch asks that all official records be provided in an electronic format to facilitate timely and efficient processing.

### *M205 ACCESS TO VOTERS*

In order to protect confidential information, pursuant to Section 58781 of the FAC, but afford interested parties with the ability to communicate with an affected industry, the Department prescribes the following Voter Access process. The Department will make mailings to individuals on voter lists, provided the interested party supplies the documents to be mailed inserted into sealed envelopes and is willing to pay mailing costs. The Department or the program concerned shall be provided with a sample copy of the mailing to ensure that: (1) the contents regard only matters related to the implementation, administration or termination of the marketing order or law concerned, (2) the contents do not include any objectionable (libelous, vulgar, profane, obscene, discriminatory, or politically sensitive) language. The interested party must certify that the content of each envelope is identical to the sample provided to the Department or program. The Department or program concerned shall not alter the contents of the mailing. In addition to placing a mailing label on each envelope, the Department or program concerned shall stamp the following wording on the outside of the envelope: “The [Department/Program Name] is mailing this envelope on behalf of an interested party to this marketing program. All costs of this mailing are borne by the interested party.”

#### *M205.1 Confidentiality of Producer Lists*

As required by Section 58781 of the FAC, the Department protects the confidentiality of all producer lists in its possession, and expects MOCA chief executives to do the same.

#### *M205.2 Confidentiality of Handler Lists*

The Department does not consider the names and addresses of handlers to be confidential unless specifically identified as confidential in the Food and Agricultural Code. However, all proprietary information related to a handler other than name and address will be kept confidential.

### *M206 REFERENDA*

The Department conducts the referendum process to ascertain the will of affected producers and handlers with regard to establishing, amending, or continuing marketing orders or agreements. Within the Department, the Marketing Branch administers referenda. This includes:

- issuing ballots to producer and/or handler lists,
- receiving ballots,
- making a determination regarding whether the ballot is from an eligible producer or handler and is properly completed,
- counting and certifying the votes,
- making necessary findings pertaining to the outcome of the referenda, and
- informing producers and/or handlers about the outcome of the referenda.

*M206.1 Referendum Extension under the California Marketing Act*

The standard time frame for voting during a referendum is up to 30 calendar days. The Act allows for deadline extensions up to an additional 15 days if the referendum period does not provide sufficient time for balloting. A minimum of 40 percent of affected producers and handlers must participate in the referendum. The primary reason for extending a voting deadline is to give affected commodity producers and handlers sufficient time to attain the required 40 percent participation.

*M207 REAUTHORIZATION*

The California Marketing Act requires periodic reauthorization of marketing orders<sup>2</sup> either by public hearing or referendum. In the absence of other reauthorization procedures, the Department is required to hold a public reauthorization hearing at least every five years. Members of the public as well as representatives of the affected industry are invited to testify. If the public hearing results in a substantial question regarding whether the program should continue, the Department is required to conduct a referendum on reauthorization. Absent a substantial question, the Department accepts hearing testimony as evidence of support for reauthorization. The Department will make every effort to issue a decision on continuation within 45 calendar days after the close of a public hearing and within 10 business days for vote tallying and certification after the deadline for a referendum.

*M207.1 Reauthorization Timing*

The Department expects the reauthorization process to be completed early enough to allow sufficient time for potential program wind-down, if indicated, before the end of the current marketing season. If the reauthorization process requires a public hearing, sufficient time must be allowed for there to be a referendum vote if warranted as a result of the hearing record in addition to allowing time for program wind-down. The hearing

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<sup>2</sup> The Dairy, Salmon and Cattle Council laws also require a continuation hearing once every five years.

should occur no later than six months prior to the end of the marketing season in the fifth year since the last reauthorization process.

*M208 RELEASE OF VOTING INFORMATION*

During a referendum, the Marketing Branch will release the voter participation percentage(s) to those making a request. The Branch also maintains the current referendum status on its website, including whether the 40 percent participation requirement has been reached, the deadline for submitting ballots, and the final results. When a 40-percent participation level is required, the Department may, upon request of the MOCA, send at least one reminder postcard to those producer and/or handler entities who have not submitted a ballot encouraging them to vote prior to the deadline.

*M209 BOARD NOMINATIONS AND APPOINTMENTS*

With the Department's approval, most MOCAs are authorized in statute to establish routine nomination procedures for replacing directors whose terms are expiring and/or to fill other vacancies. Common methods for nominating industry volunteers for appointment by the Department to advisory boards include the following:

- Nomination meetings followed by a mail ballot.
- Nomination meetings at which members vote on-site.
- Nominations and balloting conducted exclusively by mail.
- Nominations by mail with no preference voting by MOCA members.

Nominations and balloting conducted by mail should be handled directly by the Marketing Branch. The Branch will tally ballots and announce the results in addition to preparing the proper appointment documents.

## CHAPTER 3 - COMMUNICATION

### M300 OVERVIEW

The California Department of Food and Agriculture (Department) maintains a policy of fully disclosing to the public any information pertaining to the Department's programs and activities but not information required by law to be kept confidential. The Department communicates regularly with programs. In keeping with this standard, the Department:

- Maintains frequent and timely communication between MOCA chief executives and Department staff
- Prepares and distributes a **MARKETING UPDATE** – a newsletter informing programs and other interested parties of Marketing Branch issues and events along with interesting news shared by programs to other interested persons.
- Regularly updates its website (<http://www.cdfa.ca.gov/mkt/mkt/>).
- Provides timely email alerts and advisories, as needed.

### M301 DEPARTMENT RESPONSIVENESS

As a function of administrative direction and oversight, the Marketing Branch supplies information and/or clarification regarding program issues to individual marketing programs. When programs contact the Marketing Branch to raise an issue, request information or ask for a policy ruling, the Branch will acknowledge receipt of the message within 24 hours and will provide an estimate of how long it will take to provide the information requested.

### M302 SHARING COMMUNICATION

The Department and all MOCAs are interdependent when it comes to staying current on important information to California's marketing programs. Therefore, the Department's policy is to alert MOCAs of all matters that may potentially affect their operating environment.

#### M302.1 *Courtesy Copies to the Marketing Branch*

MOCAs that communicate in writing with units of the Department other than the Marketing Branch are expected to send copies of such correspondence to the Marketing Branch.

#### M302.2 *Courtesy Copies to Board Chairs*

When appropriate, the Department sends to board chairs copies of correspondence addressed to the MOCA chief executive on matters related to any program's budget and finances, as well as significant policy letters and other important correspondence.



### *M302.3 Courtesy Copies to MOCA Chief Executives*

The Department mails copies of its correspondence with board members to the affected chief executive(s).

### *M302.4 Board Roster*

The Department expects every MOCA to (i) supply a roster that, to the best of its knowledge, contains current, accurate, and complete board member contact information; and (ii) notify the Department Marketing Branch of changes in this information as changes occur. Complete contact information includes the following for every board member:

- Name
- Mailing address
- Email address
- Phone number

The Department respects the privacy of all board members and staff and only makes use of contact information for program-related business. Personal contact information for board members and staff will be kept confidential.

When the Marketing Branch receives requests for program rosters, it provides a list of members and alternate members and, if applicable, the districts each represents. The contact information given for all members is the program's headquarter's address and telephone number.

## *M303 MEDIA RELATIONS*

MOCA's are encouraged to coordinate with the Department's Public Affairs Office (PAO) when responding to media inquiries regarding sensitive issues. Likewise, when the Department receives media inquiries, it will notify the affected MOCA chief executive regarding the inquiry and, if appropriate, obtain additional information.

### *M303.1 Procedure for Requesting Assistance with Media Relations*

Through the Marketing Branch, MOCAs may request media relations expertise and assistance from the Department's Public Affairs Office. These resources may be made available in response to a crisis or controversy or as part of a systematic program of positive public relations. Upon request and on a case-by-case basis, the Branch facilitates communication between the Public Affairs Office and any MOCA seeking such assistance.

## CHAPTER 4 - MARKETING BRANCH CHARGES

### M400 OVERVIEW

The California Department of Food and Agriculture (Department) incurs costs in providing administrative direction and oversight for its marketing orders, councils, and agreements (MOCA). The authorizing legislation requires MOCA to reimburse the Department for these costs. The Department's Marketing Branch invoices each MOCA monthly in arrears for both direct and indirect charges. Indirect charges cover services provided by entities other than the Marketing Branch -- for example, the Department's Financial Services Branch in the Division of Administrative Services.

### M401 MARKETING PROGRAM SERVICES ACCOUNT (MPS)

Because General Fund support to cover cash flow needs has not been available since 1990, the Department maintains a revolving fund of approximately \$100,000 to meet monthly payroll and other financial obligations in support of the Marketing Branch. This fund is known as the Marketing Program Services Account, referred to as "the MPS." The MPS is the exclusive source of solvency protection for the Marketing Branch and withdrawals from it must therefore be recovered on a timely basis.

#### M401.1 Reserve for Unanticipated Expenditures

The Department holds an additional \$50,000 in reserve within the MPS to cover unanticipated expenditures.

#### M401.2 Consultation with the Marketing Branch's Executive Committee

If it is not clear that an unanticipated expenditure is suitable for payment from the MPS, the Department consults the Marketing Branch's Executive Committee. Similarly, should the MPS fall below \$150,000, the Department asks the Executive Committee to (i) confer on alternatives for restoring adequacy to the MPS, and (ii) make a recommendation to the Marketing Branch.

### M402 BASIS FOR MONTHLY CHARGES

In responding to MOCA requests for information, clarification, or assistance, Marketing Branch staff report billable time from the point their response involvement exceeds one-half hour. These costs, like attendance at MOCA meetings and activities, are billed directly to the affected MOCA. Typically, two weeks following the end of each month, the Marketing Branch receives budget reports (revenue and expenditure details) from the Department's Accounting Office. On the basis of these reports, Marketing Branch accounting staff bill MOCA for their share of administrative direction and oversight costs in the prior month, plus indirect costs. Appendix M7 illustrates the cost allocation of Marketing Branch charges.

#### *M403 DELINQUENT ACCOUNTS*

Delinquent payment of invoices jeopardizes the solvency of the MPS. If the Department has to borrow money from other accounts to cover the MPS, it is considered a loan and the Accounting Office charges interest. Such interest payments increase the total prorated charges paid by programs. To avoid incurring interest charges, the Department requires any MOCA that makes late payments on Marketing Branch invoices for any three months in a six-month period to pay a deposit equaling three months of estimated charges (not less than \$2,500). In these circumstances, the affected MOCA will continue to receive monthly invoices and the deposit will be held in reserve only to float late invoice payments until the payment is received. The full deposit will be refunded when the MOCA has consistently paid its monthly invoices on time for six consecutive months.

#### *M404 STANDARDS FOR COST RECOVERY*

The Department recovers costs in keeping with the following standards:

- To avoid having to assess interest charges, the Department expects to receive reimbursement by the due date on the monthly invoice, which is one week prior to the last working day of each month. This is to ensure that payments clear through the Department's Financial Services Branch by the end of the month. Any payment outstanding at the end of the month will appear as a delinquency on the next month's invoice.
- The Department assesses interest on delinquent payments of Marketing Branch charges at a rate established by the California Department of Finance.

#### *M405 BUDGETING FOR MARKETING BRANCH CHARGES*

The Department expects MOCA to anticipate Marketing Branch charges in their annual budgets. Estimates should include the (i) standard monthly costs, based on prior years; (ii) the costs of conducting public hearings and/or referenda, if applicable; and (iii) the costs of any other foreseeable activity that would exceed the Branch's routine involvement (for example, proposed legislation that will require bill analysis by Branch staff). In order to compile an estimate that is as accurate and realistic as possible, the Department expects every MOCA to work with Branch staff in arriving at estimates of Branch charges to its program over the coming year.

#### *M406 AGREED-UPON PROCEDURES (COMPLIANCE) AUDITS*

MOCAs shall arrange for an Agreed-upon Procedures Compliance Audit to be performed by the CPA firm retained to perform annual financial audits. The procedures are designed to verify each program's compliance with its enabling law, Department policies and procedures and the program's internal policies and procedures. Section 58937 of the FAC requires all expenditures to be audited at least once every two years, however, by performing the Agreed-upon Procedures in conjunction with the annual financial audit, significant savings can be achieved.

*M407 CHARGES PAID BY NEW PROPONENT GROUPS*

New MOCA proponents provide a deposit to the Department to defray only the direct Marketing Branch costs of preparing the necessary documents and carrying out related responsibilities. If the actual costs of establishing the MOCA exceed the deposit, the proponents are obligated to pay the actual cost. Chapters 9 and 10, respectively -- cover in greater detail the Department's policies pertaining to cost recovery for establishing new MOCAs.

## *CHAPTER 5 - DISPUTED CHARGES*

### *M500 OVERVIEW*

The California Department of Food and Agriculture (Department) expects every marketing order, council, and agreement (MOCA) to engage in the standard business practice of reviewing monthly invoices from the Marketing Branch to verify that the reported basis for direct charges conforms to the MOCAs own records. MOCAs with billing questions should follow the procedures outlined in this chapter. This consists, first, of requesting clarification. Once all information needed to make a determination has been made available, but the amount owed remains in dispute, the affected MOCA may submit a disputed charges letter for formal review by the Marketing Branch's Executive Committee.

### *M501 REQUEST FOR CLARIFICATION*

All invoices are based on monthly budget reports prepared for the Marketing Branch by the Financial Services Branch. Any MOCA may question charges that appear on monthly invoices by adhering to the following procedure:

- Within the period prior to the payment due date, the affected MOCA should communicate in writing with (i) Marketing Branch accounting staff, (ii) the assigned Economist, or (iii) the Branch Chief.
- Within 10 working days, the Marketing Branch's accounting staff will analyze and verify the charges shown on the relevant budget reports prepared by the Department's Division of Administrative Services.
- If Marketing Branch accounting staff finds an error, they will adjust the affected MOCA's invoice accordingly within 30 calendar days and write a letter to accompany the corrected invoice, explaining the error and need for adjustment.
- To encourage MOCAs to seek clarification on billing charges if they have questions, the Marketing Branch authorizes its accounting staff to spend up to two hours on responding to a MOCA's request for more information regarding a specific invoice. Beyond two hours, the Department will bill any affected MOCA on its next invoice for the hourly cost of additional accounting research, unless it is determined that the invoice in question contained an inadvertent error made by the Department.

### *M502 PAYMENT OF UNDISPUTED CHARGES*

Documentation prepared by Marketing Branch accounting staff must satisfy the inquiring MOCA that it is liable for the disputed charges. If questions remain, the Department expects the affected

MOCA to pay all undisputed charges by the invoice due date and simultaneously submit a disputed charges letter containing the basis for its nonpayment of the balance.

*M503 REFERRAL TO THE EXECUTIVE COMMITTEE*

Within two working days of receipt of a MOCA's disputed charges letter, the Department will notify the protesting MOCA in writing that the Marketing Branch has referred the disputed charges letter to its Executive Committee. The Committee will confer to (i) determine whether the protesting MOCA is liable for the disputed charges, and (ii) make a recommendation to the Branch Chief.

*M503.1 Composition of an Ad Hoc Disputed Charges Subcommittee*

The Executive Committee shall have the flexibility to appoint at least three marketing program executives on a case-by-case basis to serve on a disputed-charges review subcommittee. However, any chief executive is ineligible to serve on such subcommittee when his or her own MOCA's disputed charges are the subject of the review.

*M503.2 Disputed Charges Review Process*

The Department's notification regarding the timing and procedure for review of any MOCA's disputed charges letter will state that:

- The MOCA that has submitted a disputed charges letter has the right to be present to make its case when the Executive Committee, or Disputed Charges Review Subcommittee confers.
- If no representative is present, the Marketing Branch will distribute the disputed charges letter to all members of the Executive Committee or Disputed Charges Review Subcommittee.
- Within five working days of receiving the Executive Committee or Disputed Charges Review Subcommittee's recommendation, the Marketing Branch will notify the affected MOCA in writing of the Department's decision.

*M503.3 Demonstrated Effectiveness*

Since its inception, the disputed charges policy and review process outlined in M503 has proven to be an effective means for resolving disputes to the satisfaction of all affected parties. Therefore, the Department will continue to rely on the process working with the Executive Committee to manage review and resolution of disputed charges.

M504 *DISPUTED CHARGES ALTERNATIVE SCENARIOS TIMETABLE*

<b>DISPUTED CHARGES TIMETABLE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
Dispute specific charges that appear on Branch's invoice	Affected MOCA	Within period before due date on invoice
Analyze disputed charges	Marketing Branch Accounting Staff	Within 10 working days of request
If Branch was in error, adjust future invoice of affected MOCA, write letter to explain error and need for adjustment	Marketing Branch Accounting Staff	Within 30 calendar days of verifying accounting error
If Branch documents charges but MOCA decides to protest, pay all charges not disputed and submit disputed charges letter containing basis for nonpayment of balance	Affected MOCA	Within period before due date on invoice
Notify protesting MOCA that its disputed charges letter has been referred to the Executive Committee	Marketing Branch Chief	Within 2 working days of receipt of MOCA's disputed charges letter
Review disputed charges and make recommendation to the Marketing Branch Chief	Executive Committee or Disputed Charges Subcommittee	Earliest date at which at least three members are available to confer
Notify protesting MOCA of the Department's decision	Marketing Branch Chief	Within 5 working days of receiving Executive Committee's recommendation
SCENARIO I: (a) Executive Committee finds that the MOCA is liable, and the MOCA agrees to pay in full on time	Affected MOCA	Within 30 calendar days of receipt of the Department's decision
SCENARIO I: (b) Executive Committee finds that the MOCA is liable, and the MOCA agrees to pay but is late; interest is added on amount due	Marketing Branch Accounting Staff	Upon MOCA's failure to pay within 30 calendar days of receipt of the Department's decision
SCENARIO II Executive Committee finds that the MOCA is liable, but the protesting MOCA refuses to pay the disputed charges. The Department notifies board of impending action to attach protesting MOCA's bank account for disputed amount and/or initiate proceedings to terminate the MOCA	California Department of Food and Agriculture	Within 30 calendar days of receipt of the Department's decision
SCENARIO III: (a) Executive Committee finds that the MOCA is not liable for any or	Marketing Branch Accounting Staff	Within period before issuance of next invoice

<b>DISPUTED CHARGES TIMETABLE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
all of the disputed charges. The Department adjusts affected MOCA's next invoice accordingly for overcharges from the month in dispute (disputed charges refunded in full).		
SCENARIO III: (b) Executive Committee finds that the MOCA is not liable for any or all of the disputed charges and recommends another cost recovery source(s), e.g., MPS or distribution of costs to all programs.	Marketing Branch Accounting Staff	Immediately upon resolution by Executive Committee and decision by the Department



## CHAPTER 6 - FINANCE

### M600 OVERVIEW

The Food and Agricultural Code designates the California Department of Food and Agriculture (Department) as being ultimately accountable for the administrative direction and oversight of marketing orders, councils, and agreements (MOCAs). The Department is responsible for ensuring all receipts and expenditures by MOCAs are authorized by the program's budget and consistent with the program's charter. "Receipts" includes assessments, grants, reimbursements, and revenues from all other sources.

### M601 BUDGETS AND ASSESSMENT RATES

The Department's Marketing Branch is responsible for reviewing and approving the budgets and budget amendments of all MOCAs. The Department expects each MOCA to submit its budget to the Marketing Branch not more than 15 calendar days following approval by its board. Provided the MOCA has included all required information, the Department's approval is due within 15 calendar days of receipt of the budget.

#### M601.1 *Budget Approval Prior to Beginning of Fiscal Year*

The Department expects every MOCA to submit its board-approved budget in time to receive the Department's approval prior to the beginning of the affected MOCA's fiscal year. No MOCA is authorized to expend funds other than for salaries and wages before the Department has approved its budget.

#### M601.2 *Budget Completeness*

The Department requires MOCAs to indicate in their annual budget submittals:

- All budgeted expenditures
- All anticipated revenues, including grants
- All beginning and ending cash balances and reserves

#### M601.3 *Assessment Rates*

The Department's responsibility with regard to assessment rates is to ensure that each MOCA's proposed assessment rate does not exceed statutory and/or commodity-specific limits. At the same time, each MOCA's assessment rate must generate sufficient revenue to ensure that assessment payments, in combination with receipts from *all* sources, will cover all budgeted costs. The Department complies with this mandate by approving each MOCA's assessment rate as a component of the MOCA's

annual budget. Except under extraordinary circumstances, such as a pest or disease infestation or weather event causing extreme financial harm to an industry, the Department further expects the assessment rate as proposed to be in effect throughout the budget year.

#### *M601.4 Assessment Crises*

Severe circumstances, such as crop failure, on occasion create assessment-related budget crises. As authorized by Section 58923 of the FAC, the Department has the authority to approve lowering or raising an assessment rate mid-year, based on a recommendation from the affected advisory board, but does so only on a case-by-case basis. The documentation submitted by the affected MOCA in such instances must justify the change and detail the MOCA's procedure for ensuring that assessments paid by all those affected will be equitable.

#### *M601.5 Budget Amendments*

Expenditures and/or revenues that depart significantly from those anticipated in any MOCA's Department approved budget might require a mid-year budget amendment. The Department expects MOCA's that face higher than anticipated costs or receive unanticipated revenue to consult Marketing Branch staff to determine whether a budget amendment is required.

### *M602 GOVERNMENT RATES AND DISCOUNTS*

MOCA board members and employees are entitled to state discounts and certain tax exemptions, and the Department expects MOCA's to utilize all such applicable opportunities in the course of conducting official MOCA business -- for example, to reduce travel costs. Upon request, the Marketing Branch will supply a reference letter that MOCA's may give vendors in order to clarify the MOCA's legal status as State entities and, thus, their eligibility for all discounts and exemptions that are generally available to any State government entity.

#### *M602.1 Identification Cards*

The Department issues identification cards to MOCA board members and employees, upon request from a chief executive, as evidence of their eligibility for discounts and tax exemptions extended to State government. Appendix M8 contains an application plus steps and procedures for utilization of identification cards.

### *M603 RESERVE POLICY*

The Department requires all marketing programs to ensure they have an up-to-date written reserve policy approved by the Department. The policy provides guidance to both the board of directors and staff in budget planning each year.

Sample language for programs to consider is provided below:

The \_\_\_\_\_ Board of Directors maintains a minimum unassigned reserve balance of not less than *[can be a dollar amount or percentage of total revenues]* to provide for economic uncertainties. The Board finds a reserve of this level is prudent for the following reasons/purposes *[include commodity-driven findings that apply and any other reasons that are unique to your program]*:

- The imprecise nature of production estimates made prior to the start of a season which directly affects revenue projections.
- Funding for administrative costs from the beginning of a fiscal year to first receipt of assessment revenue.
- Funding for rapid response to crises that may occur during the fiscal year.
- Funding for unforeseen opportunities that arise during the year.
- Funding for unforeseen legal expenses exceeding the budget for such expenses.

The Board designates its reserve balance as:

- A Reserve for Contingencies of *[either dollar amount or percentage of total revenues]* that serves as the initial source of additional funds when needed, and
- A more long-term “restricted” reserve of *[\$ amount or percentage]*.

While the Board recognizes the need to set aside reserves for unanticipated challenges or opportunities and for financial stability, it also recognizes that assessment dollars are intended primarily for accomplishing the objectives defined in the Board’s marketing order

#### **M604 DEPOSIT ACCOUNTS**

The California Food and Agricultural Code<sup>3</sup> and California Government Code require MOCAs to deposit program funds in a bank or other depository that is approved by the California Department of Finance. To receive clearance, the Department requires MOCAs to submit to the Marketing Branch the indicated information for all new depository relationships. This includes account transfers necessitated by bank mergers or changes in bank ownership. The Branch will forward the relevant information to the California Department of Finance. The statutory information requirements are as follows:

- The legal name of the program and the official designation of the account

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<sup>3</sup> Reference FAC Section 58937 for all Advisory Boards, FAC Section 64309 for the Dairy Council, FAC Section 64696 for the Beef Council, and FAC Section 76906 for the Salmon Council.

- The name and location of the proposed bank or savings and loan association
- Evidence that the bank or savings and loan association is insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC), respectively
- The amount, source, and purpose of the funds to be deposited
- The type of account, (time deposit, savings account, etc.), length of deposit, and rate of interest the account will earn
- Terms and conditions governing the withdrawal of funds
- A letter from a representative confirming that the proposed financial institution is aware that the program's funds are public funds and that the institution will therefore handle the program's funds in conformance with all collateralization and investment requirements as specified in the California Government Code

#### *M605 ACCOUNT BALANCE REPORTS*

Section 19462 of the State Administrative Manual requires that all state agencies prepare an annual report of balances remaining as of June 30 in all accounts outside the State Treasury system into which they have deposited their funds. The Department annually distributes to all MOCAs the relevant instructions and standardized reporting forms (STD. 445) to facilitate compliance with this requirement.

#### *M606 INVESTMENT OF FUNDS*

The Food and Agricultural Code<sup>4</sup> provides that MOCAs may place funds available for investment either (i) with the State Treasurer, such as in the Local Agency Investment Fund (LAIF); or (ii) in eligible securities as described in Section 16430 et. seq. of the California Government Code (provided in full in Appendix M19). The Government Code includes, but does not limit, eligible securities to:

- Bonds or interest-bearing notes or obligations of the United States, the State of California, or any county, or city.
- Non-government bonds (see Section 16430 of the Government Code for details)
- Commercial paper of "prime" quality as defined by a nationally recognized rating organization

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<sup>4</sup> Reference FAC Section 58939 for all Advisory Boards, FAC Section 64311 for the Dairy Council, FAC Section 64697 for the Beef Council, and FAC Section 76907 for the Salmon Council.

- Bills of exchange (also known as bankers acceptances)
- Negotiable certificates of deposit
- Bank loans guaranteed by the U. S. Small Business Administration, U. S. Farmers Home Administration, Export-Import Bank (see Section 16430 of the Government Code for additional sources of bank loan or obligation guarantees)

#### *M607 FINANCIAL STATEMENTS*

The Department expects MOCAs to prepare quarterly financial statements. The Marketing Branch recommends that MOCAs attach their financial statements to minutes from all board meetings at which the chief executive has distributed financial statements. Marketing Branch Economists review these financial statements. If concerns surface regarding a particular MOCA's financial condition, either through routine reviews or audit findings, the Department may require the affected MOCA to provide financial reports at more frequent intervals. Such reports may include, but are not limited to the following:

- Balance Sheet
- Income and expenses for the reporting period
- Cash flow forecast

#### *M608 LOANS AND LINES OF CREDIT*

Section 58928 of the Food and Agricultural Code provides authorization for Marketing Orders and Agreements to borrow money. For purposes of clarifying financial responsibility, the Department expects MOCAs to provide a standard clause to be included in any loan or line of credit agreement with a lending institution and adhere to the following procedures:

- In conjunction with a lending institution, prepare a loan proposal or line of credit application containing a standard clause that exempts the State from financial responsibility for paying off the loan. This clause should read "*Lender shall seek repayment for the loan only from funds of the [MOCA name].*"
- Quantify assets and resources the MOCA proposes to offer as collateral. Collateral may include anticipated assessments.

#### *M609 INSURANCE*

The Department requires that all MOCAs fund the insurance policies that comprise the Marketing Branch's group liability insurance plan. To minimize the group plan's liability exposure, the Department expects MOCAs to obtain annual certification of insurance coverage from all employees who intend to use their own vehicles in conducting official program business (the certification form developed for this purpose by the Marketing Branch is included in this manual as Appendix M9). The group insurance plan provides coverage in the following areas of liability (refer to specific policies for greater detail):

- General Commercial: Claims alleging bodily injury or property damage resulting from an accident
- Umbrella: Excess liability over the primary general liability policy
- Advertising: Defamation of character, libel, slander, invasion of privacy, infringement of copyright, and plagiarism
- Non-owned and Hired Auto: Claims alleging bodily injury and property damage in accidents involving autos not owned by the program but driven by program employees.

#### *M610 MOTOR VEHICLE INSURANCE FOR PROGRAM-OWNED VEHICLES*

The Department expects all MOCAs with program-owned vehicles to be covered under the Office of Risk and Insurance Management (ORIM) plan because, technically, such vehicles are government-owned. ORIM coverage includes liability but does not include physical damage losses. Therefore, the Department expects each participating MOCA to secure physical damage coverage from a private insurance vendor.

#### *M611 FINANCIAL AUDITS*

State law requires that all expenditures by MOCAs be audited at least once every two years. However, the Department expects annual audits to be completed within six months of the end of each fiscal year. The Department expects a committee of the MOCA, such as its Finance Committee or Executive Committee, to review the preliminary audit report and, if warranted, submit comments on the draft audit report and management letter. The audit firm shall then present its final audit report, incorporating any comments submitted, to the full board, or a committee of the board designated that responsibility, either in person or by conference call/video conference.

##### *M611.1 Management Letter*

In conjunction with each audit, the Department requires every MOCA to instruct the auditor to prepare a management letter that addresses any concerns the auditor may have regarding fiscal procedures utilized by the affected MOCA. If there are no concerns, no management letter is required.

##### *M611.2 Approved Audit Sources*

The Food and Agricultural Code provides for audits to be completed through a contract or agreement with any of the following:

- Certified public accountant
- Public accountant holding a valid permit issued by the State Board of Accountancy
- Public accounting firm
- The California Department of Finance

### *M611.3 Audit Reports*

State law requires every MOCA to submit copies of every audit report within 30 calendar days of completion of the audit to the Department, the Governor, and the State Controller. The audit reports shall be submitted directly by the audit firm to the Marketing Branch at the time the final reports are submitted to the MOCAs. The firm may submit all three copies to the Marketing Branch, and the Branch will distribute them as indicated.

### *M612 OFFICE OR PRORERTY LEASE TERMINATION*

The Department expects MOCAs to include a release clause in every lease contract that relieves both the MOCA and the Department of any obligations under the lease contract to pay lease costs in the event the MOCA is terminated. If the leaseholder will not agree to the recommended clause, the Department expects that the affected MOCA will carry a reserve sufficient to pay in full any lease obligation that will result should the MOCA cease operations.

#### *Recommended Office / Property Lease Termination Clause:*

*“It is mutually agreed that if the [name of MOCA] is terminated by any of the methods allowed under California law, [the MOCA name’s] liability under this lease agreement will continue only until the expiration of the then-current marketing season as defined in the [name of MOCA] law. As of the date of the termination, neither the State of California nor the [name of MOCA] shall have further liability to pay lease costs under this agreement, and the Contractor shall not be obligated to perform any provisions of this lease agreement.”*

## CHAPTER 7 - LOBBYING

### M700 OVERVIEW

The California Marketing Act does not expressly prohibit “lobbying.” Section 58604 of the Food and Agricultural Code provides that advertising and sales promotion includes “the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of any commodity.” Existing council laws, however, do explicitly prohibit lobbying.

### M701 ONE VOICE

The Department expects MOCAs to coordinate with the Marketing Branch regarding their policy-related communications with the industry and general public as well as with other agencies of government, including the Legislature or Congress. This practice serves to enable the industry and the Administration to adopt a unified policy position on agricultural commodity issues.

#### M701.1 Routine Communications

The Department acknowledges that MOCAs’ efforts to educate and inform are often routine communications intended to clarify commodity-specific implications of policy changes as they arise. Such communications do not require prior review or approval by the Department.

#### M701.2 Alternative Opinion

When a MOCA is aware of and understands Administration policy but seeks to present alternative or expanded points of view, the Department expects that MOCA to request a meeting with the Department before communicating its perspective to the industry or other governmental entities.

### M702 TIME FRAME FOR REVIEW

When a MOCA is unsure of the Administration’s position on a particular issue, the Department expects that MOCA to ask the Marketing Branch to review and consider approving materials that are intended for publication and/or direct distribution to industry and/or governmental decision-making agencies.

#### M702.1 Routine Review

In most cases, the Department will complete its review and respond to the requesting MOCA within five working days.

#### M702.2 Emergency Review

When a MOCA identifies any situation as an emergency and provides timely notification that allows sufficient time for expedited review, the Department will respond within 24 hours of its receipt of the proposed communications.



## *CHAPTER 8 - ENFORCEMENT SUPPORT*

### *M800 OVERVIEW*

The California Department of Food and Agriculture (Department) is responsible for investigation and enforcement in connection with marketing orders, councils, and agreements (MOCAs).

Enforcement activities include:

- Auditing handlers subject to statutory and regulatory provisions
- Obtaining delinquent assessment reports from MOCAs
- Making deficiency determinations (marketing orders and agreements only)
- Overseeing full payment of delinquent assessments, including pursuing remedies through legal action, such as civil actions

Appendices M11 and M12 contain flow charts that depict the Department's enforcement actions for marketing orders and agreements. Individual council statutes contain variations.

### *M801 ASSESSMENT TRUSTEES*

Every marketing program is funded through mandatory assessments collected from the represented industry. Some MOCAs assess producers, some assess handlers, and others assess both. In nearly all cases, it is the first handler of the commodity that reports the amount sold and/or delivered, that holds the assessments in trust until it remits the money to the MOCA, or the collection agency approved for that program.

### *M802 RECORD KEEPING AND ACCESS TO RECORDS*

The Food and Agricultural Code<sup>5</sup> gives the Department the discretion to take whatever actions are necessary to ensure proper administration of MOCAs, including requiring that handlers maintain books and records that comprehensively and accurately reflect the operations of the business. The FAC also requires handlers to allow a representative from the Department to inspect books and records relating to payment of assessments.

### *M803 HANDLER AUDITS*

The Department audits handlers to verify accurate and complete reporting of commodity quantities received and sold and assessments paid. To complete this task, the auditor begins with an interview to learn the details of each handler's accounting system. The auditor reviews the

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<sup>5</sup> Reference FAC Section 59201 for all Advisory Boards, FAC Section 64221-64222 for the Dairy Council, FAC Section 64691.1 for the Beef Council, FAC Section 76901.5 for the Salmon Council, and FAC Section 65072 for the Cattle Council.

handler's receiving records, sales records, and grower accounts. If the auditor finds errors, he or she is required to continue reviewing all applicable records until the accounts are reconciled. The auditor normally examines records for at least the prior three complete fiscal years and is authorized to request records for an additional prior year, or a total of four years. The auditor informs the handler of the audit findings before leaving the premises. Following the audit, the auditor sends a letter to the handler and the affected MOCA to indicate whether the handler reported correctly. This letter states whether a refund is forthcoming or whether the handler owes additional assessments, penalties, interest, and/or collection costs.

#### *M803.1 Out-of-State Handlers*

Additional rules apply to out-of-state commodity handlers. In general, wherever this business arrangement is in effect, the Department considers the affected California grower to be the handler with regard to payment of assessments, if the grower owns the product when it crosses the state line. If the out-of-state handler owns the product when it crosses the state line, then the handler has nexus in California and is responsible for the payment or remittance of assessments.

#### *M803.2 Exemptions*

Unless requested by a MOCA, the Department does not audit handlers that provide MOCAs with other means of obtaining accurate transaction data. For example:

- Marketing orders with inspection programs
- Marketing programs for which other government agencies collect and verify data, such as:
  - The Quota Administration Program, for the milk and dairy marketing programs
  - The Bureau of Livestock Identification, for the California Beef Council and California Cattle Council
  - Department of Fish and Wildlife, for the California Salmon Council

#### *M803.3 Intervals*

The Department audits most non-exempt handlers at least once every three years, because Section 59231 of the California Marketing Act sets a three-year statute of limitations on filing any action or penalty against a handler for violation of reporting requirements in the Act. However, in recognition of excellent performance and in an effort to minimize costs without compromising the goals and purpose of the audit program, the Department, with agreement from MOCA chief executives, may audit less frequently those handlers with satisfactory compliance histories. "Satisfactory compliance" means that, in the prior two audits, the auditor detected no variance from what should have been reported and paid.

- Every three years: New handlers or handlers with less than satisfactory compliance history
- As needed or requested: Low volume handlers and handlers with satisfactory compliance history

#### *M803.4 Individual MOCAs' Handler Audit Policies*

The Department expects MOCAs to write their own board-approved handler audit policies subject to review and approval by the Department. In support of MOCAs' policies, the Department conducts handler audits at the intervals specified in each individual MOCA's policy.

### *M804 ASSESSMENT COLLECTION BY MOCAs*

In cases where MOCAs collect assessments from the first handler of the commodity, the Department requires each MOCA to establish assessment collection guidelines. Assessment collection guidelines may be included in the MOCA's policy manual or developed as a separate document. the Department expects each MOCA's handler assessment report to include the exact date each assessment is due and indicate when assessment payments are considered late and therefore subject to penalties.

#### *M804.1 Steps for Collecting Delinquent Assessments*

The Marketing Branch expects MOCAs to take the following steps to collect delinquent assessments:

1. Delinquency Alert by Email. If the MOCA does not receive payment within 15 days after the due date, contact the delinquent party by email immediately. Document all contacts with the handler.
2. Demand Letter. If the MOCA does not receive payment within 15 days after the delinquency notification, send a letter by overnight mail (ensuring a delivery receipt) to the handler demanding payment for the assessments due. In this letter, advise the handler that unless the MOCA receives payment within 15 calendar days, the next step will be to refer his/her account to the Department for collection. Copy the Department's Marketing Branch on the letter.
3. Importance of Formal Notification. Sending a demand letter does not preclude following up by telephone; however, a telephone call should not be used in lieu of a written demand for payment.
4. Referral to the Department. If the MOCA does not receive payment within 15 calendar days from the postmarked date of the demand letter, refer the account without delay, along with all pertinent documentation, to the Marketing Branch.

*M804.2 Prohibition Against Refusal to Provide Service*

MOCAs may not refuse to provide services to entities that have not paid assessments. Exceptions may be permissible, however, if a MOCA has a written, Department-approved policy for withholding specified services from delinquent assessment payers.

*M804.3 Voting Rights of Delinquent Assessment Payers*

The Department and MOCAs may not exclude producers or handlers whose assessments are delinquent or unpaid from voting in board elections or referenda.

*M804.4 Good Standing*

The Department may remove board members who are not in good standing. MOCA board members are in good standing if they are not currently parties in litigation that involves the program and they are timely in:

- Paying their assessments
- Completing their annual Statement of Economic Interest (Form 700)
- Completing the State ethics training required of all public officials
- Completing the State mandated harassment and abusive conduct prevention training
- Providing information that is required for proper functioning of the MOCA, as requested by the program

Board members who have violated state Equal Employment Opportunity (EEO) policies, including those prohibiting sexual harassment, discrimination, retaliation, and creating a hostile work environment are subject to removal from their position by the Department.

*M805 HANDLER BANKRUPTCY*

Upon receipt of notice of a handler bankruptcy, the affected MOCA should notify the Marketing Branch immediately. By coordinating its claims, the Department may be able to secure "priority" status in the bankruptcy for an affected MOCA.

## *CHAPTER 9 - NEW AND TERMINATING ORDERS AND AGREEMENTS*

### *M900 OVERVIEW*

Appendix M13 depicts all steps involved in establishing a new marketing order or agreement. Chapter 10 contains parallel procedures for establishing councils. The California Department of Food and Agriculture (Department) expects any marketing order or agreement that finds it necessary to terminate its operations to follow the procedures outlined at the end of this Chapter.

### *M901 MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT*

Any group of producers and/or handlers of agricultural products who wishes to create a new marketing order or agreement begins this process by signing a memorandum of understanding (MOU) with the Department.

#### *M901.1 MOU Specifications*

In the standard form MOU (see Appendix M14), the Department's Marketing Branch specifies the amount that proponents must deposit with the Department to start the authorization process. The MOU also provides an estimated cost for each additional step in creating a new marketing order or agreement and further delineates the responsibilities of all parties.

### *M902 PROPONENTS' RESPONSIBILITY FOR COSTS*

Section 58961 of the California Marketing Act authorizes the Department to require new marketing order or agreement proponents to provide a deposit to defray the anticipated direct costs of preparing the order and making it effective. If the actual costs of establishing the marketing order or agreement exceed the Department's estimate of costs, the proponents are obligated to pay the additional actual costs. After the implementation process is completed, the Department returns to the proponents any portion of the deposit it did not use. Section 58962 of the Marketing Act states that an established marketing order or agreement may later reimburse the original proponents for their deposit to the Department plus any additional expenses related to implementation of the marketing order or agreement.

### *M903 RATIONALE*

Before the Marketing Branch goes to work, the Department expects proponents for a new marketing order or agreement to demonstrate that members of the industry can reasonably assume they will benefit from the proposed program. The Department further expects the proponents' rationale to indicate that industry support is adequate to achieve the desired goals of the proposed program.

#### *M904 ANALYSIS OF PUBLIC HEARING TESTIMONY*

One of the steps the Department is required to take in connection with establishing a new marketing order or agreement is to hold a public hearing and invite testimony from members of the industry and the public. The Marketing Branch is responsible for completing a comprehensive analysis of the public hearing testimony and relevant data. This analysis conforms to the format and addresses the issues specified in statute. It is the goal of the Branch to prepare the analysis and issue a decision within 45 calendar days of the close of the public hearing record.

#### *M905 REFERENDUM*

If the Department determines that the proposed marketing order or agreement has potential benefits for the industry, the proposal may be set for an implementation referendum vote of the industry. If the proposed marketing order wins industry approval through referendum, the Department issues an order declaring the marketing order or agreement operative.

#### *M906 MANAGEMENT RESPONSIBILITY FOR NEW MARKETING ORDERS*

The Department expects timely implementation of a new marketing order or agreement, including that the board will secure the services of a chief executive, either as an employee or contractor, to direct and coordinate the administrative and fiscal matters of the program. Until the program has a chief executive, the Department will consider the chairperson to be functioning as the acting chief executive unless the board suggests an alternative interim management arrangement, such as a management committee composed of board members. While exercising the functions of acting chief executive, the chairperson shall not have access to confidential and proprietary industry information that is garnered by the board.

##### *M906.1 Avoiding Conflicts of Interest*

Marketing orders and agreements are prohibited from seeking management services from providers who have conflicts of interest. If a potential conflict of interest exists, a conflict analysis should be performed by the Department's Legal Office. Based on the outcome of this analysis, the Department may require the management services contractor or employee to prove ability to provide adequate safeguards to mitigate any conflicts. This may include the following methods:

- The marketing order or agreement hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process.

##### *M906.2 Potential for Additional Marketing Branch Charges*

Until a chief executive is in place, the new marketing order or agreement may rely on the Department for day-to-day involvement in operations. In these circumstances, the

initial budget adopted by a new marketing order or agreement should anticipate higher-than-usual monthly Marketing Branch charges for this higher level of service.

#### *M907 TERMINATION*

The Department expects a terminating marketing order or agreement to retain sufficient reserves to pay outstanding claims. In addition, the Department expects a terminating marketing order or agreement to (i) prepare a wind down plan with details regarding how the marketing order or agreement will terminate its affairs; and (ii) recommend individuals that the Department shall then appoint to a wind down committee. The Department expects the wind down plan to include the following:

- Date for closing the office
- Date for notifying employees of their termination
- Schedule for notifying vendors of termination of services
- Copy of notification to bank of the addition of Department employees as account signatories
- Plan for disposition of assets (a marketing order or agreement terminating to become a commission must prepare an MOU regarding the transfer of assets to the commission)
- Plan for transfer of intellectual property
- Plan for archiving and transfer of records to the Department
- Wind down budget, including:
  - Payment of employee leave balances
  - Payment of employee severance (if provided for in employment manual or individual employee contracts)
  - Resolution of pension benefits (if applicable)
  - Plan for commissioning final audit
  - Plan for the refund of remaining fund balances

##### *M907.1 Payment of Termination Costs*

Terminating marketing orders or agreements shall pay the full costs incurred by the Department in terminating the program.

## *CHAPTER 10 - NEW AND TERMINATING COUNCILS*

### *M1000 OVERVIEW*

Appendix M15 depicts all steps involved in establishing a new council. In short, the proponents of a council must secure a commitment from an Assembly Member or Senator to carry legislation, craft language for a bill to authorize the council, and guide the bill through the legislative process until, ultimately, the Governor signs it into law. At that point, council proponents must adhere to additional procedures as described in this Chapter. The California Department of Food and Agriculture (Department) expects any council that finds it necessary to terminate its operations to follow the procedures outlined at the end of this Chapter.

### *M1001 MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT*

Upon enactment of authorizing legislation, the council proponent group wishing to create a new council enters into a memorandum of understanding (MOU) with the Department.

#### *M1001.1 MOU Specifications*

In the standard form MOU (see Appendix M16), the Department's Marketing Branch specifies the amount that proponents must deposit with the Department to start the authorization process. The MOU also provides an estimated cost for each additional step in creating a new council and further delineates the responsibilities of all parties.

### *M1002 PROPONENTS' RESPONSIBILITY FOR COSTS*

The MOU between the Department and council proponents contains an estimate of charges to carry out an industry referendum process. Council proponents must pay a deposit to ensure that the Department will be able to cover its expenses. After the referendum, the Department will return to the proponents any portion of the deposit it did not use. If actual costs exceed the Department's estimate, however, council proponents must pay the additional actual costs, regardless of outcome of the referendum. Most council laws allow councils established through referendum to reimburse the original proponents for their deposit to the Department plus any additional expenses related to implementation of the council.

### *M1003 REFERENDUM*

Following enactment of authorizing legislation and finalization of the MOU between the Department and council proponents, the Department conducts the required implementation referendum. After the MOU is signed and before the referendum is conducted, the Marketing Branch develops a list of producers and/or handlers eligible to vote in the referendum. The Branch may use existing lists if the lists are deemed acceptable or their accuracy has been



certified. If the implementation referendum wins approval by the industry, the Department declares the council operative.

#### *M1004 MANAGEMENT RESPONSIBILITY FOR NEW COUNCILS*

The Department expects timely implementation of a new council, including that the board will secure the services of a chief executive, either as an employee or contractor, to direct and coordinate the administrative and fiscal matters of the program. Until the program has a chief executive, the Department considers the chairperson to be functioning as the acting chief executive unless the board suggests an alternative interim management arrangement, such as a management committee composed of board members. While exercising the functions of acting chief executive, the chairperson shall not have access to confidential and proprietary industry information that is garnered by the board or council.

##### *M1004.1 Avoiding Conflict of Interest*

Councils are prohibited from seeking management services from providers who have conflicts of interest. If a potential conflict of interest exists, a conflict analysis should be performed by the Department's Legal Office. Based on the outcome of this analysis, the Department may require the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

- The council hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process.

##### *M1004.2 Potential for Additional Marketing Branch Charges*

Until a chief executive is in place, the new council may rely on the Department for day-to-day involvement in operations. In these circumstances, the initial budget adopted by a new council should anticipate higher-than-usual monthly Marketing Branch charges for this higher level of service.

#### *M1005 TERMINATION*

The Department expects a terminating council to retain sufficient reserves to pay outstanding claims. In addition, the Department expects a terminating council to (i) prepare a wind down plan with details regarding how the council will terminate its affairs; and (ii) recommend individuals that the Department shall then appoint to a wind down committee. The Department expects the wind down plan to include the following:

- Date for closing the office
- Date for notifying employees of their termination

- Schedule for notifying vendors of termination of services
- Copy of notification to bank of addition of Department employees as account signatories
- Plan for disposition of assets
- Plan for transfer of intellectual property
- Plan for archiving and transfer of records to the Department
- Wind down budget, including:
  - Payment of employee leave balances
  - Payment of employee severance (if provided for in employment manual or individual employee contracts)
  - Resolution of pension benefits (if applicable)
  - Plan for commissioning final audit
  - Plan for the refund of remaining fund balances

*M1005.1 Payment of Termination Costs*

Terminating councils shall pay the full costs incurred by the Department in terminating the program.

## CHAPTER 11 - CONTRACTS AND ACQUISITIONS<sup>6</sup>

*The Department's policies and procedures regarding contracts and acquisitions for marketing programs are provided in a separate document titled: "Contracts and Acquisitions Policy for Marketing Programs", which can be accessed on the Marketing Branch website at: [www.cdfa.ca.gov/mkt/mkt](http://www.cdfa.ca.gov/mkt/mkt).*

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<sup>6</sup> Chapter updated November 2023.

## *MOCA APPENDICES*

## APPENDIX M1 – MARKETING PROGRAM INFORMATIONAL COMPARISON

CALIFORNIA MARKETING ORDERS & AGREEMENTS, COUNCILS, AND COMMISSIONS: INFORMATIONAL COMPARISON			
	MARKETING ORDER or AGREEMENT	COUNCIL	COMMISSION
This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.			
STATUTORY AUTHORITY FOR CREATION	Under general enabling authority provided in the California Marketing Act of 1937 and implemented administratively by the Department of Food and Agriculture.	Through commodity specific legislation.	Through commodity specific legislation.
SCOPE OF ACTIVITIES	Promotion, advertising, education, production research, quality standards, inspection and supply control.* * No marketing order currently utilizes supply control authority.	Promotion, advertising, education, marketing research, and research. Subject to CDFA's approval, any council may petition to adopt and administer any activity authorized by the California Marketing Act.	Promotion, advertising, education, marketing research, and production research. Subject to CDFA's approval, any commission may petition to adopt and administer any activity authorized by the California Marketing Act.
PROCEDURE TO ESTABLISH	A. Industry prepares preliminary draft of order. B. If deemed appropriate by CDFA, CDFA conducts public hearing. C. CDFA conducts industry vote if hearing testimony demonstrates that proposed marketing order may benefit the industry. D. If industry meets specified voting requirements, CDFA orders the marketing order into effect.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies council.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies commission.
AMENDMENTS	Major amendments must be developed in the same manner as the original order. CDFA may make minor amendments upon recommendation of a Board <i>only</i> for clarification or administrative purposes.	Same procedure as establishing the original council law. However, an industry vote generally is not required. In general, councils have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.	Same procedure as establishing the original commission law. However, an industry vote generally is not required. In general, commissions have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.
PROGRAM AUTHORITY AND ROLE OF THE DEPARTMENT	Marketing order and agreements Boards are advisory to CDFA. All actions of an Advisory Board are subject to CDFA's approval.	Councils are advisory to CDFA. All actions of a Council are subject to CDFA's approval.	In general, commissions are not advisory to CDFA. However, CDFA has authority in most cases to issue cease and desist orders in response to commission actions that CDFA deems to be not in the public interest. For many commissions, CDFA must concur with the annual budget and activities statement. CDFA has a non-voting ex-officio member position on most commissions.

## APPENDIX M1 CONT.

## CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: INFORMATIONAL COMPARISON

	MARKETING ORDER or AGREEMENT	COUNCIL	COMMISSION
MEMBERSHIP AND SELECTION PROCESS	Advisory Board may consist of producers and handlers, depending upon who is affected, and may have one public member. Industry peers recommend individuals through a nomination process, and CDFA appoints members from among those nominated.	Generally, the same as marketing orders and agreements.	Commissions may consist of producers and handlers, depending upon who is affected, and may be required to have one public member that is appointed by CDFA (from nominees recommended by the commission). With exception of one commission, industry members are elected directly by industry peers and are not appointed by CDFA.
CONTINUATION	A public hearing is required at least once every five years. Some marketing orders and agreements have referenda, rather than hearings, to meet the continuation requirement.	In general, an industry hearing is required at least once every five years. However, the Beef Council has no specified periodic re-approval requirement.	Re-approval requirements and intervals vary from commission to commission. In general, an industry vote or hearing is required at least once every five years.
TERMINATION	<p>A. Advisory Board may recommend that a budget and assessment rate not be established, in effect suspending the Board. CDFA may terminate a marketing order after three years if it has received no recommended budget and assessment rate.</p> <p>B. CDFA may conduct a public hearing if it receives a petition supported by at least 25% of producers or handlers that are directly affected and who produce or handle at least 25% of the volume. If questions exist as to the effectiveness of the marketing order, CDFA conducts an industry vote to determine whether the marketing order or agreement shall continue.</p> <p>C. CDFA must terminate a marketing order if it receives a petition supported by at least 51% of producers or handlers that are directly affected and who produce or handle at least 51% of the volume.</p>	<p>In general, councils can be terminated only during the continuation process.</p> <p><b>Note:</b> Termination of the Beef Council shall be submitted to an industry vote if CDFA or the Council determines that the Council is not effective. In addition, producers may petition for a vote of the industry.</p>	<p>Generally, as follows:</p> <p>A. By a 2/3 vote, a commission may recommend that CDFA conduct an industry vote for termination.</p> <p>B. CDFA conducts an industry vote for termination if it receives a petition supported by 20% of the affected producers or handlers who account for 20% of the volume.</p> <p>C. CDFA terminates a commission directly if it receives a petition supported by 51% of the affected producers or handlers who account for 51% of the volume.</p>
NON-COMPLIANCE PENALTIES	Criminal and civil	Criminal and civil	Criminal and civil

## APPENDIX M2 – CONFIDENTIALITY AGREEMENT AFFIDAVIT

### CONFIDENTIALITY AND INDEMNITY AGREEMENT AND AFFIDAVIT: TEMPLATE

#### Confidentiality Agreement

In keeping with the policy and laws of the State of California, this Agreement serves to protect confidential and proprietary information that individual producers and handlers provide to marketing orders, councils, and agreements (MOCAs) in the course of meeting statutory standards and requirements. If exempted by law from disclosure under the California Public Records Act, confidential and proprietary information is not open to the public. The purpose of this Agreement is to specify expected protections against unlawful use, disclosure, modification, and/or destruction of such information. Violation of this Agreement makes the violator subject to administrative, civil, and/or criminal action.

#### I. PARTIES to This Confidentiality Agreement:

*[Print or type name of MOCA]*

\_\_\_\_\_  
An Instrumentality of the State of California’s Department of Food and Agriculture (hereafter “Department”) and

*[Print or type name of individual contractor or firm providing executive/management services to the MOCA]*

\_\_\_\_\_  
Name: First, MI, Last [individual contractor -- or firm representative (including title)]

#### II. DEFINITION of Confidential Information *[to be initialed by contractor]:*

I, \_\_\_\_\_, agree to protect the following types of information:

INITIAL

- Information filed with and/or generated by the [insert name of MOCA] in the course of conducting ordinary and statutory business operations, including but not limited to:
  - Handlers’ filings with the Department
  - Handlers’ filings with the [insert name of MOCA] to support management of marketing, inspection, and research activities and disease and pest infestation control
  - Individual producers’ records of their operations
  - [Insert name of MOCA]’s internal confidential records (e.g., personnel, legal)

#### III. PROTECTION of Confidential/Proprietary Information *[to be initialed by contractor]:*

I, \_\_\_\_\_, agree not to disclose protected information ... *except:*

INITIAL

- To a person explicitly entitled by the Department and the [insert name of MOCA] to receive it.
- Any attorney employed by the Department or the [insert name of MOCA] to provide advice and counsel regarding confidential information.
- By court order.

I, \_\_\_\_\_, agree not to use protected information for my own self-interest or for the benefit of any other individual  
INITIAL or entity, except in connection with my responsibilities as the [insert name of MOCA] Program Executive/Manager.

I, \_\_\_\_\_, agree that the protected information will be retained in accordance with the applicable records retention  
INITIAL policy/schedule.

I, \_\_\_\_\_, agree to keep protected information filed separately from non-protected information, in both hard copy  
INITIAL and electronic formats.

I, \_\_\_\_\_, agree to inform the Department immediately of any request for protected information.  
INITIAL

I, \_\_\_\_\_, agree not to release protected information prior to receiving approval from the Department, unless  
INITIAL compelled by court order.

I, \_\_\_\_\_, agree to notify the Department immediately upon release of protected information under any circumstances.  
INITIAL

#### **IV. INDEMNITY** *[to be initialed by contractor]:*

I, \_\_\_\_\_, agree that unlawful access, use, modification, or disclosure of protected information is grounds for  
INITIAL immediate termination of my contract, or my organization's contract, with the MOCA.

I, \_\_\_\_\_, acknowledge that misuse of protected information may be punishable as a crime or subject to  
INITIAL civil action pursuant to FAC Sections 59233 and 59234.

#### **V. GENERAL TERMS of Confidentiality Agreement** *[to be initialed by contractor]:*

No representations, understandings, or agreements exist between the Parties hereto regarding the use or acquisition of confidential or proprietary information other than those expressly stated in this Agreement. Any modification of the terms of this Agreement may be made only in writing and signed by both Parties.

I, \_\_\_\_\_, acknowledge the following:  
INITIAL

- Termination. This Agreement shall remain in effect for as long as the signing party has possession of or access to confidential records.
- Dispute resolution. In the event of a dispute, the Parties may utilize any and all remedies available under California law. The Parties recognize, however, that the sensitivity associated with the unauthorized release of confidential information may necessitate immediate legal action.
- Governing law and venue. This Agreement shall be governed by and construed according to the laws of the State of California.



In witness whereof, the undersigned have executed this Agreement on the date indicated.

<b>[Name of individual or firm contracting to provide executive/management services]</b>	<b>[Name of MOCA], an Instrumentality of the State of California's Dept of Food &amp; Ag]</b>
<b>By:</b> _____ [Contractor or Firm Representative] <b>Date:</b> _____ <b>Address and phone:</b> _____ _____ (       ) -	<b>By:</b> _____ [MOCA Chair] <b>Date:</b> _____ <b>Address and phone:</b> _____ _____ (       ) -

## APPENDIX M3 – MOCA POLICY MANUALS

### ELEMENTS OF MOCA POLICY MANUALS

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The California Department of Food and Agriculture (Department) expects every marketing order, council, and agreement (MOCA) to prepare a manual containing the policies and procedures it follows to achieve accountability to the industry, the State, and the public. In general, these policies should address expenditure of assessments and management of promotion, research, and other marketing activities in compliance with applicable laws and rules. When the Department has approved it, each manual becomes the particular set of rules that auditors will use as the basis for evaluation of compliance status when conducting periodic administrative reviews of each MOCA. The Department's Marketing Branch has identified the elements listed below as useful, but the Branch expects MOCAs to add to or delete any of the listed elements to produce policy manuals that apply specifically to their own unique programs and circumstances:

ANNUAL REPORTS to members, with a copy to the Department

ANTITRUST COMPLIANCE POLICY

AUTHORITIES AND RESPONSIBILITIES OF THE MANAGER

COMMUNICATIONS

- Advertising and promotion
- Internal
- With the Department
- Media relations

CONFLICT OF INTEREST

- Annual Statement (Form 700)

CONTRACTS

ETHICS TRAINING

EMPLOYMENT MANAGEMENT

- Drug-free workplace
- Equal employment opportunity
- Grievance procedures
- Payroll
- Recruitment, selection, appointment, and termination of manager
- Severance
- Sexual harassment, hostile workplace prevention
- Vacation and sick leave

#### FILE MANAGEMENT

- Records Retention Schedule
- Email Use Policy

#### FINANCE

- Audit
- Budget
- Fund management and reconciliation (cash flow forecasts, monthly financial reports, revenues and expenditures)
- Per diem and travel expenses
- Reserves

#### GRIEVANCES (members)

#### INSURANCE

#### ISSUES MANAGEMENT

#### LEGAL SERVICES

#### LEGISLATIVE AFFAIRS

#### LIST MANAGEMENT

#### LOBBYING

#### OPEN MEETINGS

#### PURCHASING AND ACQUISITIONS

- Contracting and Bid standards and procedures
- Credit cards
- Inventory

## APPENDIX M4 – GRIEVANCE PROCEDURE

## GRIEVANCE PROCEDURE

- Notes:**
1. Any person aggrieved by the actions or determinations of a marketing order, council, or agreement (MOCA) and unable to resolve the matter informally through review of the problem with the MOCA's chief executive may request a hearing before the MOCA Board's Grievance Committee.
  2. "Aggrieved Person" means a member of the industry regulated by the affected MOCA.
  3. "Aggrieved Person" does *not* mean employee. Aggrieved employees must follow the MOCA's employee grievance procedures.
  4. Due to public requirements for due process, neither the MOCA nor the Department can guarantee the confidentiality of information submitted in written complaints.
  5. A MOCA's Executive Committee shall act as the Grievance Committee unless the Board determines that a special Grievance Committee should be appointed. A special Grievance Committee shall be composed of not fewer than three nor more than seven members of the industry.

Action	Party	Time Frame
<ul style="list-style-type: none"> <li>• Attempt to resolve grievance through informal discussion with MOCA's chief executive</li> </ul>	Aggrieved Person MOCA Chief Executive	<ul style="list-style-type: none"> <li>• 89 or fewer days from the date of action or determination that is subject of claim</li> </ul>
<ul style="list-style-type: none"> <li>• File written claim with MOCA and the Department, via Marketing Branch</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>• Within 90 days of date of action or determination that is subject of claim</li> <li>• If complaint concerns assessment, within 90 days after assessment's final due date, as established by MOCA</li> </ul>
<ul style="list-style-type: none"> <li>• Issue confirmation to aggrieved person of MOCA's and the Department's receipt of written complaint</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>• Within 20 days of receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>• Notify aggrieved person and the Department of the date, time, and place of Grievance Committee's meeting</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>• At least 20 days prior to the date of the meeting</li> </ul>
<ul style="list-style-type: none"> <li>• Convene to examine facts and circumstances of the grievance with a representative from the Department present at the meeting</li> <li>• This process includes consideration of oral and written testimony and other evidence presented by aggrieved person and other interested parties, including but not limited to MOCA staff</li> <li>• The meeting shall be recorded and/or transcribed</li> </ul>	Grievance Committee	<ul style="list-style-type: none"> <li>• Within 60 days of MOCA's receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>• Submit to MOCA Board an analysis of merits of the grievance and recommendation for resolution</li> </ul>	Grievance Committee	<ul style="list-style-type: none"> <li>• Within 30 days after Grievance Committee's meeting</li> </ul>

**APPENDIX M4 CONT.**  
**GRIEVANCE PROCEDURE**

<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<ul style="list-style-type: none"> <li>Recommend to the Department whether to approve or deny Grievance Committee's recommendation</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Within 60 days of receipt of Grievance Committee's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>Issue final decision to MOCA and aggrieved person</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 60 days of receipt of MOCA's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>If the Department's decision is unfavorable, appeal decision by submitting to the Department a written request for appeal, outlining reasons why appeal is warranted</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Within 60 days of receipt of the Department's decision</li> </ul>
<ul style="list-style-type: none"> <li>If appeal is denied by the Department's or unfavorable decision is upheld, petition appropriate court for judicial review</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Not time-specified</li> </ul>
<ul style="list-style-type: none"> <li>If grievance concerns assessments, file assessment reports and pay assessments until matter is resolved</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>According to ordinary assessment report filing and payment schedule</li> </ul>
<ul style="list-style-type: none"> <li>If grievance concerns assessments and aggrieved person prevails in all or part of the claim, refund amount of assessment payments, penalties, and/or interest due to aggrieved person according to ultimate decision</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Not time-specified</li> </ul>

## APPENDIX M5 – PUBLIC HEARING TESTIMONY

### SUGGESTED TOPICS FOR WITNESSES AT PUBLIC HEARINGS

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The California Department of Food and Agriculture (Department) conducts public hearings to receive evidence and testimony regarding the establishment, continuation, and/or effectiveness of marketing programs. The Department encourages witnesses to provide examples of previous effectiveness or explanations for poor performance and perhaps plans for improvement. While specific questions are posed at every public hearing to reflect the particular situation at hand, in general, witnesses will be asked to address various aspects of most if not all of the following concerns:

- Production, economic, and marketing conditions affecting the industry
- Research efforts and results
- History and effectiveness evaluation of:
  - Promotions in domestic and international markets
  - Monitoring and issues management regarding such matters as trade practices and/or government regulation
  - Wise, efficient, and legally compliant expenditure of assessment revenues
  - Adaptation and accommodation over time to changes in the industry and the marketplace
  - Enhancement of profitability and competitiveness in the industry
  - Generation of public benefit
- Significant accomplishments
- Ongoing industry needs that this program does or should address
- Additional activities or changes, if any, that this program could undertake that would enable it to better serve the industry and the public

**APPENDIX M6 – LIST CERTIFICATION FORM*****VOTER LIST CERTIFICATION FORM***

The California Department of Food and Agriculture (Department) requires all marketing order, council or agreement (MOCA) chief executives to certify that, to the best of their knowledge, the official producer and/or handler records they submit to the Department's Marketing Branch are current, accurate, and complete.

**\*\*\* IMPORTANT \*\*\***

The voting list certification form must be submitted exactly as presented below, except for filling in the blanks with the indicated information. Any alteration of the form will cause the Department to reject it as invalid.

**VOTER LIST CERTIFICATION**

I, \_\_\_\_\_ [name], \_\_\_\_\_ [title], with  
\_\_\_\_\_ [program name], declare as follows:

1. As \_\_\_\_\_ [title], I am the person charged with the responsibility of maintaining and updating the list of California \_\_\_\_\_ [commodity name] growers and/or handlers that are subject to the provisions of the California \_\_\_\_\_ [program name].
2. Since the last "notice to file" process completed in \_\_\_\_\_ [year], the list has been updated on a regular basis. The procedure used to update the list is: \_\_\_\_\_ [describe].
3. The list I am providing to the Department on this date is, to the best of my knowledge, a current, accurate, and complete list of California \_\_\_\_\_ [commodity name] growers and/or handlers that are subject to the provisions of the California \_\_\_\_\_ [program name].

\_\_\_\_\_  
Date

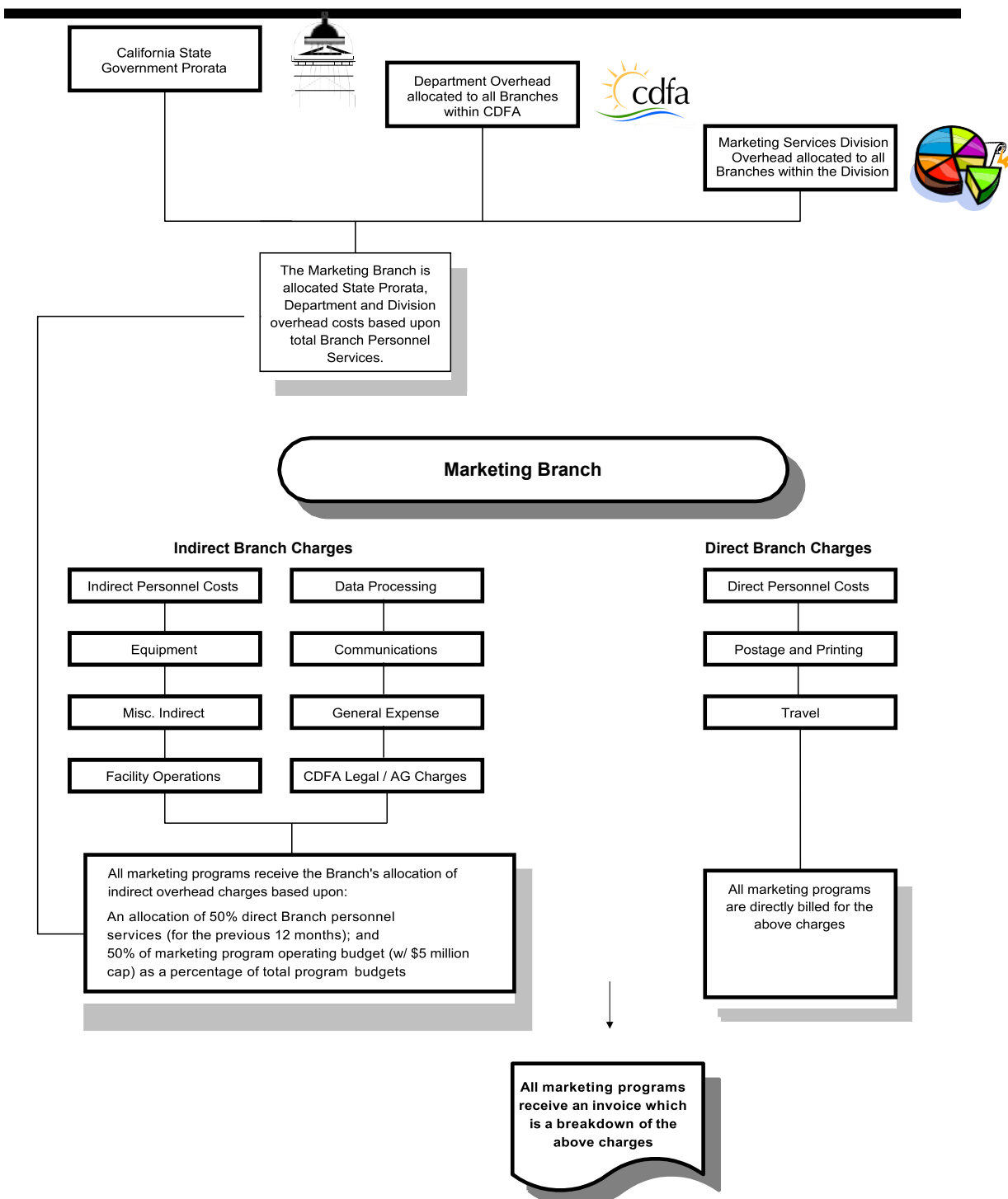


\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print or type)

## APPENDIX M7 – MARKETING BRANCH COST ALLOCATION

## COST ALLOCATION OF MARKETING BRANCH CHARGES





**APPENDIX M8 – STATE I.D. CARD APPLICATION****CALIFORNIA GOVERNMENT IDENTIFICATION CARD:  
APPLICATION AND PROCEDURES FOR USE**

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The Marketing Branch of the California Department of Food and Agriculture (Department) issues California government identification cards (ID cards) to staff and board members of marketing orders, councils, and agreements (MOCAs) in order to give these individuals access to government rates while traveling on official business. Before issuing an identification card, the Marketing Branch requires the program's chief executive and the card applicant to agree to the terms in this application.

**Application Steps:**


1. The chief executive completes the chief executive certification and sends the form to the applicant.
2. The applicant completes the applicant certification section and returns the form to the MOCA.
3. The MOCA retains the original completed form and submits a copy to its Marketing Branch representative.
4. Upon approval, the Marketing Branch mails the ID card to the MOCA, which forwards it to the applicant.

[See following page]

### State I.D. Card - Chief Executive Certification

In requesting an ID card for the person named below, I hereby certify and agree to the following:

- The applicant named below conducts official business for this MOCA.
- I have explained to the applicant that the ID can be used only in conjunction with conducting official business on behalf of this MOCA.
- I will maintain a copy of this application as long as the applicant is affiliated with this MOCA.
- I will retrieve the ID card upon cessation of the applicant's affiliation with this MOCA.
- This MOCA indemnifies the California Department of Food and Agriculture and the State of California from any liability created by improper use of the ID card.

Date:	Name of Program:
Name of Applicant:	Applicant's Position:
Name of Chief Executive:	Chief Executive's Signature: 

### Applicant Certification

In requesting a California government ID card, I hereby certify and agree to the following:


- I will use the ID card only in conjunction with conducting official business on behalf of the MOCA named above.
- I will not transfer or loan the card to another person.
- I will return the card to the MOCA immediately upon cessation of my affiliation with the MOCA.
- I will be solely and fully responsible for any and all penalties associated with improper use of the card.

\_\_\_\_\_  
Name of Applicant (print or type)

\_\_\_\_\_  
Signature of Applicant / Date

**FOR DEPARTMENT OF FOOD AND AGRICULTURE, MARKETING BRANCH USE ONLY**

**APPROVED:**

Marketing Branch Chief Signature  	Date Approved:	Card Number:
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**APPENDIX M9 – ANNUAL EMPLOYEE INSURANCE CERTIFICATION****ANNUAL CERTIFICATION OF EMPLOYEE INSURANCE COVERAGE****State of California****DEPARTMENT OF FOOD AND AGRICULTURE****Authorization to Use Privately-Owned Vehicles on Official Business**

In accordance with California Department of Food and Agriculture (Department) policies for marketing orders, councils, and agreements (MOCAs), I request approval to use privately-owned vehicles to conduct official MOCA business.

I hereby certify that while using a privately-owned vehicle on official business, I will report any accident within 48 hours. I further certify that whenever I drive a privately-owned vehicle on official business, I will have a valid driver's license in my possession, all persons in the vehicle will wear safety belts, and the vehicle shall always be:

1. Adequate for the work to be performed.
2. Equipped with safety belts in operating condition.
3. To the best of my knowledge, in safe mechanical condition.
4. Covered by liability insurance for at least the minimum amount prescribed by State Law (\$15,000 for personal injury to, or death of one person; \$30,000 for injury to, or death of, two or more persons in one accident; \$5,000 for property damage).  
Evidence of current automobile liability insurance must be carried in the vehicle.

Driver's License Number	State	Expiration Date
Employee's Signature	Print Name	Date

**MOCA Approval**

**Use of a privately-owned vehicle on official business is approved.**

Supervisor's Signature	Title	Date
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**For California Department of Food and Agriculture, Marketing Branch Use Only**

Signature	Title	Date
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## APPENDIX M10 – CONTRACTS REPORT FORM

### ANNUAL MARKETING PROGRAM CONTRACTS REPORT FORM

Name of Board or Council:	
Name of Person Completing Form:	Email Address:
Fiscal Year for Report:	Date of Report:

Contract Number:	Contractor Name:	
Budget Line Item Funding Contract:	Contract Approved by Board Action Number or Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:
Type of Project [Check Appropriate Box]: <div style="display: flex; justify-content: space-around; align-items: center;"> <span><input type="checkbox"/> Promotion</span> <span><input type="checkbox"/> Research</span> <span><input type="checkbox"/> Lease</span> <span><input type="checkbox"/> Audit</span> <span><input type="checkbox"/> Management</span> <span><input type="checkbox"/> Other</span> </div>		
Name of Project (Provide description):		

Contract Number:	Contractor Name:	
Budget Line Item Funding Contract:	Contract Approved by Board Action Number or Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:
Type of Project [Check Appropriate Box]: <div style="display: flex; justify-content: space-around; align-items: center;"> <span><input type="checkbox"/> Promotion</span> <span><input type="checkbox"/> Research</span> <span><input type="checkbox"/> Lease</span> <span><input type="checkbox"/> Audit</span> <span><input type="checkbox"/> Management</span> <span><input type="checkbox"/> Other</span> </div>		
Name of Project (Provide description):		

*Annual Contracts Report Form – Page Two*

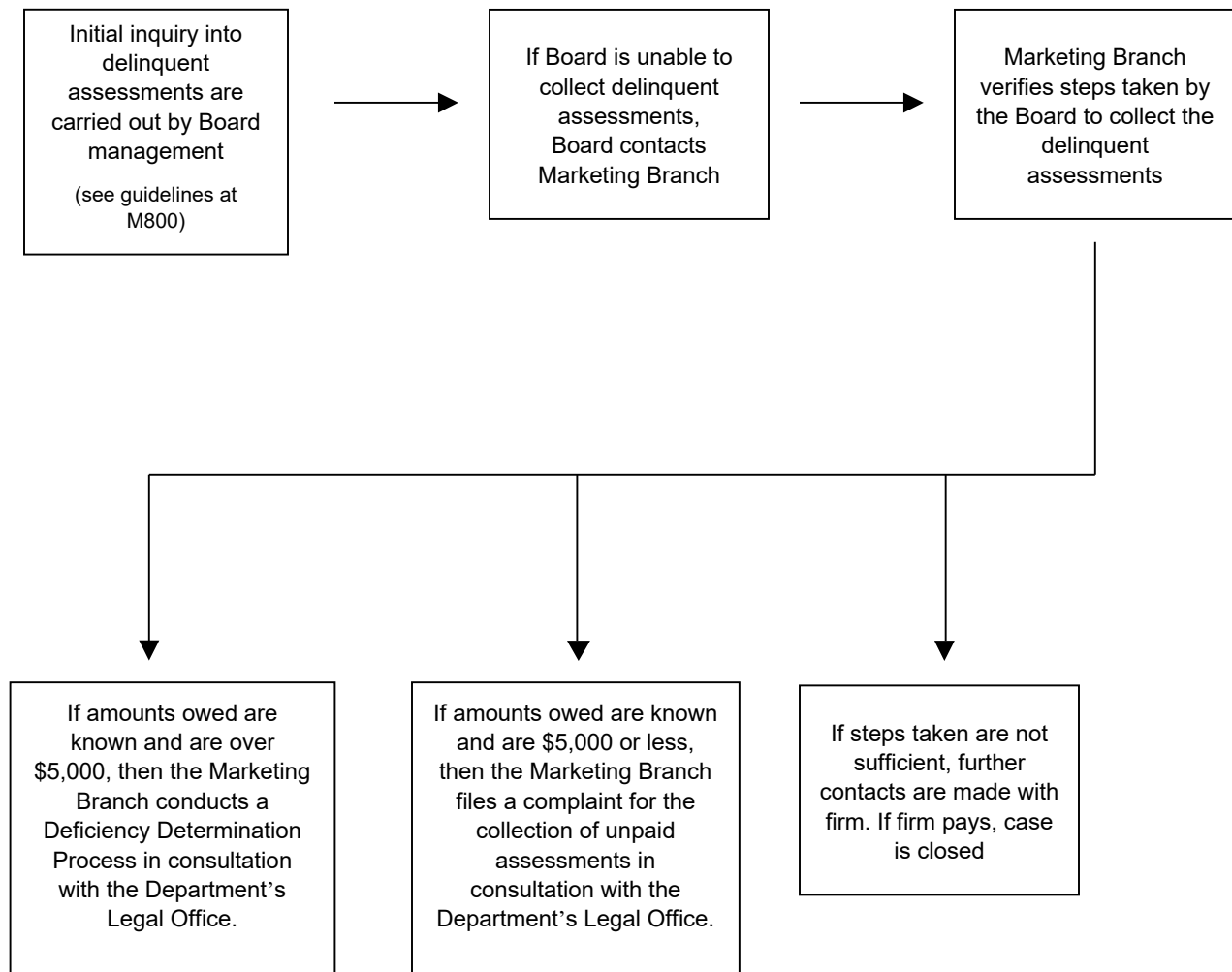
Contract Number:		Contractor Name:	
Budget Line Item Funding Contract:		Contract Approved by Board Action Number or Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:	
Type of Project [Check Appropriate Box]:			
<input type="checkbox"/> Promotion	<input type="checkbox"/> Research	<input type="checkbox"/> Lease	<input type="checkbox"/> Audit
<input type="checkbox"/> Management	<input type="checkbox"/> Other		
Name of Project (Provide description):			

Contract Number:		Contractor Name:	
Budget Line Item Funding Contract:		Contract Approved by Board Action Number or Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:	
Type of Project [Check Appropriate Box]:			
<input type="checkbox"/> Promotion	<input type="checkbox"/> Research	<input type="checkbox"/> Lease	<input type="checkbox"/> Audit
<input type="checkbox"/> Management	<input type="checkbox"/> Other		
Name of Project (Provide description):			

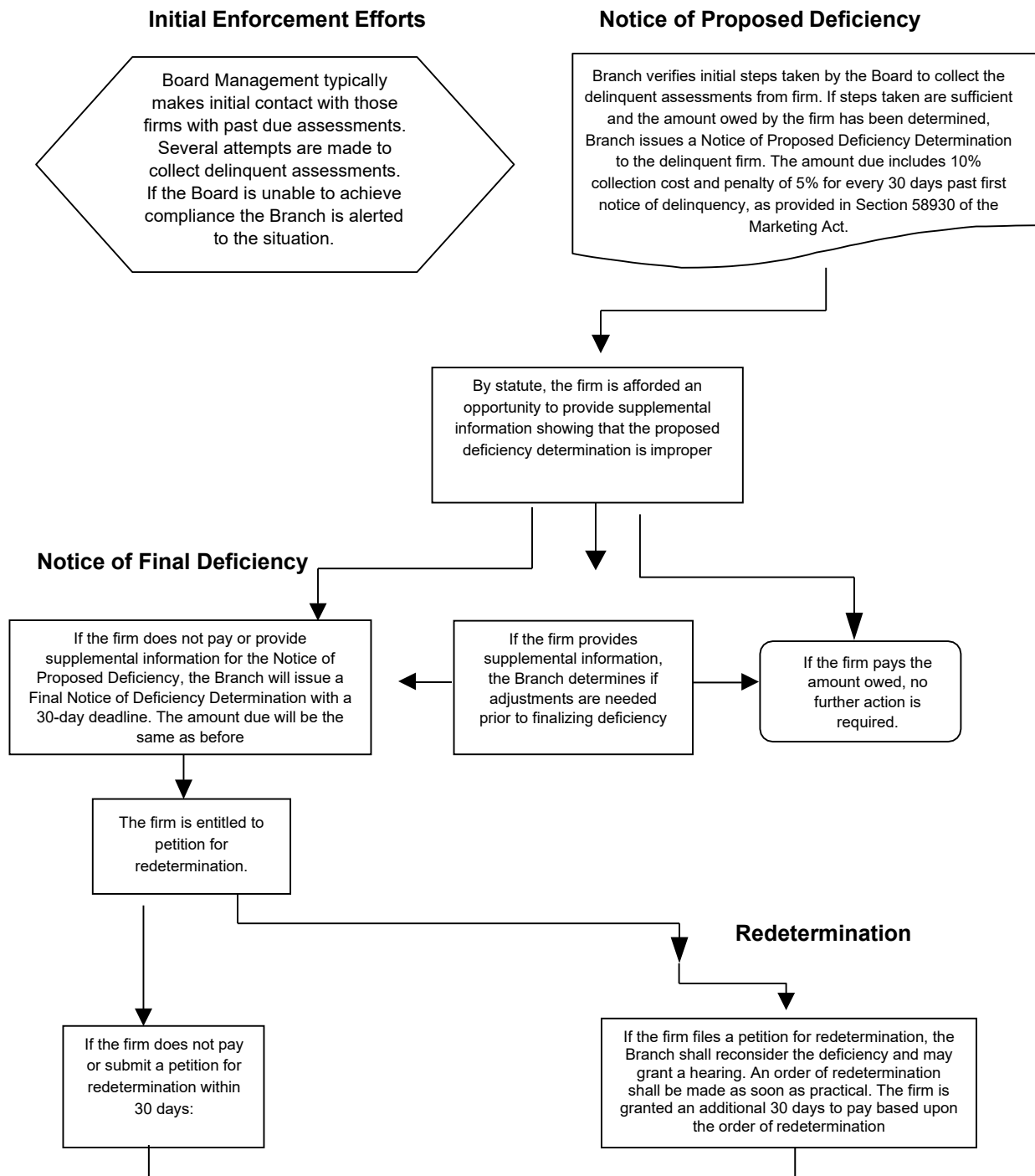
Contract Number:		Contractor Name:	
Budget Line Item Funding Contract:		Contract Approved by Board Action Number or Meeting Date:	
Contract Amount:	Contract Effective Date:	Contract Termination Date:	
Type of Project [Check Appropriate Box]:			
<input type="checkbox"/> Promotion	<input type="checkbox"/> Research	<input type="checkbox"/> Lease	<input type="checkbox"/> Audit
<input type="checkbox"/> Management	<input type="checkbox"/> Other		
Name of Project (Provide description):			

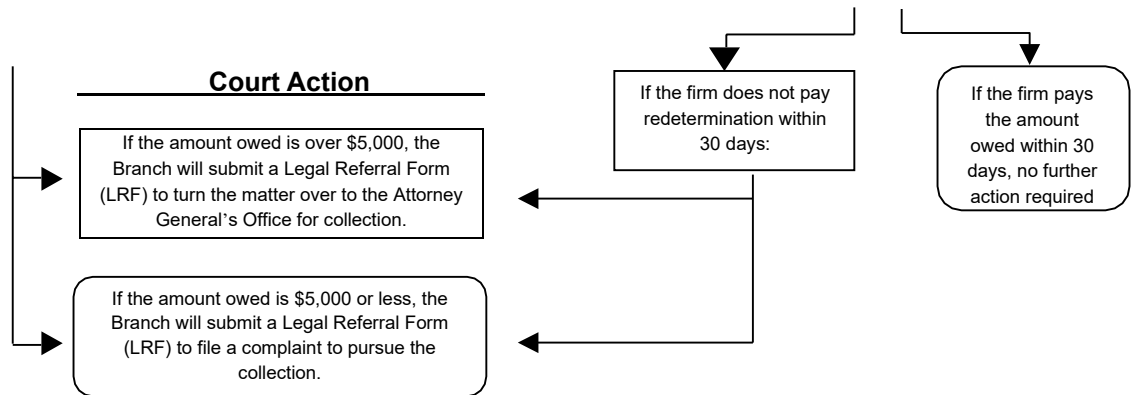
## APPENDIX M11 – ENFORCEMENT PROCEDURES

### ENFORCEMENT FLOW CHART



## APPENDIX M12 – DETAILED ENFORCEMENT PROCEDURES

DETAILED ENFORCEMENT PROCEDURES  
FOR MARKETING ORDERS



This chart is provided as an overview. See Food and Agricultural Code 59234.5 for specific statutory requirements.

Please refer to applicable council statutes for specific requirements.



**APPENDIX M13 – MARKETING ORDER IMPLEMENTATION TIMELINE**

<b>NEW MARKETING ORDER OR AGREEMENT ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame<sup>6</sup></b>
<b>Preliminary Work</b>		
<ul style="list-style-type: none"> <li>Conduct meetings with affected industry to determine whether sufficiently broad base of support exists</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Prepare written rationale that documents adequate industry support</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Prior to seeking Department action</li> </ul>
<ul style="list-style-type: none"> <li>If support is adequate, submit written request to the Department to create a new marketing order or agreement</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Estimate costs of implementing proposed marketing order or agreement</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 10 days after receipt of request</li> </ul>
<ul style="list-style-type: none"> <li>Deposit full amount of cost estimate with Department and sign Memorandum of Understanding (MOU)</li> </ul>	Proponents & Department	<ul style="list-style-type: none"> <li>At Proponents' discretion</li> </ul>
<b>Implementation Process Timeline Begins</b>		
<ul style="list-style-type: none"> <li>Craft language for the proposed marketing order or agreement</li> </ul>	Department, with input from Proponents	<ul style="list-style-type: none"> <li>Within 30 days after signing of MOU</li> </ul>
<ul style="list-style-type: none"> <li>Assemble list of growers and/or handlers who would be assessed ... if necessary, contact all handlers on record in order to develop the producer list</li> </ul>	Department	<ul style="list-style-type: none"> <li>Up to 90 days after signing of MOU</li> </ul>
<ul style="list-style-type: none"> <li>File with the Department list of affected growers, including each one's production volume</li> </ul>	Handlers	<ul style="list-style-type: none"> <li>Within 30 days of receipt of the Department's request</li> </ul>
<ul style="list-style-type: none"> <li>When a public hearing has been scheduled, send to industry a hearing notice, (i) including copy of the wording for the proposed marketing order, and (ii) indicating possibility of an industry vote</li> </ul>	Department	<ul style="list-style-type: none"> <li>Minimum of 30 days prior to the hearing is required pursuant to Section 58771 of the Marketing Act</li> </ul>
<ul style="list-style-type: none"> <li>Conduct hearing to determine whether:               <ul style="list-style-type: none"> <li>→ Industry representatives can document rationale for creating the marketing order or agreement</li> <li>→ Adequate industry funds are available to support a marketing order or agreement of the size required to achieve stated goals</li> <li>→ The proposed marketing order has the potential to invest available funds wisely to secure the desired industry benefits</li> </ul> </li> </ul>	Department	<ul style="list-style-type: none"> <li>Not more than 120 days after signing of MOU</li> </ul>

APPENDIX M13 CONTINUED		
NEW MARKETING ORDER OR AGREEMENT ESTABLISHMENT TIMELINE		
Action	Party	Time Frame <sup>7</sup>
<ul style="list-style-type: none"><li>Request short filing period after the hearing during which Department may receive additional comments</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not more than 15 days after the date of the hearing</li></ul>
<ul style="list-style-type: none"><li>Complete analysis of public hearing findings</li></ul>	Department	<ul style="list-style-type: none"><li>Within approximately 45 days of hearing or extended comment period, if one was requested, during which time no additional comments are accepted</li></ul>
<ul style="list-style-type: none"><li>Upon determination that creation of a new marketing order or agreement is justified:<ul style="list-style-type: none"><li>→ Conduct referendum (industry vote) for new marketing order; <b>or</b></li><li>→ Coordinate industry sign-up for new marketing agreement</li></ul></li></ul>	Department	<ul style="list-style-type: none"><li>Typical industry voting period for new marketing order is 30 days as authorized by Section 58995 of the Marketing Act</li><li>Typical industry sign-up period for new marketing agreement is 30 days</li></ul>
<ul style="list-style-type: none"><li>Monitor referendum to determine that statutory standards and requirements are met</li></ul>	Department	<ul style="list-style-type: none"><li>Typically, 30 days</li></ul>
<ul style="list-style-type: none"><li>For the referendum to be <u>valid</u>, at least 40% of eligible voters on record must vote</li></ul>	Affected Parties	
<ul style="list-style-type: none"><li>For the referendum to <u>pass</u>, it must meet the standards set in statute:<ul style="list-style-type: none"><li>(i) 65% of voters representing 51% of total volume submitted valid ballots and voted in favor; <b>or</b></li><li>(ii) 51% of voters representing 65% of total volume submitted valid ballots and voted in favor</li></ul></li></ul>		
<ul style="list-style-type: none"><li>If 40% participation in referendum is not achieved, exercise option to request voting period extension</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not more than 15 additional days as authorized by Section 58995 of the Marketing Act</li></ul>
<ul style="list-style-type: none"><li>If 40% participation is not achieved, deem referendum to be invalid and do not tally votes</li></ul>	Department	<ul style="list-style-type: none"><li>Within 10 days of end of voting period to ensure all ballots submitted by mail are received</li></ul>
<ul style="list-style-type: none"><li>Tally votes and certify results</li><li>Sign order to approve or deny creation of new marketing order or agreement</li></ul>	Department	<ul style="list-style-type: none"><li>Within 10 days of end of voting period to ensure all ballots submitted by mail are received.</li></ul>
<ul style="list-style-type: none"><li>If approved, post and send “Notice of Issuance” to industry</li></ul>	Department	<ul style="list-style-type: none"><li>Generally, new marketing order or agreement goes into effect before beginning of next marketing season</li></ul>

<sup>7</sup> Time frames are advisory only, unless otherwise indicated.

## **APPENDIX M14 – MOU FOR PROPOSED MARKETING ORDER**

### **ELEMENTS OF A MEMORANDUM OF UNDERSTANDING (MOU) FOR A PROPOSED MARKETING ORDER OR AGREEMENT**

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The California Department of Food and Agriculture (Department) advises any group of Proponents for a new marketing order or agreement (MO/A) to enter into a memorandum of understanding (MOU). Each MOU stipulates roles and responsibilities of both the Department and the Proponents that are applicable throughout the pre-implementation phases of the new MO/A.

#### **AUTHORITY**

The California Marketing Act (Food and Agricultural Code, Section 58601 et. seq.) is the enabling statute for marketing orders and agreements.

#### **ROLE AND RESPONSIBILITIES OF THE DEPARTMENT**

To implement the formative marketing program processes for marketing orders and agreements, the Marketing Act assigns specified administrative and enforcement powers, duties, and responsibilities to the Department. Within the Department, the Marketing Branch of the Division of Marketing Services is primarily responsible for carrying out the following activities:

1. With input from the Proponent group, draft the proposed marketing order.
2. With assistance from the Proponent group, establish a list of affected producers and/or handlers and their respective production volumes from the most recent year's harvest.
3. Conduct a public hearing.
4. Prepare findings based on the public hearing record.
5. Conduct an industry referendum vote (if warranted by the findings).
6. Tally the referendum results, pursuant to statutory criteria. If the referendum satisfies the criteria, the new marketing order or agreement may be established.
7. If the marketing order or agreement becomes effective, mail a copy of the Notice of the Issuance of the Order or Agreement to all affected parties.
8. Appoint initial board members and assist in calling and conducting the first board meeting.

## **ROLE AND RESPONSIBILITIES OF THE PROPONENTS**

The Department expects Proponents to assist the Marketing Branch in fulfilling relevant Sections of the Marketing Act, as follows:

1. Deposit a sum specified by the Department to defray the expenses the Marketing Branch will incur in carrying out establishment activities. The unexpended portion of this deposit will be returned to the Proponent group.
2. Assist the Marketing Branch with construction of producer and handler lists, as applicable.
3. Educate affected handlers and producers about the proposed marketing program and the process to establish it.

## APPENDIX M15 – COUNCIL ESTABLISHMENT TIMELINE

NEW COUNCIL ESTABLISHMENT TIMELINE		
Action	Party	Time Frame <sup>7</sup>
Preliminary Work		
<ul style="list-style-type: none"><li>Conduct meetings with affected industry to determine whether sufficiently broad base of support exists</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not applicable</li></ul>
<ul style="list-style-type: none"><li>Prepare written rationale that documents adequate industry support</li></ul>	Proponents	<ul style="list-style-type: none"><li>Prior to seeking authors for legislation</li></ul>
<ul style="list-style-type: none"><li>If support is adequate, secure commitment from an Assembly Member or Senator to carry authorizing legislation</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not applicable</li></ul>
<ul style="list-style-type: none"><li>Craft bill language and work with author to provide necessary support throughout the legislative and bill-signing process</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not applicable</li></ul>
<ul style="list-style-type: none"><li>Estimate costs of analyzing legislation and implementing proposed council</li></ul>	Department	<ul style="list-style-type: none"><li>Within 10 days after receipt of request</li></ul>
<ul style="list-style-type: none"><li>Once enacted, deposit full amount of cost estimate with the Department and sign Memorandum of Understanding (MOU)</li></ul>	Proponents & Department	<ul style="list-style-type: none"><li>Prior to beginning implementation procedures</li></ul>
Implementation Process Timeline Begins		
<ul style="list-style-type: none"><li>Assemble list of growers and/or handlers who would be assessed ... if necessary, contact all handlers on record in order to develop the producer list</li></ul>	Department	<ul style="list-style-type: none"><li>Up to 90 days after signing of MOU</li></ul>
<ul style="list-style-type: none"><li>File with the Department a list of affected growers, including each one's production volume</li></ul>	Handlers	<ul style="list-style-type: none"><li>Within 30 days of receipt of the Department's request</li></ul>
<ul style="list-style-type: none"><li>Conduct referendum (industry vote) for new council</li></ul>	Department	<ul style="list-style-type: none"><li>Typical industry voting period for new council is 30 days, however, each council law may indicate a specific duration for conducting the referendum</li></ul>
<ul style="list-style-type: none"><li>Monitor referendum to determine that statutory standards and requirements are met</li></ul>	Department	<ul style="list-style-type: none"><li>Typically, 30 days</li></ul>
<ul style="list-style-type: none"><li>For the referendum to be <u>valid</u>, the percentage of eligible voters specified in the proposed council's authorizing legislation must vote</li></ul>	Affected Parties	
<ul style="list-style-type: none"><li>For the referendum to <u>pass</u>, it must meet the specific standards set in the proposed council's authorizing legislation</li></ul>		

<b>APPENDIX M15 CONTINUED</b> <b>NEW COUNCIL ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame<sup>8</sup></b>
<ul style="list-style-type: none"> <li>If required participation in referendum is not achieved, exercise option to request voting period extension</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Typically not more than 30 additional days, however, each council law may indicate a specific duration for extending the referendum</li> </ul>
<ul style="list-style-type: none"> <li>If required participation is not achieved, deem referendum to be invalid and do not tally votes</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 10 business days of end of voting period to ensure all ballots submitted by mail are received</li> </ul>
<ul style="list-style-type: none"> <li>Tally votes and certify results</li> <li>Sign order to approve or deny creation of council</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 10 business days of end of voting period to ensure all ballots submitted by mail are received</li> </ul>
<ul style="list-style-type: none"> <li>If approved, notify members of industry</li> </ul>	Department	<ul style="list-style-type: none"> <li>Generally, new council goes into effect before beginning of next marketing season</li> </ul>

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<sup>8</sup> Time frames are advisory only, unless otherwise indicated.

## **APPENDIX M16 – MOU FOR PROPOSED COUNCIL**

### **ELEMENTS OF A MEMORANDUM OF UNDERSTANDING (MOU) FOR A PROPOSED COUNCIL**

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Upon enactment of authorizing legislation, the California Department of Food and Agriculture (Department) advises any group of Proponents for a new council to enter into a memorandum of understanding (MOU). Each MOU stipulates roles and responsibilities of both the Department and the Proponents that are applicable throughout the pre-implementation phases of the new council.

#### **AUTHORITY**

Every council has its own enabling statute.

#### **ROLE AND RESPONSIBILITIES OF THE DEPARTMENT**

To implement the formative marketing program processes, all authorizing legislation assigns specified administrative and enforcement powers, duties, and responsibilities to the Department. Within the Department, the Marketing Branch of the Division of Marketing Services is primarily responsible for carrying out the following activities:

1. With assistance from the Proponent group, establish a list of affected producers and their respective production volumes from the most recent year's harvest.
2. If required by the authorizing legislation:
  - Conduct an industry referendum vote.
  - Tally the referendum results, pursuant to statutory criteria. If the referendum satisfies the criteria, the new council may be established.
3. If the council is established, mail a copy of the Notice of Issuance to all affected parties.
4. Appoint initial board members and assist in calling and conducting the first board meeting.

#### **ROLE AND RESPONSIBILITIES OF THE PROPONENTS**

The Department expects Proponents to assist the Marketing Branch in fulfilling relevant Sections of councils' enabling statutes, as follows:

1. Deposit a sum specified by the Department to defray the expenses the Marketing Branch will incur in carrying out establishment activities. The unexpended portion of this deposit will be returned to the Proponent group.
2. Assist the Marketing Branch with construction of producer and handler lists, as applicable.

3. Educate affected handlers and producers about the proposed council and the process to establish it.



## **Appendix M17 – Antitrust Policy Agreement**

### **California Department of Food and Agriculture [Name of Marketing Order/Council] Antitrust Policy Agreement**

It shall be the policy of the [Board/Council Name] to be in strict compliance with all Federal and State Antitrust laws, rules and regulations. Therefore:

- I. This policy applies to all membership, board, committee and other meetings of the [Name], and all meetings attended by representatives of the [Name].
- II. Discussions of prices or price levels are prohibited. In addition, no discussion is permitted of any elements of a company's operations which might influence price such as:
  - a. Cost of operations, supplies, labor or services;
  - b. Allowance for discounts;
  - c. Terms of sale including credit arrangements; and profit margins and mark ups, provided this limitation shall not extend to discussions of methods of operation, maintenance, and similar matters in which cost of efficiency is merely incidental.
- III. It is a violation of Antitrust laws to agree not to compete, therefore, discussions of division of territories, regions, or customers or limitations on the nature of business carried on or products sold are not permitted.
- IV. Boycotts in any form are unlawful. Discussion relating to boycotts is prohibited, including discussions about blacklisting or unfavorable reports about particular companies including their financial situations.
- V. It is the [Name]'s policy that, in all meetings attended by a grower or handler representative where a discussion borders on areas of antitrust sensitivity involving price or price levels, elements of a company's operations, divisions of territories, regions, or customers, limitations on the nature of a business carried on or products sold, boycotts, or any area outside the range of activities specifically authorized by a marketing order or the California Food and Agricultural Code, the representative requests that the discussion be stopped and asks that the request be made a part of the minutes of the meeting being attended. If others continue the discussion, representative should excuse him/herself from the meeting and request that the minutes show that he or she left the meeting at that point and why he or she left. Any such instances should be reported immediately to the Executive/President of the [Name] and Department staff.

- VI. It is the [Name]'s policy that a copy of these Antitrust Compliance Policies and Procedures be given to each board member, committee member, and employees annually, posted on the [Name]'s official website, and that an antitrust statement be read at the opening of all meetings of the [Name].
- VII. If there is any question as to the application of this policy, the [Name] shall immediately contact the Legal Office of the Department.

Please sign and date this policy and retain for your [Name] files.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

## APPENDIX M18 – EXECUTIVE OFFICER EMPLOYMENT AGREEMENT

### EXECUTIVE OFFICER EMPLOYMENT AGREEMENT

This Executive Officer Employment Agreement (“Agreement”) is entered into by and between [Board Name] (Board), a board formed under the California Marketing Act, Chapter 1 of Part 2, Division 21 of the California Food and Agricultural Code or [Council Name] (Council), a council formed under Chapter [Council Chapter] of Part 2, Division 22 of the California Food and Agricultural Code, and [Employee Name] ([Title]).

#### Recitals

The [Board/Council] is an [Advisory Board/Council] to the Secretary of the Department of Food and Agriculture (Department) and as such is subject to state laws and regulations. The board members are appointed by the Secretary and serve at the Secretary’s pleasure. The Secretary’s approval of this Agreement is required.

#### Terms and Conditions

##### 1. SALARY

The Board agrees to pay [Employee Name] \$\_\_\_\_\_ in salary per annum for the [Title]’s services, payable in equal monthly installments and subject to payroll taxes, customary withholdings, and retirement plan as may be applicable.

##### 2. TERM OF AGREEMENT

The term of this Agreement shall be from [fill in date] to [fill in date] unless and until terminated by either party in accordance with the provisions set forth in Paragraph 5 or until terminated by the event of death or permanent disability of the [Title]. Permanent disability shall be defined as the [Title]’s disability or incapacity as determined by the Board’s group disability policy.

This Agreement may be renewed for subsequent one-year terms thereafter as determined by the Board. The parties understand and agree that renewal must be approved by the Secretary to become effective.

[Employee Name] agrees to remain in the exclusive full-time employment of the Board during the term of this Agreement.

##### 3. EMPLOYMENT AND DUTIES

[Employee Name] as [Title] shall carry out the functions and duties specified in the [Title] job description (Exhibit A) and/or the [Board Name] Handbook dated [date], as well as the policies of [Board Name] and the Department and shall perform other legally permissible and proper duties and functions as the Board of Directors may assign. Such employment shall be “at will,” meaning that the [Title] serves at the pleasure of the Board and the Secretary and therefore, may be separated from employment at any time, with or without cause.

The [Title] shall perform [his/her] duties to the best of [his/her] ability in accordance with the highest professional ethical standards of the profession and shall comply with all applicable rules and regulations established by the Board and the Department.

The [Title] shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. The [Title] shall complete disclosure forms required by law, including but not limited to Form 700 (FPPC).

The [Title] is an exempt employee, as defined in California law, and is expected to engage in those hours of work that are necessary to fulfill the obligations of [Title]'s position, as described in Exhibit A. The [Title] is expected to be available during the Board's regular business hours. However, it is recognized that the [Title] may be required to devote additional time to the business of the Board outside of the Board's customary office hours.

The [Title] shall not date or pursue a romantic relationship with any Board member, or Board employee whom the [Title] supervises, directly or indirectly during the term of [his/her] employment.

#### 4. PERFORMANCE EVALUATION

The Board shall evaluate the [Title]'s performance annually during the month of [insert month]. In addition, every year the Board and the [Title] shall set goals and objectives for the [Title] for the ensuing year if the recommendation in the evaluation is to continue the employment of the [Title] and extend the term of this Agreement.

#### 5. RESIGNATION AND/OR TERMINATION

The [Title] may resign at any time with or without cause and agrees to give the Board at least 60 days' advance written notice of the effective date of [his/her] resignation.

The Board may at any time terminate the [Title]'s employment upon 30 days' advance written notice. At the Board's option, this 30-day notice period may be satisfied by 30-days' actual notice or payment of 30-days' salary with an immediate termination.

The parties recognize and affirm that: 1) the [Title] is an "at will" employee whose employment may be terminated by the Board without cause, and 2) there is no express or implied promise made to the [Title] for any form of continued employment or for any particular period of time, despite the existence of a term of expiration in this Agreement. This Agreement is the sole and exclusive basis for an employment relationship between the [Title] and the Board.

The parties recognize and affirm that despite the [Board Name]'s right to terminate employment at any time, cause may arise requiring termination.

For purposes of this Agreement, "cause" shall exist if the [Title]:

- (a) materially breaches a term of this Agreement or neglects to perform the [Title]'s duties hereunder;
- (b) engages in conduct which is seriously prejudicial to the Board;
- (c) acts in bad faith to the detriment of the Board, the Department or the assessment payers;
- (d) refuses or fails to act in accordance with a lawful, reasonable directive or order from the Board;
- (e) is guilty of gross misconduct or dishonesty;
- (f) is convicted of a felony or any criminal offense;

- (g) is unable to perform the essential functions of the [Title]'s position with or without reasonable accommodation, for a period in excess of one hundred twenty (120) days;
- (h) engages in situations involving an actual or potential conflict of interest or the appearance of such a conflict; or
- (i) violates any provision of California Government Code section 19572.

The existence of cause for termination shall constitute a material breach of this Agreement.

The decision to terminate shall be made in a closed session of the Board and confirmed in a public meeting in accordance with the Bagley-Keene Open Meeting Act. Pursuant to section 11126(a)(1) of the California Government Code, the [Title] is entitled to a 24-hour notice of possible disciplinary action to be considered at a Board meeting to allow the employee the opportunity to request a public hearing in which the employee can address the employer regarding the matter.

#### 6. SEVERANCE PAY

If the [Title] is terminated by the Board prior to expiration of this Agreement while the [Title] is still willing and able to perform [his/her] duties, the Board agrees to pay the [Title] a maximum cash severance equal to *[either a fixed amount, or a formula (e.g., % of salary x years of service) as determined by the Board with the specifics incorporated into this section of the agreement]*. Applicable payroll taxes and customary withholdings may be applicable.

In consideration for and as a condition precedent of receipt of the severance pay provided for above, the [Title] shall execute a full and complete release of all claims against the Department, the Board, and their officers, directors, employees, and affiliated entities.

Provided, however, if the [Title] is terminated for cause under this Agreement, the Board shall have no obligation to pay the severance set forth in this paragraph. Further, if this Agreement is permitted to expire on its own terms, no severance payment shall be due.

#### 7. CAR ALLOWANCE *(OPTIONAL or Reference policy document if addressed elsewhere. Providing a program-owned vehicle is another option.)*

The [Title]'s duties require that [he/she] shall have the use of an automobile at all times during [his/her] employment with the Board. The Board shall pay the [Title] [\$xxx] per month for the expenses of owning, maintaining, and insuring a personal automobile. The amount of the allowance shall be evaluated each fiscal year and, if appropriate, may be increased or decreased to reflect actual costs.

#### 8. CELL PHONE/TABLET/COMPUTER *(OPTIONAL or Reference policy document if addressed elsewhere)*

The Board shall provide electronic devices and a data plan as deemed necessary for the [Title]'s use for business purposes only. These electronic devices shall at all times remain the property of the Board.

#### 9. SUPPLEMENTAL BENEFITS *(OPTIONAL or Reference policy document if addressed elsewhere)*

The Board shall provide the [Title] the same categories of benefits that are available to all other full-time Board employees as described in the *(reference policy document if addressed elsewhere)*. Benefits may be amended from time to time.

10. VACATION/HOLIDAYS/SICK LEAVE *(reference policy document if addressed elsewhere)*

The [Title] shall have [XX] days of paid vacation leave at the date of the commencement of employment and may accrue [XX] days of vacation each month, which may be carried over to the next calendar year. The total accrued vacation time cannot exceed [XX] days at the end of any calendar year.

Federal and state holidays are provided for in the [Board] Handbook.

The [Title] shall have [XX] day's sick leave at the date of the commencement of employment and may accrue [XX] days of sick leave each year which is not accruable from year to year nor payable at termination.

11. EXPENSE REIMBURSEMENT/PROFESSIONAL DEVELOPMENT *(OPTIONAL or reference policy document if addressed elsewhere)*

The Board shall reimburse the [Title] for all actual, reasonable and necessary expenses incurred within the scope of the [Title]'s employment, subject to the Board's policies and procedures in effect during the Term of this Agreement.

The Board agrees to pay for the professional dues and subscriptions of the [Title] necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the [Title]'s continued professional participation, growth and advancement, and for the good of the Board, subject to approval by the Board.

12. RELOCATION *(OPTIONAL)*

The Board agrees to reimburse the [Title] for the cost of relocation. Expenses shall not exceed [XXXX] and shall be reimbursed only upon submission of receipts for actual, reasonable and necessary expenses.

13. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The Board, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of the [Title], provided such terms and conditions are not inconsistent with provisions of this Agreement, the Department's Accounting Guidelines, and/or state and federal law.

14. NOTICES

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO [BOARD NAME]:  
[Name of Board Chair], Chair  
[Address of Board]

TO EMPLOYEE:  
[Name of Employee], [Title]  
[Address of Employee]

## 15. CONFIDENTIALITY

The [Title] may be exposed to or possess proprietary confidential and trade secret information of the Board, the Department, or of others doing business with the Board. The [Title] agrees to keep confidential and shall not **at any time**, either directly or indirectly, divulge, disclose, share, or communicate to any person, firm, or organization in any manner whatsoever, or make any use of except for the benefit of the Board, information concerning matters affecting or relating to the business of the Board.

Any inadvertent disclosure of confidential or proprietary information must be immediately reported to the Board and the Department.

Any breach of confidentiality is a material breach of this Agreement and may result in immediate termination.

All records and files concerning the Board's business, customers, suppliers, and clients, including without limitation, matters on which the [Title] worked during the term of this Agreement, shall belong and remain the property of the Board.

The [Title] shall also agree to cooperate fully with the Board and the Department in the event of any administrative proceeding or litigation against the Board or the Department arising from acts occurring during the [Title]'s tenure with the Board or claims arising from the [Title]'s actions.

## 16. INDEMNIFICATION

The Board shall defend and indemnify the [Title] to the same extent as any other public officer within the State of California is obliged to defend and indemnify its public employees pursuant to Government Code section 825, *et seq.*, or other applicable provisions of law.

## 17. ENTIRE AGREEMENT

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein this Agreement cannot be modified except by mutual agreement signed by the parties.

## 18. ASSIGNMENT

This Agreement is not assignable by either the Board or the [Title].

## 19. SEVERABILITY

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of this Agreement.

## 20. WAIVER

No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall it be, a waiver of any other breach of this Agreement. No waiver shall be binding unless it is in writing signed by the party waiving the breach. A waiver by the [Board Name] is not binding until approved by the Secretary.

## 21. GOVERNING LAW

This Agreement shall be deemed to have been executed and delivered within the State of California, and rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

## 22. BOARD RATIFICATION / DEPARTMENT APPROVAL

This Agreement, and any revisions, amendments, or modifications thereof are subject to review and ratification by the Board and subject to review and approval by the Secretary in order for it to become effective.

IN WITNESS WHEREOF, the Board has caused this Agreement to be signed and executed in its behalf by the Chair of the Board of Directors as of the date next to [his/her] signature. It has also been executed by the [Title] as of the date next to [his/her] signature. The Secretary gives [his/her] approval of this Agreement by [his/her] signature below.



\_\_\_\_\_  
[Employee name]  
[Title]

\_\_\_\_\_  
Date signed



\_\_\_\_\_  
[Board Chair name]  
[Board name] Chair

\_\_\_\_\_  
Date signed

### DEPARTMENT APPROVAL:



\_\_\_\_\_  
[Director name]  
Director of Marketing Services

\_\_\_\_\_  
Date signed



\_\_\_\_\_  
[Secretary name]  
Secretary of Food and Agriculture

\_\_\_\_\_  
Date signed



## APPENDIX M19 - AUTHORIZED INVESTMENTS FOR STATE FUNDS

### CALIFORNIA GOVERNMENT CODE

#### Section 16430

Eligible securities for the investment of surplus moneys shall be any of the following:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds or interest-bearing notes on obligations that are guaranteed as to principal and interest by a federal agency of the United States.

(c) Bonds, notes, and warrants of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(d) Bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the state, municipal utility district, or school district of this state.

(e) Any of the following:

(1) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended (12 U.S.C. Sec. 2001 et seq.).

(2) Debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended (12 U.S.C. Sec. 2001 et seq.).

(3) Bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act (12 U.S.C. Sec. 1421 et seq.).

(4) Stocks, bonds, debentures, and other obligations of the Federal National Mortgage Association established under the National Housing Act, as amended (12 U.S.C. Sec. 1701 et seq.).

(5) Bonds of any federal home loan bank established under that act.

(6) Obligations of the Federal Home Loan Mortgage Corporation.

(7) Bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended (16 U.S.C. Sec. 831 et seq.).

(8) Other obligations guaranteed by the Commodity Credit Corporation for the export of California agricultural products under the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. Sec. 714 et seq.).

(f) (1) Commercial paper of “prime” quality as defined by a nationally recognized organization that rates these securities, if the commercial paper is issued by a federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, or limited liability company that is approved by the Pooled Money Investment Board as meeting the conditions specified in either subparagraph (A) or subparagraph (B):

(A) Both of the following conditions:

(i) Organized and operating within the United States.

(ii) Having total assets in excess of five hundred million dollars (\$500,000,000).

(B) Both of the following conditions:

(i) Organized within the United States as a federally or state-chartered bank or a state-licensed branch of a foreign bank, special purpose corporation, trust, or limited liability company.

(ii) Having programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

(2) A purchase of eligible commercial paper may not do any of the following:

(A) Exceed 270 days maturity.

(B) Represent more than 10 percent of the outstanding paper of an issuing federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, or limited liability company.

(C) Exceed 30 percent of the resources of an investment program.

(3) At the request of the Pooled Money Investment Board, an investment made pursuant to this subdivision shall be secured by the issuer by depositing with the Treasurer securities authorized by Section 53651 of a market value at least 10 percent in excess of the amount of the state's investment.

(g) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, that are eligible for purchase by the Federal Reserve System.

(h) Negotiable certificates of deposits issued by a federally or state-chartered bank or savings and loan association, a state-licensed branch of a foreign bank, or a federally or state-chartered credit union. For the purposes of this section, negotiable certificates of deposits are not subject to Chapter 4 (commencing with Section 16500) and Chapter 4.5 (commencing with Section 16600).

(i) The portion of bank loans and obligations guaranteed by the United States Small Business Administration or the United States Farmers Home Administration.

(j) Bank loans and obligations guaranteed by the Export-Import Bank of the United States.

(k) Student loan notes insured under the Guaranteed Student Loan Program established pursuant to the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.) and eligible for resale to the Student Loan Marketing Association established pursuant to Section 133 of the Education Amendments of 1972, as amended (20 U.S.C. Sec. 1087-2).

(l) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(m) Bonds, debentures, and notes issued by corporations organized and operating within the United States. Securities eligible for investment under this subdivision shall be within the top three ratings of a nationally recognized rating service.

(n) Negotiable Order of Withdrawal Accounts (NOW Accounts), invested in accordance with Chapter 4 (commencing with Section 16500).

*(Amended by Stats. 2015, Ch. 249, Sec. 1. (SB 797) Effective January 1, 2016.)*

**APPENDIX M20 – MEETING NOTICE TEMPLATE**

[BOARD OR COUNCIL NAME]

**MEETING NOTICE**

**[Date and Start Time]**

**[Location of Meeting]**

*(If a web-based or teleconference meeting give instructions to join, plus the one physical location, where at least one board member will be present)*

Members of the public are encouraged to provide comment to the Board and may suggest items to be placed on the agenda for discussion at the next Board meeting. While the Board values the participation of the public, the Board Chair reserves the right to limit the time for public comment depending on the length of agenda and number of commenters.

Each of the noticed agenda items will include discussion and public comment. Noticed items will be considered for possible action by the Board. Any item not so noticed will not be considered or discussed. Items listed on the agenda may be considered in any order at the discretion of the Board Chair. All meeting agendas and notices are available on the California Department of Food and Agricultural website at: <https://www.cdfa.ca.gov/mkt/mkt/>. *(select meeting notices)*

For further information regarding this meeting, please contact: [contact name] at [telephone number].

**AMERICANS WITH DISABILITIES ACT**

All meeting facilities are accessible to persons with disabilities. If you need reasonable accommodation as defined by the Americans with Disabilities Act, or if you have questions regarding the public meeting, please contact [contact name] at [phone number]. Requests for reasonable accommodation should be made no later than three (3) days before the meeting.

*(Agenda must be on separate page)*

**APPENDIX M20 CONTINUED**

[BOARD OR COUNCIL NAME]

[Meeting Date and Start Time]

[Meeting Location]

**MEETING AGENDA**

1. Call to Order, Roll Call, Verify Quorum and Introductions
2. Review and Approve Minutes to Previous Board Meeting(s)
3. Closed Session pursuant to California Government Code section 11126, the Board is authorized to meet in closed session to consider the following matter(s):
  - a. Personnel matter – [to consider the appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing] [Government Code section 11126(a)(1)].
  - b. Pending litigation – [name(s)] v. [name(s)], [Case number if known] [Government Code section 11126(e)(1)]
4. Agenda Item
5. Agenda Item . . .
6. Additional Public Comments
7. Adjournment

*Meetings of the [Board] are open to the public and comply with the Bagley-Keene Open Meeting Act. This Act allows for public comment on all agenda items.*

*Agenda order is tentative and subject to change by the Board without prior notice. Audience members may address the Board following each agenda item. While the Board values the participation of the public, the Board Chair reserves the right to limit the time for public comment depending on the length of agenda and number of commenters.*

***Americans with Disabilities Act***

*All meeting facilities are accessible to persons with disabilities. If you need reasonable accommodation as defined by the Americans with Disabilities Act, or if you have questions regarding the public meeting, please contact [contact name] at [phone number]. Requests for reasonable accommodation should be made no later than three (3) days before the meeting.*

Supplemental information regarding meeting notices and agendas:

- (1) Meeting notices and agendas must be posted on the Marketing Branch's website at least 10 days prior to the date of the meeting. All documents posted to the Branch's website must be compliant with accessibility standards of the Americans with Disabilities Act (ADA-compliant). The Department also encourages MOCAs to post meeting notices and agendas on their own website.
- (2) For teleconference and web-based meetings, a primary physical location must also be identified where members of the public may physically attend the meeting and participate.
- (3) Closed sessions should not be included on an agenda as a place-holder. If there is not an identified need at the time the agenda is posted, then no closed session should be included as an agenda item. If the closed session involves a complaint filed or a proposed disciplinary action against an employee, the employee affected has certain rights pursuant to Government Code section 11126(a)(2).
- (4) An attorney from the Department's Legal Office or the Attorney General's Office must be present during all closed sessions regarding pending litigation and should be present during closed sessions regarding sensitive personnel matters involving a MOCA's Executive Officer.

**APPENDIX M21 – TELECONFERENCE OR WEB-BASED APPLICATION MEETING GUIDELINES****California Agricultural Marketing Boards and Councils****Teleconference or Web-based Application Meeting Guidelines**

Reference Section 58853 of the Food and Agricultural Code (FAC) for Advisory Boards

Reference FAC Section 63906 for Councils

Effective January 1, 2017

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These guidelines are adopted pursuant to FAC Sections 58853 and 63906. These Sections were added to the FAC by Assembly Bill 1976 (Chapter 451) passed by the Legislature on September 9, 2016 and signed into law by Governor Brown on September 22, 2016.

For the purpose of these Guidelines, “Programs” means any advisory board or council promulgated under Divisions 21 and 22 of the FAC, including any committee established by a program. “Members” means members and alternate members of a program’s board of directors and any committee established by a program consisting of three or more persons.

***Section 1******Teleconference Meetings are Public Meetings***

In order to ensure transparency in the conduct of State business, all program meetings are open for the public to attend and to comment on any matter within a program’s purview. All meetings are subject to, and shall comply with, the Bagley-Keene Open Meeting Act (reference Sections 11120 through 11132 of the California Government Code and FAC Sections 58853 and 63906). All meetings shall be noticed at least ten days in advance and include an agenda of the topics to be discussed and/or acted upon.

***Section 2******Teleconference Meeting Notices***

Teleconference meeting notices shall comply with all notice requirements for meetings of a state body as those requirements are modified in FAC Sections 58853 and 63906. The meeting notice shall:

- a. Include the conference telephone number and the participant passcode prominently displayed in proximity to the date and time at which the meeting will be held;
- b. If an Internet site will be used as a resource or location, the URL must be included on the meeting notice;

- c. Designate a primary physical meeting location at which at least one member of the state body will be present during the meeting and at which the public may attend;

Also, documents made available to members shall be posted to the program's and CDFA's meetings webpages at the same time as they are distributed to the members.

### ***Section 3***

#### ***Member Notification of Intent to Participate by Teleconference***

Any member who intends to participate in a meeting by telephone or Web-based application must notify the program office at least 24 hours prior to the start of the meeting. To ensure compliance with this requirement:

- a. The meeting notice shall include the name of the staff person whom members must contact to notify of their intent to participate electronically.
- b. The person to whom notification is provided shall maintain a record of those members providing such notice, along with the written notification, or in the case of notification by phone, a phone log shall be maintained.
- c. The published notice and agenda shall be amended to include the names of the members attending by teleconference at least 24 hours prior to the meeting.
- d. If a member does not provide 24 hour notice of participation, there will be no remedial action for the first occurrence. Upon a second occurrence, where the member participates by teleconference but does not meet the 24 hour notice requirement, the member will be allowed to participate in the meeting but will not be allowed to vote on any agenda items.

### ***Section 4***

#### ***Minutes of Teleconference Meeting***

The minutes to a teleconference meeting shall indicate the members who participated electronically. The minutes shall also note any member who participated electronically but did not meet the requisite notice requirement pursuant to Section 3.

### ***Section 5***

#### ***Procedures for Canceling and Rescheduling Meetings***

If a teleconference meeting is canceled, the designated call-in number shall provide a voice message for callers alerting them to the cancellation and a notice of the cancellation shall be provided as soon as possible on the Program's and Department's meetings webpages.

A teleconferencing or internet-based service with the ability to manage caller interaction may be used, as needed, to assist the program in managing the meeting.

*DEPARTMENT POLICIES  
FOR COMMISSIONS*



## *CHAPTER 1 - ADMINISTRATIVE DIRECTION AND OVERSIGHT*

### *C100 OVERVIEW*

Broadly stated, the responsibility of the California Department of Food and Agriculture (Department) is generally to assure both the industry and the public that the State's agricultural commissions operate in accordance with the law. To this end, the Department's Marketing Branch provides administrative direction and oversight of commissions year-round. To further promote compliance, the Department notifies commissions of changes in applicable laws, regulations, and policies.

There are nineteen active marketing commissions in the state. The Department's oversight role for each commission is defined in the individual commission law. The Department's oversight role for most commissions are similar, and includes:

- Attending meetings of the commission's board of directors and executive committee,
- Reviewing and concurring in the commission's annual budget and statement of contemplated activities,
- Concurring in the commission's selection of a CPA firm to conduct its annual financial audits and Agreed-upon Procedures compliance audits,
- Reviewing annual audits reports and ensuring that recommendations contained in the audit reports are acted upon by the commission,
- Conducting, tabulating, and certifying the votes for referenda implementing, and continuing the operation of the commission,
- Receiving, tabulating and certifying election ballots for appointments to the commission,
- Monitoring compliance with the Department's Accounting Guidelines and General Rules, and
- Monitoring compliance with the Department's Advertising and Communications Guidelines.

### *C101 BOARD OF DIRECTORS RESPONSIBILITY FOR COMMISSION MANAGEMENT*

Each commission's board of directors is responsible for securing the services of a chief executive, either as an employee or contractor, to administer the program.

### *C101.1 Executive Search*

Often, when a vacancy in the chief executive position occurs, the commission already has a person on staff who has been identified through succession planning to fill the position. When this is not the case, the Department encourages the commission board of directors to conduct an executive search process. At a minimum, a job announcement should be posted on the commission's website. Many commissions retain the services of an executive search firm to assist in filling the position.

### *C101.2 Interim Management while Search is Conducted*

In the absence of a chief executive, the Department expects the affected commission to hire or contract with a replacement in a timely manner. The Department encourages all commissions to have in place a written policy regarding who is responsible for managing the staff and programs until a new chief executive is appointed.

### *C101.3 Potential for Additional Charges*

Due to the potential need for increased administrative direction and oversight in the absence of a chief executive, the Department expects any commission in these circumstances to budget appropriately so as to cover additional Marketing Branch charges.

### *C101.4 Potential for Conflict of Interest*

The Department strongly discourages commissions from seeking management services from providers who may have conflicts of interest pursuant to the Political Reform Act and the rules of the Fair Political Practices Commission. If a potential conflict of interest exists, commissions should consult with their legal counsel regarding the need to perform a conflict analysis. Based on the outcome of this analysis, the Department may require the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

- The commission hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process. See the confidentiality agreement template included as Appendix C2.

#### *C101.5 Employment Status of Commission Employees*

The staff of commissions may be public agency employees or contractors. As such, they may apply for insurance and/or pension programs administered by the Public Employment Retirement System (PERS). Their employment, however, is not subject to civil service regulation.

#### *C101.6 Office Locations*

Commissions maintain offices in various areas around the state. They are responsible for negotiating lease agreements for office space.

### *C102 ADVERTISING AND PROMOTION GUIDELINES*

*The Department's "Advertising, Promotion and Communications Guidelines for Agricultural Commodity Programs" can be accessed on the Marketing Branch website at:*

*[www.cdfa.ca.gov/mkt/mkt](http://www.cdfa.ca.gov/mkt/mkt)*

#### *C102.1 Unsolicited Ad Ideas*

To avoid claims of an implied contract or obligation, the Department recommends that, if applicable, every commission develop written policy and procedures to guide staff in the systematic and documented rejection of unsolicited suggestions for advertising.

### *C103 PROCEDURES FOR REQUESTING LEGAL OPINIONS*

Any commission may request legal advice or an official legal opinion from the Department's Legal Office by submitting a request in writing to the Marketing Branch. The Legal Office has discretion whether or not to provide an official legal opinion. The Legal Office typically requires at least one week to determine if an opinion will be provided. Upon receipt of the Legal Office's decision, the Marketing Branch immediately notifies the affected commission's chief executive.

#### *C103.1 Acknowledgement of a Commission's Request for Legal Opinion*

The Department acknowledges receipt of a request for a legal opinion and either agrees to the due date proposed by the commission or assigns another. The Legal Office typically requires at least two weeks to prepare responses to such requests unless the commission specifies the need for an expedited response. If the Legal Office determines that the matter requires immediate attention, the Department notifies the affected commission of its expected time to prepare a brief.

### *C103.2 Expedited Review of Personnel Issues*

The Department recognizes that issues involving commission employees often require immediate attention. How commission management responds to these situations in real time may subject the commission and the Department to additional exposure if the response is not proper, prompt or incomplete. The Marketing Branch will contact the Legal Office immediately upon receiving the request for assistance from a commission. If the assigned economist or branch chief is not available, the commission should contact the Marketing Division Director or Department's General Counsel directly.

### *C103.3 External Inquiries*

The Department's Executive Office (including the Legal Office) notifies the Marketing Branch and chief executive within two working days of having received inquiries or information requests regarding any specific commission(s). Whenever possible and relevant, in keeping with the nature of the inquiry, either the Executive Office or the Marketing Branch consults with the appropriate commission chief executive(s) regarding the Department's response.

## *C104 LITIGATION NOTIFICATION*

The Department and all marketing programs are mutually responsible for notification regarding filed lawsuits that affect either the State's marketing programs overall or a particular commission.

## *C105 PUBLIC RECORDS REQUESTS*

The Marketing Branch refers any public records request it receives directly to the Department's Legal Office for processing. This includes all requests from the Legislature. If the request is from the Legislature, the Marketing Branch will also notify the Department's Legislative Office. The Marketing Branch also appraises the chief executive(s) of the affected commissions(s) of these actions.

The Legal Office notifies the Marketing Branch and the commission of any public records request that the Department received directly.

The Legal Office is allowed up to 10 working days (with an extension of 14 additional days in specified unusual circumstances) to notify the requester whether disclosable records exist, the grounds for this determination, and the estimated date and time when the records will be made available.

#### *C105.1 Public Records Requests Received by Commissions*

Public records requests submitted directly to commissions are responded to by the commission through its legal counsel. Commissions are required to respond to the request in the timeframe stated in C105.

#### *C106 COMMISSION BYLAWS*

The Department expects every commission to maintain and update, as needed, its own Bylaws and submit revisions and/or amendments for Department concurrence, required by individual commission statutes.

#### *C107 ADMINISTRATIVE REVIEW*

The Department provides an ongoing review of commissions on three levels. These generally include:

1. Participation in all meetings of commission boards of directors and executive committees and approval of various commission activities as specified in the respective commission laws.
2. Frequent interactions between the program liaison assigned to work with the commission and its CEO/staff. Depending on the provisions of the individual commission laws, these interactions regard Department policies and procedures and any potential issues or concerns of the Department, the commission, or the commodity industry concerned.
3. A set of Agreed-upon Procedures (AUP) is performed in conjunction with each annual financial audit. This AUP compliance audit is performed by the CPA firm selected by the program and approved by the department. The AUP compliance audit compliments the annual financial audits. The AUP compliance audit examines the commission's compliance with the its enabling law, department policies and procedures and the commission's own policies and procedures.

#### *C108 GRIEVANCE PROCEDURE*

Most individual commission statutes provide for adoption of a grievance procedure. The Department recommends that commissions adopt a grievance procedure similar to that suggested in Appendix C3.

#### *C109 BAGLEY-KEENE OPEN MEETING ACT*

The Bagley-Keene Open Meeting Act (Bagley-Keene) provides requirements for the proper noticing and conduct/recording of business at meetings of any State body. All commission board of director and committee meetings are subject to these Bagley-Keene notice requirements (including closed sessions held during regular meetings). Bagley-Keene also addresses the proper conduct and recording of business discussed and transacted at board or

committee meetings. There are separate noticing requirements in Division 21 and 22 of the Food and Agricultural Code for teleconference meetings of MOCAs and commissions (ref. §§ 58853 and 63906).

## CHAPTER 2 - PUBLIC HEARINGS AND VOTING

### C200 OVERVIEW

In general, the California Department of Food and Agriculture (Department) is required to conduct industry votes to consider full implementation of commissions and public hearings and/or referenda for continuation of commissions -- depending on individual commission statutes. In addition, the Department may conduct industry votes to elect industry volunteers to serve on commission boards of directors.

### C201 PUBLIC HEARINGS

The Department conducts public hearings pursuant to individual commission statutes to receive testimony and evidence regarding the effectiveness of existing commissions. These hearings require a minimum of 30 days public notice, which the Department distributes via regular mail and by posting the notice on its website. The official notice:

- Announces the date, time, and location of the hearing; and
- States the subject matter to be considered
- Suggests relevant questions that witnesses should be prepared to answer at the hearing (see Appendix C4).

#### C201.1 *Hearing Officer and Panel*

The hearing is conducted by a Hearing Officer, selected by the Department, who ensures an orderly process is followed to build a complete hearing record. At the beginning of the hearing, the Hearing Officer explains the purpose of the hearing, how the hearing will proceed, and introduces the Hearing Panel which usually consists of two Department economists. A Panel Member will then be sworn in and will introduce the Department's Hearing Folder. The exhibits in the Folder provide the foundational information the Panel will use in its analysis of the hearing record. Testimony and evidence provided by witnesses builds upon the information introduced by the Department.

#### C201.2 *Witness Testimony*

Witnesses generally testify in the order in which they sign in. In the case of witnesses wishing to testify as a panel, this should be noted when signing in, including the names of each person included in the panel. In the case of a hearing called as a result of a petition, the petitioner will be the first witness. The Hearing Officer restricts all witnesses to speaking only about the call of the hearing. Because these are information-gathering hearings only, witnesses are not cross-examined.

However, Hearing Panel Members may ask questions of the witnesses to seek clarification of their testimony.

For those unable to attend a hearing, written testimony may be submitted for the hearing so long as it is received by the Marketing Branch at least two business days prior to the date of the hearing. Written comments received after this time, but before the conclusion of the hearing, may be included in the hearing record by the Hearing Officer. All written comments received for hearings will be posted on the Marketing Branch's website and provided to all persons requesting copies.

Witnesses may offer their own prepared testimony or may respond to the testimony introduced by other witnesses. Also, if time permits at the end of the hearing, the Hearing Officer will allow persons who have previously testified to offer additional testimony or to respond to other witnesses' testimony.

#### *C201.3 Post-Hearing Briefs*

Before the close of each hearing, the Hearing Officer asks those in attendance whether there is a desire to provide for a filing period to allow witnesses testifying at the hearing to submit a post-hearing brief to amplify, clarify, or withdraw their testimony introduced at the hearing, or to respond to testimony introduced by other witnesses at the hearing. Any authorized post-hearing brief submitted to the Hearing Officer will be posted on the Marketing Branch's website.

#### *C201.4 Department Findings and Recommendation to the Secretary*

The Hearing Panel will analyze the hearing record (Department exhibits, written comments submitted prior to the hearing, testimony and evidence presented at the hearing, and submitted by authorized post-hearing brief). Based on testimony and evidence received, the Panel prepares and submits written findings and recommendations to the Secretary and the Department issues notice of a decision within 45 days after the close of the hearing record.

### *C202 VOTER ELIGIBILITY*

Individual commission statutes define voter eligibility of producers and/or handlers.

#### *C202.1 Voter Eligibility for New Producers and/or Handlers*

The Department makes a good faith effort to give new producers and handlers subject to a commission law, with no record of production or volume handled in the previous season, the right to vote. In those cases where volume is one of the voting eligibility criteria, the Department may qualify new producers or handlers to vote without weighting those votes by volume.



### *C203 BLOC VOTING*

“Bloc voting” refers to the practice by an agricultural cooperative marketing association of casting votes on behalf of its members. Individual commission statutes may authorize bloc voting. Wherever applicable, the Department requires every cooperative that utilizes bloc voting to submit the following items:

1. A copy of the cooperative’s bylaws authorizing the cooperative to vote on behalf of its members.
2. An approved board motion indicating:
  - a. That the cooperative is bloc voting on behalf of its members.
  - b. The cooperative’s position regarding the specific referendum at hand.
  - c. Whether individual members will be allowed to vote outside the bloc vote.
3. A list of producers eligible to vote. If the referendum utilizes volume as a criterion for approval, the Department requires the cooperative to supply information regarding each producer’s volume, in electronic format.

### *C204 LIST MANAGEMENT*

Typically, commissions maintain producer and handler contact information lists but, in some cases, another public agency assumes this responsibility. If a commission supplies the list, the Department requires the commission chief executive to certify to the best of his or her knowledge that the official producer and handler records submitted contain names, addresses, and volume data, if applicable, that are current, accurate, and complete. Appendix C5 contains the certification form that the Department requires chief executives to sign.

#### *C204.1 Electronic Format*

Whenever the Department has need for data on individual industry participants, the Marketing Branch asks that all official records be provided in an electronic format to facilitate timely and efficient processing.

### *C205 ACCESS TO VOTER LISTS*

The Department’s policy is to encourage commissions to grant indirect access to their voter lists by directly managing mailings on behalf of interested parties that are willing to pay mailing costs. Pursuant to authority provided in individual commission laws, most commission adopt their own Voter Access procedures, which closely mirror the process provided in Section M205, applicable to MOCAs.

### *C205.1 Confidentiality*

The Department protects the confidentiality of producer and handler lists in its possession, as provided in the commission law, and expects chief executives of commissions to do the same.

## *C206 REFERENDA*

As provided for in individual commission statutes, the Department conducts the referendum process to ascertain the will of affected producers and handlers with regard to establishing or continuing commissions. Within the Department, the Marketing Branch administers referenda, including mailing the ballots, counting the votes, and/or certifying the results.

### *C206.1 Referendum Extension*

In general, commission statutes provide for voting periods of between 10 and 60 days. The Department recommends a standard time frame for referendum voting of 30 calendar days with an option of extension up to 60 days. Most commission statutes require that a minimum of 40 percent of affected producers and handlers participate in the implementation referendum. The primary reason for extending a voting deadline is to give affected commodity producers and handlers sufficient time to attain the required level of participation.

## *C207 REAUTHORIZATION*

Most individual commission statutes require periodic industry reauthorization of commissions, either by public hearing or by referendum. If reauthorization is by referendum, refer to Section C206. If the required reauthorization process is a public hearing, the Department is responsible for conducting the hearing. Members of the public as well as representatives of the affected industry are invited to testify. If the public hearing results in a substantial question regarding whether the commission is fulfilling its mission, the Department is required to conduct a referendum on reauthorization. Absent a substantial question, the Department accepts hearing testimony as evidence of support for reauthorization. The Department will make every effort to issue a decision on continuation within 45 calendar days after the close of a public hearing and within 10 business days for vote tallying and certification after the deadline for a referendum.

### *C207.1 Reauthorization Timing*

The Department expects the reauthorization process to be completed early enough to allow sufficient time for potential program wind-down, if indicated, before the end of the current marketing season. If the reauthorization procedure specified in the commission law is a public hearing, then the hearing should be held early enough for a referendum to be completed and, if required, program wind-down.

*C208 RELEASE OF VOTING INFORMATION*

During a referendum, the Marketing Branch will release the voter participation percentage(s) to those making a request. The Branch also maintains the current referendum status on its website, including whether the 40 percent participation requirement has been reached, the deadline for submitting ballots, and the final results. When a 40 percent participation level is required, the Department may, upon request from the commission, send at least one reminder letter or postcard to those producer and/or handler entities who have not submitted a ballot encouraging them to vote prior to the deadline.

*C209 NOMINATIONS AND ELECTIONS*

With concurrence from the Department when required by a commission law, most commission statutes provide authority to commissions to establish routine nomination and election procedures for replacing directors whose terms are expiring and/or to fill other vacancies. Common methods for nominating and electing industry volunteers to serve on commissions' boards of directors include the following:

1. Nomination meetings followed by a mail ballot.
2. Nomination meetings at which members vote on-site.
3. Nominations and balloting conducted exclusively by mail.

Unless specified otherwise in the commission statute, the Department encourages commissions to have the Department carry out election voting by mail in an effort to protect voter confidentiality and to provide for third-party vote tabulation.

## CHAPTER 3 - COMMUNICATION

### C300 OVERVIEW

The California Department of Food and Agriculture (Department) maintains a policy of fully disclosing to the public any information pertaining to the Department's programs and activities but not information required by law to be kept confidential. The Department communicates regularly with commissions. In keeping with this standard, the Department:

- Maintains frequent and timely communication between commission chief executives and Department staff
- Prepares and distributes a MARKETING UPDATE – a newsletter informing programs and other interested parties of important issues related to commodity marketing programs.
- Regularly updates its website (<http://www.cdfa.ca.gov/mkt/mkt/>)
- Provides timely email alerts and advisories, as needed

### C301 DEPARTMENT RESPONSIVENESS

As a function of administrative direction and oversight, the Department's Marketing Branch supplies information and/or clarification regarding program issues to individual commissions. When programs contact the Marketing Branch to raise an issue, request information or ask for a policy ruling, the Branch will acknowledge receipt of the message within 24 hours and will provide an estimate of how long it will take to provide the information requested.

### C302 SHARING COMMUNICATION

The Department and all commissions are interdependent when it comes to staying current on important information to California's marketing programs. Therefore, the Department's policy is to alert commissions to all matters that may potentially affect their operating environment.

#### C302.1 *Courtesy Copies to the Marketing Branch*

Commissions that communicate in writing with units of the Department of Food and Agriculture other than the Marketing Branch are expected to send copies of such correspondence to the Marketing Branch.

#### C302.2 *Courtesy Copies to Board Chairs*

When appropriate, the Department sends to board chairs copies of correspondence addressed to the commission's chief executive on matters related to a commission's budget and finances, as well as significant policy letters and other important correspondence.

*C302.3 Courtesy Copies to Commission Chief Executives*

The Department mails copies of its correspondence with board members to the affected chief executive(s).

*C302.4 Board Roster*

The Department expects every commission to (i) supply a roster that, to the best of its knowledge, contains current, accurate, and complete board member contact information; and (ii) notify the Marketing Branch of changes in this information as changes occur. Complete contact information includes the following for every board member:

- Name
- Mailing address
- Email address
- Phone number

*C303 MEDIA RELATIONS*

The Marketing Branch facilitates commissions' communication with the Department's Public Affairs Office, which advises the media regarding issues and activities related to commissions. While many programs have staff or public relations agencies that communicate directly with the media, the Department strongly encourages these staff to keep the Public Affairs Office informed, particularly in the case of sensitive inquiries, since the media often contacts the Public Affairs Office for comments or further information. Likewise, when the Marketing Branch receives media inquiries, it refers inquirers to the Public Affairs Office. The Branch also immediately notifies the affected commission chief executive regarding the inquiry and, if appropriate, obtains additional information.

*C303.1 Procedure for Requesting Assistance with Media Relations*

Through the Marketing Branch, commissions may request media relations expertise and assistance from the Department's Public Affairs Office. These resources may be made available in response to a crisis or controversy or as part of a systematic program of positive public relations. Upon request and on a case-by-case basis, the Branch facilitates communication between the Public Affairs Office and any commission seeking such assistance.

## CHAPTER 4 - MARKETING BRANCH CHARGES

### C400 OVERVIEW

The California Department of Food and Agriculture (Department) incurs costs in providing administrative direction and oversight for its agricultural commissions. Individual authorizing statutes require commissions to reimburse the Department for these costs. The Marketing Branch invoices each commission monthly in arrears for both direct and indirect charges. Indirect charges cover services provided by entities other than the Marketing Branch -- for example, the Department's Financial Services Branch in the Division of Administrative Services.

### C401 MARKETING PROGRAM SERVICES ACCOUNT (MPS)

Because General Fund support to cover cash flow needs has not been available since 1990, the Department maintains a revolving fund of approximately \$100,000 to meet monthly payroll and other financial obligations in support of the Marketing Branch. This fund is known as the Marketing Program Services Account, referred to as "the MPS." The MPS is the exclusive source of solvency protection for the Marketing Branch and withdrawals from it must therefore be recovered on a timely basis.

#### C401.1 *Reserve for Unanticipated Expenditures*

The Department holds an additional \$50,000 in reserve within the MPS to cover unanticipated expenditures.

#### C401.2 *Consultation with the Marketing Branch's Executive Committee*

If it is not clear that an unanticipated expenditure is suitable for payment from the MPS, the Department consults the Marketing Program CEO Executive Committee. Similarly, should the MPS fall below \$150,000, the Department asks the Executive Committee to (i) confer on alternatives for restoring adequacy to the MPS, and (ii) make a recommendation to the Marketing Branch.

### C402 BASIS FOR MONTHLY CHARGES

In responding to commissions' requests for information, clarification, or assistance, Marketing Branch staff report billable time from the point their response involvement exceeds one-half hour. These costs, like attendance at commission meetings and activities, are billed directly to the affected commission. Typically, two weeks following the end of each month, the Marketing Branch receives budget reports (revenue and expenditure details) from the Department's Financial Services Branch. Based on these reports, Marketing Branch accounting

staff bill commissions for their share of administrative direction and oversight costs in the prior month, plus indirect costs. Appendix C6 illustrates the cost allocation of Marketing Branch charges.

#### *C403 DELINQUENT ACCOUNTS*

Delinquent payment of invoices jeopardizes the solvency of the MPS. If the Department must borrow money from other accounts to cover the MPS, the Financial Services Branch charges interest on the loan. Such interest payments increase the total prorated charges paid by programs. To avoid incurring interest charges, the Department requires any commission that makes late payments on Marketing Branch invoices for any three months in a six-month period to pay a deposit equaling three months of estimated charges (not less than \$2,500). In these circumstances, the affected program will continue to receive monthly invoices and the deposit will be held in reserve only to float late invoice payments until the payment is received. The full deposit will be refunded when the program has consistently paid its monthly invoices on time for six consecutive months.

#### *C404 STANDARDS FOR COST RECOVERY*

The Department recovers costs in keeping with the following standards:

- To avoid having to assess interest charges, the Department expects to receive reimbursement by the due date on the monthly invoice, which is one week the prior to last working day of each month. This ensures that payments clear through the Department's Financial Services Branch by the end of the month. Any payment outstanding at the end of the month will appear as an outstanding balance on the next month's invoice.
- The Department assesses interest on delinquent payments of Marketing Branch charges at a rate established by the Department of Finance.

#### *C405 BUDGETING FOR MARKETING BRANCH CHARGES*

The Department expects commissions to anticipate Marketing Branch charges in their annual budgets. Estimates should include the (i) standard monthly costs, based on prior years; (ii) the costs of conducting public hearings and/or referenda, if applicable; and (iii) the costs of any other foreseeable activity that would exceed the Branch's routine involvement (for example, proposed legislation that will require bill analysis by Branch staff). To prepare an estimate that is as accurate and realistic as possible, the Department expects every commission to work with Branch staff in arriving at estimates of Branch charges to its program over the coming year.

*C406 CHARGES PAID BY NEW PROPONENT GROUPS*

New commission proponents provide a deposit to the Department to defray only the direct Marketing Branch costs of preparing the necessary documents and carrying out related responsibilities for carrying out implementation procedures for a new commission. This includes staff time to analyze the commission bill as it goes through the legislative process. If the actual costs of establishing the commission exceed the deposit, the proponents are obligated to pay the actual cost. Chapter 9 covers in greater detail the Department's policies pertaining to cost recovery for establishing new commissions.



## *CHAPTER 5 - DISPUTED CHARGES*

### *C500 OVERVIEW*

The California Department of Food and Agriculture (Department) expects every commission to engage in the standard business practice of reviewing monthly invoices from the Marketing Branch to verify that the reported basis for direct charges conforms to the commission's own records. Commissions with billing questions should follow the procedures outlined in this chapter. This consists, first, of requesting clarification. Once all necessary information is provided, but the amount owed remains in dispute, the affected commission may submit a disputed charges letter for formal review by the Marketing Branch's Executive Committee.

### *C501 REQUEST FOR CLARIFICATION*

All invoices are based on monthly budget reports prepared for the Marketing Branch by the Financial Services Branch. Any commission may question charges that appear on monthly invoices by adhering to the following procedure:

- Within the period prior to the payment due date, the affected commission should communicate in writing with (i) Marketing Branch accounting staff, (ii) the assigned Economist, or (iii) the Branch Chief.
- Within 10 working days, the Marketing Branch's accounting staff will analyze and verify the charges shown on the relevant budget reports prepared by the Financial Services Branch.
- If Marketing Branch accounting staff find an error, they will adjust the affected commission's invoice accordingly within 30 calendar days and write a letter to accompany the corrected invoice, explaining the error and need for adjustment.
- To encourage commissions to seek clarification on billing charges if they have questions, the Marketing Branch authorizes its accounting staff to spend up to two hours on responding to a commission's request for more information regarding a specific invoice. Beyond two hours, the Branch will bill any affected commission on its next invoice for the hourly cost of additional accounting research, unless it is determined that the invoice in question contained an inadvertent error made by the Department.

### *C502 PAYMENT OF UNDISPUTED CHARGES*

Documentation prepared by Marketing Branch accounting staff must satisfy the inquiring commission that it is liable for the disputed charges. If questions remain, the Department

expects the affected commission to pay all undisputed charges by the invoice due date and simultaneously submit a disputed charges letter containing the basis for its nonpayment of the balance.

### *C503 REFERRAL TO THE EXECUTIVE COMMITTEE*

Within two working days of receipt of a commission's disputed charges letter, the Department will notify the protesting commission in writing that the Marketing Branch has referred the disputed charges letter to its Executive Committee. The Committee will confer to (i) determine whether the protesting commission is liable for the disputed charges, and (ii) make a recommendation to the Branch Chief.

#### *C503.1 Composition of an Ad Hoc Disputed-Charges Subcommittee*

The Executive Committee shall have the flexibility to appoint at least three marketing program executives on a case-by-case basis to serve on a disputed-charges review subcommittee. However, any chief executive is ineligible to serve on such subcommittee when his or her own commission's disputed charges are the subject of the review.

#### *C503.2 Disputed Charges Review Process*

The Department's notification regarding the timing and procedure for review of any commission's disputed charges letter will state that:

- The commission that has submitted a disputed charges letter has the right to be present to make its case when the Executive Committee or Disputed Charges Review Subcommittee confers.
- If no representative is present, the Marketing Branch will distribute the disputed charges letter to all members of the Executive Committee or Disputed Charges Review Subcommittee.
- The Executive Committee or Disputed Charges Review Committee shall confer in a timely manner, accounting for work schedules and demands, regarding the merits of the program's dispute
- Within five working days of receiving the Executive Committee or Disputed-Charges Subcommittee's recommendation, the Marketing Branch will notify the affected commission in writing of the Department's decision.

#### *C503.3 Demonstrated Effectiveness*

Since its inception, the disputed charges policy and review process outlined in C503 proven to be an effective means for resolving disputes to the satisfaction of all

affected parties. Therefore, the Department will continue to rely on the Executive Committee to manage review and resolution of disputed charges.

*C504 DISPUTED CHARGES ALTERNATIVE SCENARIOS TIMETABLE*

<b>DISPUTED CHARGES TIMETABLE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
Dispute specific charges that appear on Branch's invoice	Affected commission	Within period before due date on invoice
Analyze disputed charges	Marketing Branch Staff	Within 10 working days of request
If Branch was in error, adjust future invoice of affected commission, write letter to explain error and need for adjustment	Marketing Branch Staff	Within 30 calendar days of verifying accounting error
If Branch documents charges but commission decides to protest, pay all charges not disputed and submit disputed charges letter containing basis for nonpayment of balance	Affected commission	Within period before due date on invoice
Notify protesting commission that its disputed charges letter has been referred to the Executive Committee	Marketing Branch Chief	Within 2 working days of receipt of commission's disputed charges letter
Review disputed charges and make recommendation to the Marketing Branch Chief	Executive or Disputed Charges Committee	Earliest date at which at least three members are available to confer
Notify protesting commission of the Department's decision	Marketing Branch Chief	Within 5 working days of receiving Executive Committee's recommendation
SCENARIO I: (a) Executive Committee finds that the commission is liable, and the commission agrees to pay in full on time	Affected commission	Within 30 calendar days of receipt of the Department's decision

DISPUTED CHARGES TIMETABLE		
Action	Party	Time Frame
SCENARIO I: (b) Executive Committee finds that the commission is liable, and the commission agrees to pay but is late; interest is added on amount due	Marketing Branch Staff	Upon commission's failure to pay within 30 calendar days of receipt of the Department's decision
SCENARIO II: Executive Committee finds that the commission is liable, but the protesting commission refuses to pay the disputed charges. The Department notifies board of impending action to attach protesting commission's bank account for disputed amount and/or issue a cease and desist order	California Department of Food and Agriculture	Within 30 calendar days of receipt of the Department's decision
SCENARIO III: (a) Executive Committee finds that the commission is not liable for any or all of the disputed charges. The Department adjusts affected commission's next invoice accordingly for overcharges from the month in dispute (disputed charges refunded in full).	Marketing Branch Staff	Within period before issuance of next invoice
SCENARIO III: (b) Executive Committee finds that the commission is not liable for any or all the disputed charges and recommends another cost recovery source, e.g., MPS or distribution of costs to all programs	Marketing Branch Staff	Immediately upon resolution by Executive Committee and decision by the Department

## CHAPTER 6 - FINANCE

### C600 OVERVIEW

Commissions, with the concurrence of the California Department of Food and Agriculture (Department), are authorized by their individual statutes to allocate and expend their resources and to administer their own programs. Commission laws view commission members as being qualified to establish budgets for their respective industries. However, the Department is responsible for ensuring that expenditure of mandatory assessments accords with authorized activities.

### C601 BUDGETS AND ASSESSMENT RATES

The Department's Marketing Branch is responsible for reviewing and concurring in the budgets and budget amendments of most commissions. The Department expects each affected commission to submit its budget to the Marketing Branch not more than 30 calendar days following approval by its board of directors. The Department is required to complete its review and concurrence within 15 to 30 calendar days of receipt of the budget (depending on the review period stipulated in each commission's authorizing statute).

#### C601.1 *Budget Concurrence Prior to Beginning of Fiscal Year*

The Department understands that most marketing programs find it necessary to hold their budget-and-assessment-setting meeting as close as possible to the start of the fiscal year. This allows for the best possible estimate of production and thus, assessment revenues for the upcoming season. However, most commissions laws require the commission to submit its board-approved budget for Department concurrence prior to expending funds other than for salaries and wages.

#### C601.2 *Time is of the Essence*

The Department urges commissions to submit board-approved budgets for Department concurrence as soon as possible after its budget-setting meeting.

### C602 GOVERNMENT RATES AND DISCOUNTS

Commission board members and employees are entitled to state discounts and certain tax exemptions while conducting official commission business -- for example, to reduce travel costs. Upon request, the Marketing Branch will supply a reference letter that commissions may give vendors to clarify commissions' legal status as State entities and, thus, their eligibility for all discounts and exemptions that are generally available to any State government entity.

### C602.1 *Identification Cards*

Upon request from a chief executive, the Department issues identification cards to commission board members and employees as evidence of their eligibility for discounts and tax exemptions extended to State government. Appendix C7 contains an application plus steps and procedures for utilization of identification cards.

## C603 *RESERVES*

The Department encourages all marketing programs to ensure they have an up-to-date written reserve policy. The policy provides guidance to both the board of directors and staff in budget planning each year.

Sample language for programs to consider is provided below.

*The \_\_\_\_\_ Board of Directors maintains a minimum unassigned reserve balance of not less than [can be a dollar amount or percentage of total revenues] to provide for economic uncertainties. The Board finds a reserve of this level is prudent for the following reasons/purposes [include commodity-driven findings that apply and any other reasons that are unique to your program]:*

- *The imprecise nature of production estimates made prior to the start of a season which directly affects revenue projections.*
- *Funding for administrative costs from the beginning of a fiscal year to first receipt of assessment revenue.*
- *Funding for rapid response to crises that may occur during the fiscal year.*
- *Funding for unforeseen opportunities that arise during the year.*
- *Funding for unforeseen legal expenses exceeding the budget for such expenses.*

*The Board designates its reserve balance as:*

- *A Reserve for Contingencies of [either dollar amount or percentage of total revenues] that serves as the initial source of additional funds when needed, and*
- *A more long-term “restricted” reserve of [\$ amount or percentage].*

*While the Board recognizes the need to set aside reserves for unanticipated challenges or opportunities and for financial stability, it also recognizes that assessment dollars are intended primarily for accomplishing the objectives defined in the commission law.*

#### C604 DEPOSIT ACCOUNTS

The Department expects commissions to exercise prudence in safekeeping their funds. Specifically, the Department recommends that commissions follow a protocol similar to that utilized by marketing orders, councils, and agreements (MOCAs). The suggested policy is shown below:

*The Department encourages commissions to deposit program funds in a bank or other depository approved by the California Department of Finance. To receive this clearance, commissions should submit the indicated information for all new depository relationships to the Department of Finance. This includes account transfers necessitated by bank mergers or changes in bank ownership. The statutory information requirements are as follows:*

- *The legal name of the program and the official designation of the account*
- *The name and location of the proposed bank or savings and loan association*
- *Evidence that the bank or savings and loan association is insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC), respectively*
- *The amount, source, and purpose of the funds to be deposited*
- *The type of account, (time deposit, savings account, etc.), length of deposit, and rate of interest the account will earn*
- *Terms and conditions governing the withdrawal of funds*
- *A letter from a representative confirming that the proposed financial institution is aware that the program's funds are public funds and that the institution will therefore handle the program's funds in conformance with all collateralization and investment requirements as specified in the California Government Code*

#### C605 INVESTMENT OF FUNDS

The Department expects commissions to exercise prudence in investing their funds. Commissions must place funds available for investment (i) with the State Treasurer, such as in the Local Agency Investment Fund (LAIF); or (ii) in eligible securities as described in Section 16430 et. seq. of the California Government Code (provided in full in Appendix C10). The Government Code includes, but does not limit, eligible securities to:

- Bonds or interest-bearing notes or obligations of the United States, the State of California, or any county, or city.
- Bonds (see Section 16430 of the Government Code for details)

- Commercial paper of “prime” quality as defined by a nationally recognized rating organization
- Bills of exchange (also known as bankers acceptances)
- Negotiable certificates of deposit
- Bank loans guaranteed by the U. S. Small Business Administration, U.S. Farmers Home Administration, Export-Import Bank (see Section 16430 of the Government Code for additional sources of bank loan or obligation guarantees)

#### C606 *FINANCIAL STATEMENTS*

The Department expects commissions to prepare periodic financial statements pursuant to their individual internal policies and procedures. The Marketing Branch recommends that commissions attach their financial statements to minutes from all meetings at which the chief executive has distributed financial statements.

Marketing Branch staff review these financial statements. If concerns surface regarding a particular commission’s financial condition, either through routine reviews or audit findings, the Department may ask the affected commission to provide additional financial reports. Such reports may include, but are not limited to the following:

- Balance Sheet
- Income and expenses for the reporting period
- Cash flow forecast

#### C607 *LOANS AND LINES OF CREDIT*

Individual commission statutes provide authorization for commissions to borrow money. For purposes of clarifying financial responsibility, the Department recommends that commissions provide a standard clause to be included in any loan or line of credit agreement with a lending institution and adhere to the following procedures:

- In conjunction with a lending institution, prepare a loan proposal or line of credit application containing a standard clause that exempts the State from financial responsibility for paying off the loan. *Standard Clause for Inclusion in Loan Agreements:*  

“Food and Agricultural Code Section [*fill in correct number*] authorizes [*name of commission*] to incur liability in any loan, lease, or other financial transaction up to



the amount of \$\_\_\_\_.”<sup>9</sup>

- Quantify assets and resources the commission proposes to offer as collateral. Collateral may include anticipated assessments.

#### *C608 MOTOR VEHICLE INSURANCE FOR PROGRAM- OWNED VEHICLES*

The Office of Risk and Insurance Management (ORIM) provides vehicle insurance for State-owned vehicles. The Department encourages commissions that own vehicles to purchase coverage under the ORIM plan. ORIM has recommended that commissions that do not participate in the ORIM plan should obtain at least \$1 million in liability coverage. The ORIM insurance plan provides unlimited primary coverage for liability exposures. However, the plan does not include coverage for physical damage losses. Each participating program needs to secure physical damage coverage from a private insurance vendor.

#### *C609 FINANCIAL AUDITS*

Each commission law specifies the audit requirements for that commission. In most cases, the law requires that the Department concur in a commission’s selection of an audit firm.

##### *C609.1 Agreed-upon Procedures (Compliance) Audits*

The Marketing Branch worked with the Executive Committee of Program CEOs to establish a set of Agreed-upon Procedures performed by the CPA firm retained to perform annual financial audits. The procedures are designed to verify each program’s compliance with:

- its enabling law,
- department policies and procedures, and
- the program’s internal policies and procedures.

By having the Agreed-upon Procedures performed in conjunction with the annual financial audit, significant savings are realized.

#### *C610 HANDLER AUDITS*

Every marketing program is funded through mandatory assessments on the affected industry. Some commissions assess producers, some assess handlers, and others assess both. In nearly all

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<sup>9</sup> Note: In the absence of a commission-specific code section, substitute the standard clause used by MOCAs. (See Section M608.)

cases, the first handler of the commodity that receives product from producers (including the handler's own production) remits the assessment. Each handler reports the amount sold and/or delivered and remits the appropriate assessment to the commission or collection agency approved for that commodity. Commissions may contract with the Department or other entities to conduct handler audits. Section M803 contains a general description of the Department's handler audit procedures for MOCAs (see the excerpt below). Commissions' handler audits may differ slightly, depending on respective commission statutes.

*Excerpt from the Department's Policies for MOCAs, Section M803:*

*The Department audits handlers to verify accurate and complete reporting of commodity quantities received and sold and assessments paid. To complete this task, the auditor begins with an interview to learn the details of each handler's accounting system. The auditor reviews the handler's receiving records, sales records, and grower accounts. If the auditor finds errors, he or she is required to continue reviewing all applicable records until the accounts are reconciled. Pursuant to FAC 59231-59234.5, the auditor normally examines records for at least the prior three complete fiscal years and is authorized to request records for an additional prior year, or a total of four years. The auditor informs the handler of the audit findings before leaving the premises. Following the audit, the auditor sends a letter to the handler and the affected MOCA to indicate whether the handler reported correctly. This letter states whether a refund is forthcoming or whether the handler owes additional assessments, penalties, interest, and/or collection costs.*

#### **C611 OFFICE OR PROPERTY LEASE TERMINATION**

The Department recommends that commissions include a release clause in every lease contract that relieves the commission of any obligations under the lease contract to pay lease costs in the event the commission is terminated. If the leaseholder will not agree to the recommended clause, the Department expects that the affected commission will carry a reserve sufficient to pay in full any lease obligation that will result should the commission cease operations.

*Recommended Office / Property Lease Termination Clause:*

*"It is mutually agreed that if the [name of commission] is terminated by any of the methods allowed under California law, [the commission name's] liability under this lease agreement will continue only until the expiration of the then-current marketing season as defined in the commission law. As of the date of the termination, neither the State of California nor the [name of commission] shall have further liability to pay lease costs under this agreement, and the Contractor shall not be obligated to perform any provisions of this lease agreement."*

## C612 ASSESSMENT CONCERNS

Invoking the police powers of the State to collect mandatory assessments requires extraordinary care in implementation to protect the rights of assessment payers while also ensuring program viability.

### C612.1 *Response to Nonpayment of Assessments*

Commissions shall consult with legal counsel before deciding to refuse to provide services to entities that have not paid assessments.

### C612.2 *Good Standing*

The Department recommends that commissions define “good standing” and regulate commission membership accordingly. The following information from Chapter 8 of the Department’s Policies for MOCAs offers a sample set of criteria:

*Excerpt from the Department’s Policies for MOCAs, Section M804.4:*

*The Department may remove board members who are not in good standing. MOCA board members are in good standing if they are not currently parties in litigation that involves the program and they are timely in:*

- *Paying their assessments*
- *Completing their annual Conflict of Interest Statements (Form 700)*
- *Completing the State ethics training required of all public officials*
- *Completing the State mandated harassment and abusive conduct prevention training*
- *Providing information that is required for proper functioning of the MOCA, as requested by the program*

*Board members who have violated state Equal Employment Opportunity (EEO) policies, including those prohibiting sexual harassment, discrimination, retaliation, and creating a hostile work environment are subject to removal from their position by the Department.*

### C612.3 *Nonpayment of Assessments as Grounds for Removal of Commissioners*

The Department may remove any commissioners it has appointed who are not current in their assessment payments.

### C612.4 *Voting Rights of Delinquent Assessment Payers*

The Department and commissions may not exclude producers or handlers whose assessments are delinquent or unpaid from voting in board elections or referenda.

## CHAPTER 7 - LOBBYING

### C700 OVERVIEW

Existing commission laws do not expressly prohibit “lobbying.” The powers and duties found in most commission laws authorize agricultural commodity advertising and sales promotion, education, and “the presentation of facts to and negotiations with state, federal, or foreign government agencies on matters which affect the marketing of any commodity” (see individual commission statutes for variations on this basic premise).

### C701 ONE VOICE

The Department encourages commissions to coordinate with the Marketing Branch regarding their policy-related communications with the industry and general public as well as with other agencies of government, including the Legislature or Congress. This practice serves to enable the industry and the Administration to adopt a unified policy position on agricultural commodity issues.

#### C701.1 *Routine Communications*

The Department acknowledges that commissions’ efforts to educate and inform are often routine communications intended to clarify commodity-specific implications of policy changes as they arise. Such communications do not require prior review or concurrence by the Department.

#### C701.2 *Alternative Opinion*

When a commission is aware of and understands Administration policy but seeks to present alternative or expanded points of view, commissions are advised to engage with the Department before communicating its perspective to the industry or other governmental entities

### C702 TIME FRAME FOR REVIEW

When a commission is unsure of the Administration’s position on a particular issue, the Department expects that commission to ask the Marketing Branch to review and consider approving materials that are intended for publication and/or direct distribution to industry and/or governmental decision-making agencies.

#### C702.1 *Routine Review*

In most cases, the Department will complete its review and respond to the requesting commission within five working days.

*C702.2 Emergency Review*

When a commission identifies any situation as an emergency and provides timely notification that allows sufficient time for expedited review, the Department will make every effort to respond within 24 hours of its receipt of the proposed communications.

## *CHAPTER 8 - ENFORCEMENT*

### *C800 OVERVIEW*

Each commission is responsible for investigation and enforcement of its enabling law. Enforcement activities include:

- Auditing handlers subject to statutory and regulatory provisions
- Obtaining delinquent assessment reports from handlers
- Overseeing full payment of delinquent assessments, including pursuing remedies through legal action, such as civil actions
- Investigating complaints filed regarding with the commission regarding alleged violations of the commission law or the commission's rules and regulations.

### *C801 RECORDS REVIEW*

Each commission law authorizes the commission the discretion to take whatever actions are necessary to ensure its proper administration, including requiring that handlers maintain books and records that comprehensively and accurately reflect the operations of the business. Each commission law also requires handlers to allow a representative from the commission, or its authorized agent, to inspect books and records relating to payment of assessments.

### *C802 ENFORCEMENT POLICY*

The California Department of Food and Agriculture (Department) expects that each commission will establish a set of written enforcement policies either as part of its bylaws, a policy manual or as a separate enforcement policy document. As a courtesy, the Department can review and provided feedback to commissions regarding their enforcement policies. The policy should include, but not be limited to, the following:

- An assessment report form template to be provided to all handlers
- Templates for any other report forms required by the commission that are necessary for the proper administration of the commission
- When report forms, including assessment reports and payments, are due from handlers
- What notice will be provided to handlers that are delinquent in filing required reports or payments
- What steps will be taken to collect delinquent reports or assessments from handlers that do not respond timely to a notice of delinquency.
- What criteria will be used to determine whether and how penalties and interest on delinquent outstanding balances will be applied.

## CHAPTER 9 - NEW AND TERMINATING COMMISSIONS

### C900 OVERVIEW

Appendix C8 depicts steps involved in establishing a new commission. In short, the proponents of a commission must secure a commitment from an Assembly Member or Senator to carry legislation, craft language for a bill to authorize the commission, and guide the bill through the legislative process until, ultimately, the Governor signs it into law. At that point, commission proponents must be guided by the implementation procedures provided in the new commission law and adhere to the additional procedures described in this Chapter. The California Department of Food and Agriculture (Department) advises any commission that finds it necessary to terminate its operations to follow the procedures outlined at the end of this Chapter,

### C901 MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT

Upon enactment of authorizing legislation, the proponent group wishing to create a new commission enters into a memorandum of understanding (MOU) with the Department.

#### C901.1 MOU Specifications

In the standard form MOU (see Appendix C9), the Department's Marketing Branch specifies the amount that proponents must deposit with the Department to start the authorization process. The MOU also provides an estimated cost for each step in creating a new commission and further delineates the responsibilities of all parties.

### C902 PROPONENTS' RESPONSIBILITY FOR COSTS

New commission laws and the Department's MOU require proponents of a new commission to pay a deposit sufficient to cover the expenses the Department incurs as it conducts an industry referendum. After the commission has been established, the Department will return to the proponents any portion of the deposit it did not use. If actual costs exceed the Department's estimate, however, commission proponents must pay the additional actual costs, regardless of outcome of the referendum. Most commission laws allow commissions established through referendum to reimburse the original proponents for their deposit to the Department plus any additional expenses related to implementation of the commission.

### C903 REFERENDUM

Following enactment of authorizing legislation and finalization of the MOU between the Department and commission proponents, the Department conducts the required implementation referendum. After the MOU is signed and before the referendum is conducted, the Department Marketing Branch develops a list of producers and/or handlers eligible to vote in the referendum. The Branch may use existing lists if the lists are deemed

acceptable or their accuracy has been certified. If the implementation referendum wins approval by the industry, the Department declares the commission operative.

*C904 APPOINTMENT OF INITIAL BOARD OF DIRECTORS*

Once the commission is declared operative, the Department will call for nominations and elections to fill board positions unless the commission law provides otherwise. Once board positions are filled, the Department will work with the new members to call the first organizational meeting(s) of the board.

*C905 BOARD RESPONSIBILITY FOR MANAGEMENT OF NEW COMMISSIONS*

The Department expects timely implementation of a new commission, including that the board will secure the services of a chief executive, either as an employee or contractor, to direct and coordinate the administrative and fiscal matters of the program. Until the program has a chief executive, the Department considers the chairperson to be functioning as the acting chief executive, unless the commission suggests an alternative interim management arrangement, such as a management committee composed of board members. The Department recommends that while exercising the functions of acting chief executive, the chairperson should not have access to confidential and/or proprietary industry information that is garnered by the commission.

*C905.1 Avoiding Conflict of Interest*

The Department strongly discourages commissions from seeking management services from providers who may have conflicts of interest. If a potential conflict of interest exists, commissions should consult with their legal counsel regarding the need to perform a conflict analysis. Based on the outcome of this analysis, the Department may require the management services contractor or employee to provide adequate safeguards to mitigate any conflicts. This may include the following methods:

- The commission hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process.

*C905.2 Potential for Additional Marketing Branch Charges*

Until a chief executive is in place, the new commission may rely on the Department for day-to-day involvement in operations. In these circumstances, the initial budget adopted by a new commission should anticipate higher-than-usual monthly Marketing Branch charges for this higher level of service.



## C906 TERMINATION

The Department requires that a terminating commission retain sufficient reserves to pay outstanding claims. In addition, the Department recommends that terminating commissions follow planning procedures similar to those of terminating marketing orders, councils, and agreements:

*Excerpt from the Department's Policies for Marketing Orders and Agreements, Section M907:*

*The Department expects a terminating marketing order or agreement to (i) prepare a wind down plan with details regarding how the marketing order or agreement will terminate its affairs; and (ii) recommend individuals that the Department shall then appoint to a wind down committee. The Department expects the wind down plan to include the following:*

- *Date for closing the office*
- *Date for notifying employees of their termination*
- *Schedule for notifying vendors of termination of services*
- *Copy of notification to bank of addition of Department employees as account signatories*
- *Plan for disposition of assets*
- *Plan for transfer of intellectual property*
- *Plan for archiving and transfer of records to the Department*
- *Wind down budget, including:*
  - *Payment of employment leave balances*
  - *Payment of employee severance (if provided for in the commission's employment manual or individual employee contracts)*
  - *Resolution of pension benefits (if applicable)*
  - *Plan for commissioning final audit*
  - *Plan for the refund of remaining fund balances*

### C906.1 *Payment of Termination Costs*

Terminating commissions shall pay the full costs incurred by the Department in terminating the program.

## CHAPTER 10 - CONTRACTS AND ACQUISITIONS<sup>10</sup>

*The Department's policies and procedures regarding contracts and acquisitions for marketing programs are provided in a separate document titled: "Contracts and Acquisitions Policy for Marketing Programs", which can be accessed on the Marketing Branch website at:*  
[www.cdfa.ca.gov/mkt/mkt](http://www.cdfa.ca.gov/mkt/mkt).

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<sup>10</sup> Chapter updated November 2023.

## *COMMISSION APPENDICES*

## Appendix C1 – Marketing Program Informational Comparison

CALIFORNIA MARKETING ORDERS & AGREEMENTS, COUNCILS, AND COMMISSIONS: INFORMATIONAL COMPARISON			
	MARKETING ORDER or AGREEMENT	COUNCIL	COMMISSION
<b>This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.</b>			
<b>STATUTORY AUTHORITY FOR CREATION</b>	Under general enabling authority provided in the California Marketing Act of 1937 and implemented administratively by the Department of Food and Agriculture.	Through commodity specific legislation.	Through commodity specific legislation.
<b>SCOPE OF ACTIVITIES</b>	Promotion, advertising, education, production research, quality standards, inspection and supply control.* *No marketing order currently utilizes supply control authority.	Promotion, advertising, education, marketing research, and research. Subject to CDFA's approval, any council may petition to adopt and administer any activity authorized by the California Marketing Act.	Promotion, advertising, education, marketing research, and production research. Subject to CDFA's approval, any commission may petition to adopt and administer any activity authorized by the California Marketing Act.
<b>PROCEDURE TO ESTABLISH</b>	A. Industry prepares preliminary draft of order. B. If deemed appropriate by CDFA, CDFA conducts public hearing. C. CDFA conducts industry vote if hearing testimony demonstrates that proposed marketing order may benefit the industry. D. If industry meets specified voting requirements, CDFA orders the marketing order into effect.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies council.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies commission.
<b>AMENDMENTS</b>	Major amendments must be developed in the same manner as the original order. CDFA may make minor amendments upon recommendation of a Board <b>only</b> for clarification or administrative purposes.	Same procedure as establishing the original council law. However, an industry vote generally is not required. In general, councils have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.	Same procedure as establishing the original commission law. However, an industry vote generally is not required. In general, commissions have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.
<b>PROGRAM AUTHORITY AND ROLE OF THE DEPARTMENT</b>	Marketing order and agreements Boards are advisory to CDFA. All actions of an Advisory Board are subject to CDFA's approval.	Councils are advisory to CDFA. All actions of a Council are subject to CDFA's approval.	In general, commissions are not advisory to CDFA. However, CDFA has authority in most cases to issue cease and desist orders in response to commission actions that CDFA deems to be not in the public interest. For many commissions, CDFA must concur with the annual budget and activities statement. CDFA has a non-voting ex-officio member position on most commissions.

## Appendix C1 Continued

## CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: INFORMATIONAL COMPARISON

	MARKETING ORDER or AGREEMENT	COUNCIL	COMMISSION
MEMBERSHIP AND SELECTION PROCESS	Advisory Board may consist of producers and handlers, depending upon who is affected, and may have one public member. Industry peers recommend individuals through a nomination process, and CDFA appoints members from among those nominated.	Generally, the same as marketing orders and agreements.	Commissions may consist of producers and handlers, depending upon who is affected, and may be required to have one public member that is appointed by CDFA (from nominees recommended by the commission). With exception of one commission, industry members are elected directly by industry peers and are not appointed by CDFA.
CONTINUATION	A public hearing is required at least once every five years. Some marketing orders and agreements have referenda, rather than hearings, to meet the continuation requirement.	In general, an industry hearing is required at least once every five years. However, the Beef Council has no specified periodic re-approval requirement.	Re-approval requirements and intervals vary from commission to commission. In general, an industry vote or hearing is required at least once every five years.
TERMINATION	<p>A. Advisory Board may recommend that a budget and assessment rate not be established, in effect suspending the Board. CDFA may terminate a marketing order after three years if it has received no recommended budget and assessment rate.</p> <p>B. CDFA may conduct a public hearing if it receives a petition supported by at least 25% of producers or handlers that are directly affected and who produce or handle at least 25% of the volume. If questions exist as to the effectiveness of the marketing order, CDFA conducts an industry vote to determine whether the marketing order or agreement shall continue.</p> <p>C. CDFA must terminate a marketing order if it receives a petition supported by at least 51% of producers or handlers that are directly affected and who produce or handle at least 51% of the volume.</p>	<p>In general, councils can be terminated only during the continuation process.</p> <p><b>Note:</b> Termination of the Beef Council shall be submitted to an industry vote if CDFA or the Council determines that the Council is not effective. In addition, producers may petition for a vote of the industry.</p>	<p>Generally, as follows:</p> <p>A. By a 2/3 vote, a commission may recommend that CDFA conduct an industry vote for termination.</p> <p>B. CDFA conducts an industry vote for termination if it receives a petition supported by 20% of the affected producers or handlers who account for 20% of the volume.</p> <p>C. CDFA terminates a commission directly if it receives a petition supported by 51% of the affected producers or handlers who account for 51% of the volume.</p>
NON-COMPLIANCE PENALTIES	Criminal and civil	Criminal and civil	Criminal and civil

**APPENDIX C2 – CONFIDENTIALITY AGREEMENT AFFIDAVIT**  
**CONFIDENTIALITY AND INDEMNITY AGREEMENT**  
**AND AFFIDAVIT (USED BY MOCAs):**  
**TEMPLATE**

**Confidentiality Agreement**

In keeping with the policy and laws of the State of California, this Agreement serves to protect confidential and proprietary information that individual producers and handlers provide to marketing orders, councils, and agreements (MOCAs) in the course of meeting statutory standards and requirements. If exempted by law from disclosure under the California Public Records Act, confidential and proprietary information is not open to the public. The purpose of this Agreement is to specify expected protections against unlawful use, disclosure, modification, and/or destruction of such information. Violation of this Agreement makes the violator subject to administrative, civil, and/or criminal action.

***I. PARTIES to This Confidentiality Agreement:***

*[Print or type name of MOCA]*

\_\_\_\_\_  
 An Instrumentality of the State of California’s Department of Food and Agriculture (hereafter “Department”) and

*[Print or type name of individual contractor or firm providing executive/management services to the MOCA]*

\_\_\_\_\_  
 Name: First, MI, Last [individual contractor -- or firm representative (including title)]

**II. DEFINITION of Confidential Information *[to be initialed by contractor]:***

I, \_\_\_\_\_, agree to protect the following types of information:  
INITIAL

- Information filed with and/or generated by the [insert name of MOCA] in the course of conducting ordinary and statutory business operations, including but not limited to:
  - Handlers’ filings with the Department
  - Handlers’ filings with the [insert name of MOCA] to support management of marketing, inspection, and research activities and disease and pest infestation control
  - Individual producers’ records of their operations
  - [Insert name of MOCA]’s internal confidential records (e.g., personnel, legal)

**III. PROTECTION of Confidential/Proprietary Information *[to be initialed by contractor]:***

I, \_\_\_\_\_, agree not to disclose protected information ... *except:*  
INITIAL

- To a person explicitly entitled by the Department and the [insert name of MOCA] to receive it.
- Any attorney employed by the Department or the [insert name of MOCA] to provide advice and counsel regarding confidential information.
- By court order.

I, \_\_\_\_\_, agree not to use protected information for my own self-interest or for the benefit of any other individual  
INITIAL or entity, except in connection with my responsibilities as the [insert name of MOCA]'s Program Executive/Manager.

I, \_\_\_\_\_, agree that the protected information will be retained in accordance with the applicable records retention  
INITIAL policy/schedule.

I, \_\_\_\_\_, agree to keep protected information filed separately from non-protected information, in both hard copy  
INITIAL and electronic formats.

I, \_\_\_\_\_, agree to inform the Department immediately of any request for protected information.  
INITIAL

I, \_\_\_\_\_, agree not to release protected information prior to receiving approval from the Department, unless  
INITIAL compelled by court order.

I, \_\_\_\_\_, agree to notify the Department immediately upon release of protected information under any  
INITIAL circumstances.

#### **IV. INDEMNITY** *[to be initialed by contractor]:*

I, \_\_\_\_\_, agree that unlawful access, use, modification, or disclosure of protected information is grounds for  
INITIAL immediate termination of my contract, or my organization's contract, with the MOCA.

I, \_\_\_\_\_, acknowledge that misuse of protected information may be punishable as a crime or subject to  
INITIAL civil action pursuant to FAC Sections 59233 and 59234.

#### **V. GENERAL TERMS of Confidentiality Agreement** *[to be initialed by contractor]:*

No representations, understandings, or agreements exist between the Parties hereto regarding the use or acquisition of confidential or proprietary information other than those expressly stated in this Agreement. Any modification of the terms of this Agreement may be made only in writing and signed by both Parties.

I, \_\_\_\_\_, acknowledge the following:  
INITIAL

- Termination. This Agreement shall remain in effect for as long as the signing party has possession of or access to confidential records.
- Dispute resolution. In the event of a dispute, the Parties may utilize any and all remedies available under California law. The Parties recognize, however, that the sensitivity associated with the unauthorized release of confidential information may necessitate immediate legal action.
- Governing law and venue. This Agreement shall be governed by and construed according to the laws of the State of California.

In witness whereof, the undersigned have executed this Agreement on the date indicated.

<b>[Name of individual or firm contracting to provide executive/management services]</b>	<b>[Name of MOCA], an Instrumentality of the State of California's Dept of Food &amp; Ag]</b>
<p><b>By:</b> _____ [Contractor or Firm Representative]</p> <p><b>Date:</b> _____</p> <p><b>Address and phone:</b></p> <p>_____</p> <p>_____</p> <p>(       ) -</p>	<p><b>By:</b> _____ [MOCA Chair]</p> <p><b>Date:</b> _____</p> <p><b>Address and phone:</b></p> <p>_____</p> <p>_____</p> <p>(       ) -</p>



### Appendix C3 – MOCA Grievance Procedure

<b>GRIEVANCE PROCEDURE FOR MARKETING ORDERS, COUNCILS, AND AGREEMENTS (MOCAs)</b> <b><u>IMPORTANT:</u> MOCAs are <i>required</i> to follow the grievance procedure outlined in this Appendix. The California Department of Food and Agriculture recommends that commissions adopt and implement a similar procedure.</b>		
Action	Party	Time Frame
<b>Notes:</b> <ol style="list-style-type: none"> <li>Any person aggrieved by the actions or determinations of a marketing order, council, or agreement (MOCA) and unable to resolve the matter informally through review of the problem with the MOCA's chief executive may request a hearing before the MOCA Board's Grievance Committee.</li> <li>"Aggrieved Person" means a member of the industry regulated by the affected MOCA.</li> <li>"Aggrieved Person" does <i>not</i> mean employee. Aggrieved employees must follow the MOCA's employee grievance procedures</li> <li>Due to public requirements for due process, neither the MOCA nor the Department can guarantee the confidentiality of information submitted in written complaints.</li> <li>A MOCA's Executive Committee shall act as the Grievance Committee unless the Board determines that a special Grievance Committee should be appointed. A special Grievance Committee shall be composed of not fewer than three nor more than seven members of the industry.</li> </ol>		
<ul style="list-style-type: none"> <li>Attempt to resolve grievance through informal discussion with MOCA's chief executive</li> </ul>	Aggrieved Person MOCA Chief Executive	<ul style="list-style-type: none"> <li>89 or fewer days from the date of action or determination that is subject of claim</li> </ul>
<ul style="list-style-type: none"> <li>File written claim with MOCA and the Department, via Marketing Branch</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Within 90 days of date of action or determination that is subject of claim</li> <li>If complaint concerns assessment, within 90 days after assessment's final due date, as established by MOCA</li> </ul>
<ul style="list-style-type: none"> <li>Issue confirmation to aggrieved person of MOCA's and the Department's receipt of written complaint</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Within 20 days of receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>Notify aggrieved person and the Department of the date, time, and place of Grievance Committee's meeting</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>At least 20 days prior to the date of the meeting</li> </ul>

**Appendix C3 Continued****GRIEVANCE PROCEDURE FOR MARKETING ORDERS,  
COUNCILS, AND AGREEMENTS (MOCAs)**

**IMPORTANT:** MOCAs are *required* to follow the grievance procedure outlined in this Appendix. The California Department of Food and Agriculture recommends that commissions adopt and implement a similar procedure.

Action	Party	Time Frame
<ul style="list-style-type: none"> <li>Convene to examine facts and circumstances of the grievance with a representative from the Department present at the meeting</li> <li>This process includes consideration of oral and written testimony and other evidence presented by aggrieved person and other interested parties, including but not limited to MOCA staff</li> <li>The meeting shall be recorded and/or transcribed</li> </ul>	Grievance Committee	<ul style="list-style-type: none"> <li>Within 60 days of MOCA's receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>Submit to MOCA Board an analysis of merits of the grievance and recommendation for resolution</li> </ul>	Grievance Committee	<ul style="list-style-type: none"> <li>Within 30 days after Grievance Committee's meeting</li> </ul>
<ul style="list-style-type: none"> <li>Recommend to the Department whether to approve or deny Grievance Committee's recommendation</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Within 60 days of receipt of Grievance Committee's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>Issue final decision to MOCA and aggrieved person</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 60 days of receipt of MOCA's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>If the Department's decision is unfavorable, appeal decision by submitting to the Department a written request for appeal, outlining reasons why appeal is warranted</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Within 60 days of receipt of the Department's decision</li> </ul>
<ul style="list-style-type: none"> <li>If appeal is denied by the Department or unfavorable decision is upheld, petition appropriate court for judicial review</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Not time-specified</li> </ul>
<ul style="list-style-type: none"> <li>If grievance concerns assessments, file assessment reports and pay assessments until matter is resolved</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>According to ordinary assessment report filing and payment schedule</li> </ul>
<ul style="list-style-type: none"> <li>If grievance concerns assessments and aggrieved person prevails in all or part of the claim, refund amount of assessment payments, penalties, and/or interest due to aggrieved person according to ultimate decision</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Not time-specified</li> </ul>

## Appendix C4 – Public Hearing - Suggested Testimony Topics

### SUGGESTED TOPICS FOR WITNESSES AT PUBLIC HEARINGS

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The California Department of Food and Agriculture (Department) conducts public hearings to receive evidence and testimony regarding the establishment, continuation, and/or effectiveness of marketing programs. The Department encourages witnesses to provide examples of previous effectiveness or explanations for poor performance and perhaps plans for improvement. While specific questions are posed at every public hearing to reflect the particular situation at hand, in general, witnesses will be asked to address various aspects of most if not all of the following concerns:

- Production, economic, and marketing conditions affecting the industry
- Research efforts and results
- History and effectiveness evaluation of:
  - Promotions in domestic and international markets
  - Monitoring and issues management regarding such matters as trade practices and/or government regulation
  - Wise, efficient, and legally compliant expenditure of assessment revenues
  - Adaptation and accommodation over time to changes in the industry and the marketplace
  - Enhancement of profitability and competitiveness in the industry
  - Generation of public benefit
- Significant accomplishments
- Ongoing industry needs that this program does or should address
- Additional activities or changes, if any, that this program could undertake that would enable it to better serve the industry and the public

**APPENDIX C5 – LIST CERTIFICATION FORM*****VOTER LIST CERTIFICATION FORM***

The California Department of Food and Agriculture (Department) requires all commission chief executives to certify that, to the best of their knowledge, the official producer and/or handler records they submit to the Department's Marketing Branch are current, accurate, and complete.

\*\*\* IMPORTANT \*\*\*

The voting list certification form must be submitted exactly as presented below, except for filling in the blanks with the indicated information. Any alteration of the form will cause the Department to reject it as invalid.

**VOTER LIST CERTIFICATION**

I, \_\_\_\_\_ [name], \_\_\_\_\_ [title], with  
\_\_\_\_\_ [program name], declare as follows:

1. As \_\_\_\_\_ [title], I am the person charged with the responsibility of maintaining and updating the list of California \_\_\_\_\_ [commodity name] growers and/or handlers that are subject to the provisions of the California \_\_\_\_\_ [program name].
2. Since the last "notice to file" process completed in \_\_\_\_\_ [year], the list has been updated on a regular basis. The procedure used to update the list is: \_\_\_\_\_ [describe].
3. The list I am providing to the Department on this date is, to the best of my knowledge, a current, accurate, and complete list of California \_\_\_\_\_ [commodity name] growers and/or handlers that are subject to the provisions of the California \_\_\_\_\_ [program name].

\_\_\_\_\_  
Date

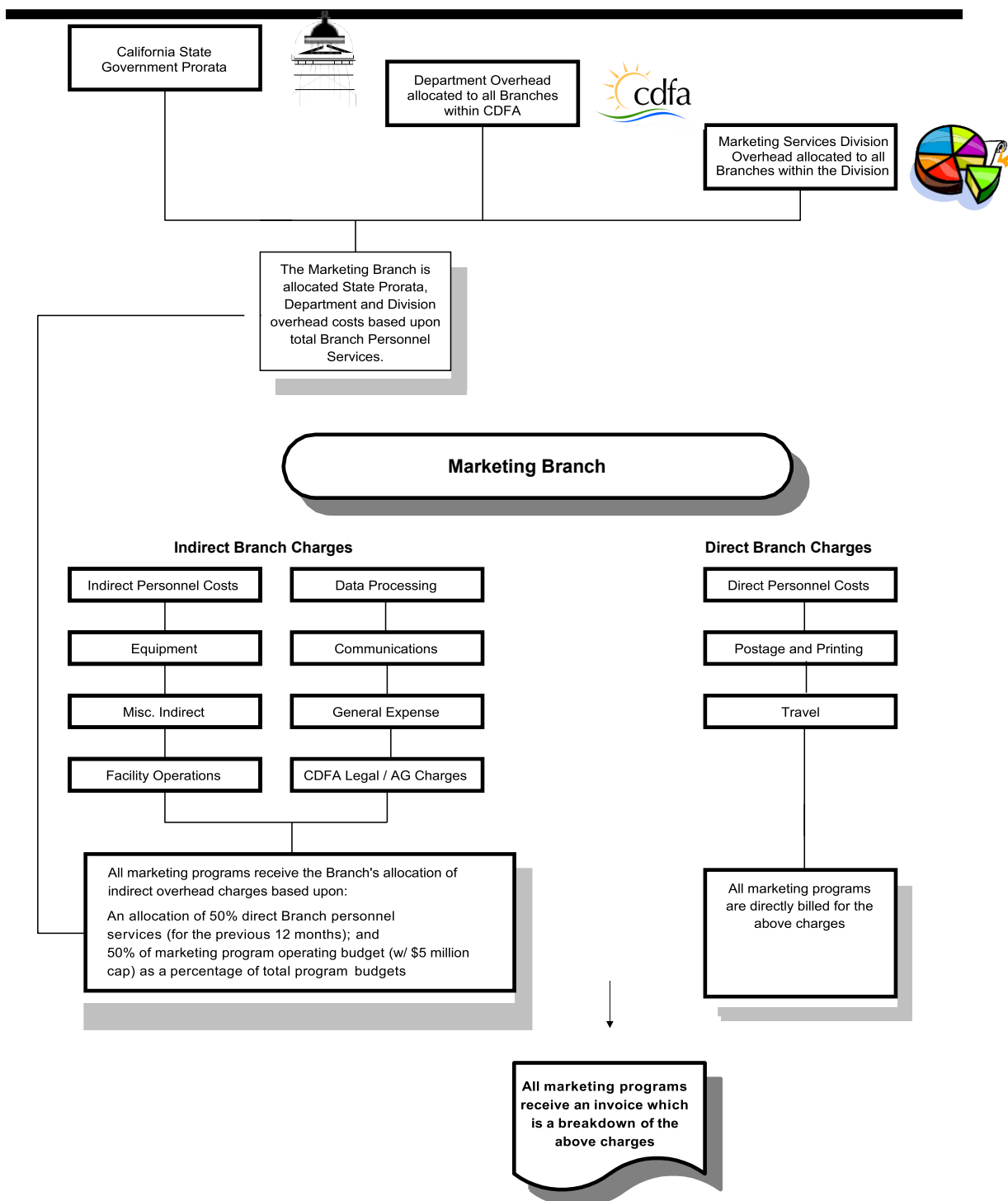


\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (print or type)

## APPENDIX C6 – MARKETING BRANCH COST ALLOCATION

## COST ALLOCATION OF MARKETING BRANCH CHARGES



## APPENDIX C7 – STATE I.D. CARD APPLICATION

### CALIFORNIA GOVERNMENT IDENTIFICATION CARD: APPLICATION AND PROCEDURES FOR USE

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The Marketing Branch of the California Department of Food and Agriculture (Department) issues California government identification cards (ID cards) to staff and board members of commissions in order to give these individuals access to government rates while traveling on official business. Before issuing an identification card, the Marketing Branch requires the program's chief executive and the card applicant to agree to the terms in this application.

#### **Application Steps:**


1. The chief executive completes the chief executive certification and sends the form to the applicant.
2. The applicant completes the applicant certification section and returns the form to the commission.
3. The commission retains the original completed form and submits a copy to its Marketing Branch representative.
4. Upon approval, the Marketing Branch mails the ID card to the commission, which forwards it to the applicant.

[See following page]

### State I.D. Card - Chief Executive Certification

In requesting an ID card for the person named below, I hereby certify and agree to the following:

- The applicant named below conducts official business for this commission.
- I have explained to the applicant that the ID can be used only in conjunction with conducting official business on behalf of this commission.
- I will maintain a copy of this application as long as the applicant is affiliated with this commission.
- I will retrieve the ID card upon cessation of the applicant's affiliation with this commission.
- This commission indemnifies the California Department of Food and Agriculture and the State of California from any liability created by improper use of the ID card.

Date:	Name of Program:
Name of Applicant:	Applicant's Position:
Name of Chief Executive:	Chief Executive's Signature: 

### Applicant Certification

In requesting a California government ID card, I hereby certify and agree to the following:


- I will use the ID card only in conjunction with conducting official business on behalf of the commission named above.
- I will not transfer or loan the card to another person.
- I will return the card to the commission immediately upon cessation of my affiliation with the commission.
- I will be solely and fully responsible for any and all penalties associated with improper use of the card.

\_\_\_\_\_  
Name of Applicant (print or type)

\_\_\_\_\_  
Signature of Applicant / Date

**FOR DEPARTMENT OF FOOD AND AGRICULTURE, MARKETING BRANCH USE ONLY**

**APPROVED:**

Marketing Branch Chief Signature 	Date Approved:	Card Number:
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## Appendix C8 – New Commission Establishment Timeline

NEW COMMISSION ESTABLISHMENT TIMELINE		
Action	Party	Time Frame <sup>9</sup>
Preliminary Work		
<ul style="list-style-type: none"><li>Conduct meetings with affected industry to determine whether sufficiently broad base of support exists</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not applicable</li></ul>
<ul style="list-style-type: none"><li>Prepare written rationale that documents adequate industry support</li></ul>	Proponents	<ul style="list-style-type: none"><li>Prior to seeking authors for legislation</li></ul>
<ul style="list-style-type: none"><li>If support is adequate, secure commitment from an Assembly Member or Senator to carry authorizing legislation</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not applicable</li></ul>
<ul style="list-style-type: none"><li>Craft bill language and work with author to provide necessary support throughout the legislative and bill-signing process</li></ul>	Proponents	<ul style="list-style-type: none"><li>Not applicable</li></ul>
<ul style="list-style-type: none"><li>Estimate costs of implementing proposed commission</li></ul>	Department	<ul style="list-style-type: none"><li>Within 10 days after receipt of request</li></ul>
<ul style="list-style-type: none"><li>Deposit full amount of cost estimate with the Department and sign Memorandum of Understanding (MOU)</li></ul>	Proponents & Department	<ul style="list-style-type: none"><li>At Proponents’ discretion</li></ul>
Implementation Process Timeline Begins		
<ul style="list-style-type: none"><li>Assemble list of growers and/or handlers who would be assessed ... if necessary, contact all handlers on record in order to develop the producer list</li></ul>	Department	<ul style="list-style-type: none"><li>Up to 90 days after signing of MOU</li></ul>
<ul style="list-style-type: none"><li>File with the Department a list of affected growers, including each one’s production volume</li></ul>	Handlers	<ul style="list-style-type: none"><li>Within 30 days of receipt of the Department’s request</li></ul>
<ul style="list-style-type: none"><li>Conduct referendum (industry vote) for new commission</li></ul>	Department	<ul style="list-style-type: none"><li>Typical industry voting period for new commission is 30 days, however, each commission law may indicate a specific duration for conducting the referendum</li></ul>
<ul style="list-style-type: none"><li>Monitor referendum to determine that statutory standards and requirements are met</li></ul>	Department	<ul style="list-style-type: none"><li>Typically, 30 days</li></ul>
<ul style="list-style-type: none"><li>For the referendum to be <u>valid</u>, the percentage of eligible voters specified in the proposed commission’s authorizing legislation must vote</li></ul>	Affected Parties	
<ul style="list-style-type: none"><li>For the referendum to <u>pass</u>, it must meet the specific standards set in the proposed commission’s authorizing legislation</li></ul>		



<b>Appendix C8 - Continued</b> <b>NEW COMMISSION ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame<sup>11</sup></b>
<ul style="list-style-type: none"> <li>If required participation in referendum is not achieved, exercise option to request voting period extension</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Typically not more than 30 additional days, however, each commission law may indicate a specific duration for extending the referendum</li> </ul>
<ul style="list-style-type: none"> <li>If required participation is not achieved, deem referendum to be invalid and do not tally votes</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 10 business days of end of voting period to ensure all ballots submitted by mail are received</li> </ul>
<ul style="list-style-type: none"> <li>Tally votes and certify results</li> <li>Sign order to approve or deny creation of new commission</li> </ul>	Department	<ul style="list-style-type: none"> <li>Within 10 business days of end of voting period to ensure all ballots submitted by mail are received</li> </ul>
<ul style="list-style-type: none"> <li>If approved, notify members of industry</li> </ul>	Department	<ul style="list-style-type: none"> <li>Generally, new commission goes into effect before beginning of next marketing season</li> </ul>

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<sup>11</sup> Time frames are advisory only, unless otherwise indicated.

## **Appendix C9 – Elements of MOU for Proposed Commission**

### **ELEMENTS OF A MEMORANDUM OF UNDERSTANDING (MOU) FOR A PROPOSED COMMISSION**

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Upon enactment of authorizing legislation, the California Department of Food and Agriculture (Department) advises any group of Proponents for a new commission to enter into a memorandum of understanding (MOU). Each MOU stipulates roles and responsibilities of both the Department and the Proponents that are applicable throughout the pre-implementation phases of the new commission.

#### **AUTHORITY**

Every commission has its own enabling statute.

#### **ROLE AND RESPONSIBILITIES OF THE DEPARTMENT**

To implement the formative marketing program processes, all authorizing legislation assigns specified administrative and enforcement powers, duties, and responsibilities to the Department. Within the Department, the Marketing Branch of the Division of Marketing Services is primarily responsible for carrying out the following activities:

1. With assistance from the Proponent group, establish a list of affected producers and their respective production volumes from the most recent year's harvest.
2. Conduct an industry referendum vote.
3. Tally the referendum results, pursuant to statutory criteria. If the referendum satisfies the criteria, the new commission may be established.
4. If the commission is established, mail a copy of the Notice of Issuance to all affected parties.
5. Appoint initial board members and assist in calling and conducting the first board meeting.

#### **ROLE AND RESPONSIBILITIES OF THE PROPONENTS**

The Department expects Proponents to assist the Marketing Branch in fulfilling relevant Sections of commissions' enabling statutes, as follows:

1. Deposit a sum specified by the Department to defray the expenses the Marketing Branch will incur in carrying out establishment activities. The unexpended portion of this deposit will be returned to the Proponent group.
2. Assist the Marketing Branch with construction of producer and handler lists, as applicable.
3. Educate affected handlers and producers about the proposed commission and the process to establish it.

## APPENDIX C10 – AUTHORIZED INVESTMENTS FOR STATE FUNDS

### CALIFORNIA GOVERNMENT CODE

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#### Section 16430

Eligible securities for the investment of surplus moneys shall be any of the following:

- (a)** Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (b)** Bonds or interest-bearing notes on obligations that are guaranteed as to principal and interest by a federal agency of the United States.
- (c)** Bonds, notes, and warrants of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.
- (d)** Bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the state, municipal utility district, or school district of this state.
- (e)** Any of the following:
  - (1) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended (12 U.S.C. Sec. 2001 et seq.).
  - (2) Debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended (12 U.S.C. Sec. 2001 et seq.).
  - (3) Bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act (12 U.S.C. Sec. 1421 et seq.).
  - (4) Stocks, bonds, debentures, and other obligations of the Federal National Mortgage Association established under the National Housing Act, as amended (12 U.S.C. Sec. 1701 et seq.).
  - (5) Bonds of any federal home loan bank established under that act.
  - (6) Obligations of the Federal Home Loan Mortgage Corporation.
  - (7) Bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended (16 U.S.C. Sec. 831 et seq.).
  - (8) Other obligations guaranteed by the Commodity Credit Corporation for the export of California agricultural products under the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. Sec. 714 et seq.).
- (f)** (1) Commercial paper of “prime” quality as defined by a nationally recognized organization that rates these securities, if the commercial paper is issued by a federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, or limited liability company that is approved by the Pooled Money Investment Board as meeting the conditions specified in either subparagraph (A) or subparagraph (B):
  - (A)** Both of the following conditions:
    - (i) Organized and operating within the United States.
    - (ii) Having total assets in excess of five hundred million dollars (\$500,000,000).
  - (B)** Both of the following conditions:
    - (i) Organized within the United States as a federally or state-chartered bank or a state-licensed branch of a foreign bank, special purpose corporation, trust, or limited liability company.

(ii) Having programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

(2) A purchase of eligible commercial paper may not do any of the following:

(A) Exceed 270 days maturity.

(B) Represent more than 10 percent of the outstanding paper of an issuing federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, or limited liability company.

(C) Exceed 30 percent of the resources of an investment program.

(3) At the request of the Pooled Money Investment Board, an investment made pursuant to this subdivision shall be secured by the issuer by depositing with the Treasurer securities authorized by Section 53651 of a market value at least 10 percent in excess of the amount of the state's investment.

**(g)** Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, that are eligible for purchase by the Federal Reserve System.

**(h)** Negotiable certificates of deposits issued by a federally or state-chartered bank or savings and loan association, a state-licensed branch of a foreign bank, or a federally or state-chartered credit union. For the purposes of this section, negotiable certificates of deposits are not subject to Chapter 4 (commencing with Section 16500) and Chapter 4.5 (commencing with Section 16600).

**(i)** The portion of bank loans and obligations guaranteed by the United States Small Business Administration or the United States Farmers Home Administration.

**(j)** Bank loans and obligations guaranteed by the Export-Import Bank of the United States.

**(k)** Student loan notes insured under the Guaranteed Student Loan Program established pursuant to the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.) and eligible for resale to the Student Loan Marketing Association established pursuant to Section 133 of the Education Amendments of 1972, as amended (20 U.S.C. Sec. 1087-2).

**(l)** Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

**(m)** Bonds, debentures, and notes issued by corporations organized and operating within the United States. Securities eligible for investment under this subdivision shall be within the top three ratings of a nationally recognized rating service.

**(n)** Negotiable Order of Withdrawal Accounts (NOW Accounts), invested in accordance with Chapter 4 (commencing with Section 16500).

*(Amended by Stats. 2015, Ch. 249, Sec. 1. (SB 797) Effective January 1, 2016.)*