

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



**MARKETING ORDER FOR RESEARCH,
EDUCATION, AND PROMOTION OF MILK AND
DAIRY PRODUCTS IN CALIFORNIA**

Effective December 1, 1969
Incorporating Amendments Effective through March 1, 2022

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Summary of Past Amendments

Date	Amendments
October 1, 1971	<ul style="list-style-type: none"> • Redefined the fiscal year so as to be on a calendar year basis. • Placed nomination meetings in the fall prior to October 31. • Redefined the term of office to correspond with the new fiscal year definition.
December 1, 1972	<ul style="list-style-type: none"> • Modified district representation.
April 17, 1975	<ul style="list-style-type: none"> • Provided for public member position.
December 1, 1977	<ul style="list-style-type: none"> • Modified district representation.
December 19, 1979	<ul style="list-style-type: none"> • Expanded the size of the Executive Committee.
December 1, 1981	<ul style="list-style-type: none"> • Modified district representation
July 9, 1984	<ul style="list-style-type: none"> • Provided for a non-voting affiliate member to represent Nevada dairymen. • Provided for the permissive use of official board brand names and other distinctive designations. • Provided for a temporary cents/hundredweight assessment.
April 1, 1986	<ul style="list-style-type: none"> • Made the cents/hundredweight assessment a permanent option.
December 1, 1986	<ul style="list-style-type: none"> • Modified district representation
January 1, 1987	<ul style="list-style-type: none"> • Clarified board voting requirements for motions involving use of funds.
November 1, 1989	<ul style="list-style-type: none"> • Modified district representation
June 5, 1991	<ul style="list-style-type: none"> • Provided for reserve alternate members
August 1, 1996	<ul style="list-style-type: none"> • Modified district representation
February 1, 1998	<ul style="list-style-type: none"> • Clarified procedures for collecting assessments on bulk milk leaving California.
August 24, 1999	<ul style="list-style-type: none"> • Authorized incidental brand advertising activities on a temporary basis through the year 2002
January 15, 2002	<ul style="list-style-type: none"> • Modified district representation. • Clarified procedures for filling board vacancies
April 1, 2002	<ul style="list-style-type: none"> • Further clarified procedures for filling board vacancies.
October 1, 2002	<ul style="list-style-type: none"> • Modified district representation
November 15, 2002	<ul style="list-style-type: none"> • Modified to reflect permanent Marketing Act amendment authorizing incidental mentions of brands.
July 25, 2005	<ul style="list-style-type: none"> • Increased representation from 1 to 2 members in District 10 and decreased representation from 3 to 2 members in District 12.
March 11, 2012	<ul style="list-style-type: none"> • Modified district representation. • Established term limits for board members and the chairman position.
October 15, 2014	<ul style="list-style-type: none"> • Modified district representation by merging Districts 12 and 13 into one consolidated district entitled District 11

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<p>August 1, 2015</p>	<ul style="list-style-type: none"> • Changed the board member term start date from December 1 to March 1. • Made corresponding term start date change for public member. • Clarified when Executive Committee is selected. • Changed references about Executive Subcommittee to Executive Committee. • Moved Chair term limit provision from Duties and Powers section to Committees section
<p>March 1, 2016</p>	<ul style="list-style-type: none"> • Merged the Marketing Order for Manufacturing Milk with the Marketing Order for Market Milk to Create the Marketing Order for Research, Education, and Promotion of Milk and Dairy Products in California.
<p>September 15, 2020</p>	<ul style="list-style-type: none"> • Implemented 2-step mail nomination and preference vote process to replace nomination meetings. • Eliminated reserve alternate positions. • Eliminated assigned linkage between board members and alternate members. • Modified voting approval requirements for passage of board motions. • Eliminated all references to producer-handlers.
<p>March 1, 2022</p>	<ul style="list-style-type: none"> • Downsized the Board from 24 producer members to 18 producer members. • Reduced the number of districts from 10 districts to 7 districts by merging former districts 5 and 6 and merging former districts 7, 8 and 9. • Allocated the 18 producer positions amongst the 7 districts. • Added authorization to have phase-in procedures to implement restructuring of the Board. • Eliminated term limits.

MARKETING ORDER FOR RESEARCH, EDUCATION, AND PROMOTION OF MILK AND DAIRY PRODUCTS IN CALIFORNIA

ARTICLE I - DEFINITIONS

SECTION A. DEFINITION OF TERMS.

As used in this Marketing Order, the following terms have the following meanings:

1. "Department" means the Department of Food and Agriculture of the State of California.
2. "Act" means the California Marketing act of 1937, being Part 2, Chapter 1 of the Food and Agricultural Code, as amended.
3. "Person" means any individual, partnership, corporation, association, or any other business unit.
4. "Milk" means the lacteal secretion which is obtained from the udders of cows.as defined in Sections 32509 and 32510 of the Food and Agricultural Code.
5. "Milk Fat" means the fat of milk.
6. "Cream" means that portion of milk, rich in milk fat, which rises to the surface of milk upon standing, or is separated from milk by centrifugal force.
7. "Dairy Products" include milk and any derivative of milk which is in natural, processed, or manufactured form or which constitutes a part of another article, commodity, or product but does not include imitation milk or imitation dairy products.
8. "Imitation Milk" or "Imitation Dairy Product" means any product which is not a dairy product as defined herein but which resembles any dairy product and which is sold in competition with such dairy product.
9. "Producer" means any person that is engaged within this State in the business of producing, or causing to be produced, for market, milk as defined herein.

A producer also includes any person who produces milk or milk fat and uses such production, or any part thereof, for processing. For the purposes of this Marketing Order, such a person is a producer in any transaction which involves the delivery of unprocessed milk or milk fat produced by him or her to him or herself for processing or to another handler for processing.

10. “Handler” means any person, who, as owner, agent, or broker, purchases or otherwise acquires possession of or control of milk or milk fat from a producer in the form of unprocessed milk or cream, or in any other unprocessed form, for the purpose of processing it.

A handler also includes any person who produces milk or milk fat and uses such production, or any part thereof, for processing. For the purposes of this Marketing Order, such a person is a handler with respect to milk or milk fat produced by him or her, or received from another producer, and processed by him or her.

11. “Fiscal Year” means the period beginning January 1 of any year and extending through the last day of December of the same year.

12. “Board”, “Advisory Board”, and “Milk Advisory Board” are synonymous terms which mean the California Milk Producers Advisory Board established pursuant to this Marketing Order.

13. “Books and Records” means any books, records, contracts, documents, memoranda, papers, correspondence, or other written data, pertaining to matters relating to this Marketing Order, of any producer directly affected by this Marketing Order.

14. “Public Member” means any person who is neither a producer nor a handler of milk as defined herein.

ARTICLE II CALIFORNIA MILK PRODUCERS ADVISORY BOARD AND COMMITTEES

Section A. ESTABLISHMENT, MEMBERSHIP AND TERM OF OFFICE.

1. An industry advisory board to be known as the California Milk Producers Advisory Board has been established by the Department to assist in the administration of this Marketing Order. This Board shall be composed of eighteen (18) members all of whom shall be producers of milk. There may also be an additional public member as provided for in Article II, Section A, Subsection 6. There cannot be more than one producer vote on the Board from any one dairy production entity.

2. There shall be the same number of alternate members as members of the Board. Alternate producer members shall be engaged in the production of milk and be from the districts to which their respective positions are assigned. The alternate public member shall meet the criteria of Article II, Section A, Subsection 6.

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

4. The term of office of all members and alternate members of the Board shall be for a period of three (3) years. Other than for the public member and alternate public member, said term shall be on a staggered basis with one-third (1/3) of the members and alternate members appointed each year. With the exception of the public member and alternate member, the term of office of each member and alternate member shall commence on March 1 of any given year and continue to the last day of February of the third year thereafter, or until their successors have been duly appointed and qualified. The term of office of the public member and alternate public member shall commence as soon as appointed by the Department following nomination by the Board. Such nomination may be made at the first meeting of the Board held after March 1 of each third year, or as soon thereafter as possible. The term of office of the public member and alternate public member shall be for three years or until their successors have been duly appointed and qualified.

5. Nominations and appointment of producer members and alternate members shall be from the seven districts as described hereinafter.

District Number 1 - Shall be composed of the counties of Del Norte and Humboldt. Representation shall be one (1) member and one (1) alternate.

District Number 2 - Shall be composed of the counties of Lake, Marin, Mendocino, Napa Solano and Sonoma. Representation shall be one (1) member and one (1) alternate.

District Number 3 - Shall be composed of the counties of Butte, Colusa, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity and Yuba. Representation shall be one (1) member and one (1) alternate member.

District Number 4 - Shall be composed of the counties of Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Mariposa, Merced, Monterey, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tuolumne and Yolo. Representation shall be seven (7) members and seven (7) alternates.

District Number 5 - Shall be composed of the counties of Fresno, Inyo, Kings, Madera, Mono and Tulare. Representation shall be six (6) members and six (6) alternates.

District Number 6 - Shall be composed of the counties of Kern, San Luis Obispo and Santa Barbara. Representation shall be one (1) member and one (1) alternate.

District Number 7 - Shall be composed of the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura. Representation shall be one (1) member and one (1) alternate.

6. There may be a public member and alternate public member on the Board nominated and recommended by the Board for the Department's appointment. Such persons shall not have a financial interest in the production or processing of milk and shall represent the public generally. Said recommendations shall be by a vote of the Board made at its first meeting held after March 1 of each third year, or as soon thereafter as possible.

Section B. MODIFICATION OF DISTRICTS AND REPRESENTATION.

In the event of changes in the production of milk in the several districts and in order to maintain reasonably equitable representation upon the Board for all milk producers, the Board may from time to time recommend to the Department, and the Department may approve modifications of districts or representation therefrom. Any said modifications of districts or representation shall be a minor amendment as defined in the Act. In order to facilitate the implementation of such modifications, the Board may recommend, and the Department may approve, interim phase-in procedures which may include reassigning the term of office for members and alternates of the Board and deviating from the normal nomination and preference voting processes provided for in this Article.

Section C. NOMINATION AND PREFERENCE VOTING FOR MEMBERS AND ALTERNATE MEMBERS OF THE BOARD.

1. Annually, and not later than November 30 of each year, the Department shall conduct nominations and preference voting for each of the districts that have terms expiring or vacant positions for the purpose of receiving district preferences of milk producers, for appointment by the Department to the Board. Nominations and preference voting shall be conducted by mail and shall be open to all producers.

2. Producer Nomination Process. Each fall, the Department will mail a letter to all producers within effected districts notifying them that it is seeking nominations for available positions on the Board. All producers who desire an appointment to the Board and who wish to have their name appear on their district's election ballot must return completed nomination materials by the specified closing date. The nominations will be received for any available positions without regards to any specific member or alternate position.

3. **Producer Preference Voting Process.** Subsequent to the district nomination process, the Department will prepare district ballot packets with the names of the producers who submitted nominations and will mail the ballot packets to all producers within the effected districts. The ballot packets will instruct producers on how many nominees they may vote for. The Department will tally the ballots. Subsequent to the tally, the nominee with the highest vote total within each district will be given their choice of their district's available positions. Then, the nominee with the next highest vote total within each district will be given their choice of their district's remaining available positions and so on until there is a roster with a producer nominee assigned to each of the available positions. This completed roster will serve as the recommended list of producer nominees for consideration for appointment by the Department.

4. The Board may make a recommendation to the Department for the appointment of a public member and alternate public member as provided for in Article II, Section A, Subsection 6.

Section D. APPOINTMENT OF MEMBERS AND ALTERNATE MEMBERS OF THE BOARD.

1. In appointing the producer members and the producer alternate members of the Board, the Department will give due consideration to the recommended nominee roster developed through the district nomination and preference voting process. It is understood that the Department may make appointments that deviate from the actual preference voting outcome if it so sees fit.

2. In appointing the public member and the alternate public member of the Board, the Department shall give due consideration to the recommendations of the Board.

Section E. QUALIFICATION OF BOARD MEMBERS.

1. Each person appointed by the Department for a producer member position or a producer alternate member position on the Board shall be a producer of milk and shall qualify by filing with the Department such necessary papers as the Department may require.

2. Each person appointed by the Department for a public member position or a public alternate member position shall be a person without a financial interest in the production or processing of milk and shall qualify by filing such necessary papers as the Department may require.

Section F. INTERIM FILLING OF VACANCIES.

In the event of the death, removal, resignation, or disqualification of any producer member of the Board, the Chairman may designate any alternate from the same district to act in the place and stead of the former member on an interim basis until the next round of annual district nominations and preference voting during which time the Department will seek a replacement for filling the vacancy. When an alternate producer position becomes vacant, the Board may recommend and the Department may consider appointment of a producer to fill the vacancy or the position may remain vacant until the next round of annual district nominations and preference voting during which time the Department will seek a replacement for filling the vacancy.

Section G. ALTERNATE MEMBERS OF THE BOARD.

When a producer member is unable to attend a meeting, he or she may designate any alternate member from their district to serve in their place. An alternate sitting in the place and stead of a member, shall have all of the rights, powers, privileges, and immunities as the member.

Section H. DUTIES AND POWERS OF THE BOARD.

The Board shall have the following powers and duties, which may be exercised subject to the approval of the Department.

1. To administer the provisions of this Marketing Order.
2. To recommend to the Department annually, and more frequently as may be required, programs of research, education, and promotion of milk and dairy products and other food products as authorized herein.
3. To recommend to the Department administrative rules and regulations pertaining to the administration and enforcement of this Marketing Order.
4. To receive and report to the Department violations of this Marketing Order.
5. To recommend to the Department amendments to this Marketing Order.
6. To recommend to the Department annually budgets covering estimated income, administrative expenses of the Board and the Department, and the expenses to be incurred under proposed programs of research, education, and promotion.
7. To appoint a CEO and such employees as it may deem necessary to carry out its functions, to fix their salaries, and define their duties.
8. To keep minutes, books, and records which clearly reflect all of its acts and transactions, and which shall at all times be subject to examination by the Department or his/her duly authorized representatives, and to provide to the Department copies of the minutes of all meetings, duly certified by an authorized officer of the Board.
9. To elect a Chair, Vice Chair, Secretary, and Treasurer and such other officers as may be appropriate from the membership of the Board.
10. To adopt such other rules for the conduct of the business of the Board as the Board may deem advisable.

Section I. EXPENSES OF MEMBERS OF THE BOARD.

The members of the Board, and alternate members when acting as members or as members of any subcommittee, or any member of the Board when requested to perform a specific task for the Board, shall be reimbursed for all necessary expenses incurred in performing their duties and exercising their powers hereunder.

Section J. COMMITTEES OF THE BOARD.

1. Committees and Special Committees. The Advisory Board may at any time recommend to the Department the establishment of subcommittees or special committees and the appointment of members thereto to carry out duties and functions as delegated or assigned by the Board and shall be limited to those necessary to carry out the actions and policies of the Board. An Action taken by any such subcommittee or special committee shall be subject to approval by the Board and the Department.

2. Executive Committee. An Executive Committee shall be selected by the Board, consisting of the Chairman, Vice Chairman, Secretary, and Treasurer of the Board, and three (3) additional members of the Board.

The Executive Committee shall be selected by the Board at the first Board meeting held after March 1 of each year. The members of the Executive Committee shall serve until a new Executive Committee is selected, even in such instances when an Executive Committee member has not been reappointed to a new term as a Board member.

The Chair is limited to three consecutive one-year terms. At the end of this term, it is an option of the incoming Chair to ask the outgoing Chair to serve in a one-year ex-officio position on the Executive Committee. The Board has the option to nominate the individual to the Executive Committee after the expired term as Chair, but not for the position of Chair.

The duties and functions of the Executive Committee shall be those delegated to it by the Board and shall be limited to those necessary to carry out the actions and policies of the Board in the interim's between Board meetings. All actions taken by the Executive Committee shall be subject to approval by the Board and the Department.

Section K. PROCEDURE FOR BOARD.

1. A quorum of the Board shall consist of ten (10) members. Except as provided in Numbers 2 and 3 of this Section, all actions of the Board shall be valid if approved by a majority of members present, provided there is a quorum of the Board.

2. As required by Section 59051 of the Act, any action recommending a minor amendment to this marketing order must be approved by not less than 75 percent of the producer members of the full Board.

3. No action relating to the selection or dismissal of the CEO shall be valid unless approved by a two-thirds (2/3) vote of the full Board.

Section L. LIMITATION OF LIABILITY OF BOARD MEMBERS AND EMPLOYEES.

The members and alternate members of the Board, duly selected and appointed by the Department and while serving as members of the Board or of the Subcommittees established hereunder, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any producer or handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own

individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members and alternate members of the Board shall be several and not joint and no member or alternate member shall be liable for the default of any other member or alternate member.

ARTICLE III - RESEARCH, EDUCATION AND PROMOTION PROGRAMS

Section A. RESEARCH PROGRAMS.

As provided in Sections 58892 and 58892.1 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Department, for approval by the Department, programs of research relating to milk and dairy products. Also, as provided in these Sections, such programs may include research studies concerning the health, food, nutritional, therapeutic, dietetic or such qualities of other food products, for the development of new food products, or for the development of new uses for milk or dairy products.

Upon approval by the Department, the Board may proceed to implement and to administer any such programs of research as provided for herein, and to report findings thereon to milk producers, the Department, and other interested persons.

Section B. EDUCATION PROGRAMS.

Pursuant to the provisions of Section 58893 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Department for approval, programs of education relating to milk and dairy products. Such programs may include programs designed to acquaint producers or other interested persons with quality improvement, including sanitation practices, procedures, or methods as applied to such milk or dairy products, and may also include educational programs designed to make available to producers, handlers, and the public generally the findings of research programs carried out pursuant to the provisions of Section A of this Article.

Upon approval by the Department, the Board may proceed to implement and to administer any such programs as provided for herein and to incur expenses thereunder.

Section C. PROMOTION PROGRAMS.

Pursuant to the provisions of Section 58889 of the Act, as amended, the Board is authorized to develop programs of advertising and trade promotion relating to milk and dairy products, for consideration and approval by the Department; provided, that any such plans, with the exception of plans that make incidental references to brands of cheese, ice cream, or butter as described below, shall be directed toward increasing the sale of such milk and dairy products without reference to any private brand or trade name used by any handler of milk or dairy products; and provided further, that no such advertising or promotion program for milk or dairy products shall make use of any false or unwarranted claims in behalf of any such products, or disparage the quality, value, sale, or use of any other commodity.

Pursuant to Subsection 58889 (c) which was incorporated into the Marketing Act via AB 1525 in 1998, made operative via a successful producer referendum in 1999 and amended via AB 1854 in 2002, the Board may develop advertising and sales promotion plans to allocate funds for promotions of cheese, ice cream, or butter products made with California milk, including promotions in which brand or trade names are used; provided, that the use is incidental to the promotion of the California milk product and not in direct promotion of the brand or trade name;

and provided further, that the allocation of funds is made available on a nondiscriminatory basis to all retailers and manufacturers of butter, ice cream, or cheese utilizing milk produced in California. Permissible private brand or trade name marketing promotions may include advertising, performance allowances, sales promotions, couponing subject to Section 61375 and in-store promotion programs and materials, and other marketing communication tools

Upon approval by the Department, the Board is authorized to implement and administer any such programs as provided for herein and to incur expenses thereunder.

Section D. OFFICIAL BOARD BRAND, TRADE NAME AND LABEL PROGRAMS.

Pursuant to the provisions of Section 58894 of the Food and Agricultural Code, the Board is authorized to establish and to regulate the permissive use of official Board brands, trade names and labels, and other distinctive designations of grade, quality or condition, except the grade or quality designations in effect pursuant to State or Federal grade standards, for any product in which milk or other dairy products are used. Any official Board brand or trade name which is established pursuant to this section shall not be construed as a private brand or trade name with respect to Section 58889 of the Code.

Section E. AUTHORIZATION TO ENTER INTO CONTRACTS AND TO EMPLOY QUALIFIED PERSONNEL.

In order to carry out any research, education, or promotion program authorized by this Article, the Board is authorized to enter into any necessary contracts with public or private agencies or persons qualified to assist in the formulation and conducting of any such programs or plans, and to prepare estimates of the costs of any such programs. Any such contract shall clearly state the services to be performed and the estimated costs to be incurred and shall provide for an accurate accounting of all actual expenditures under such contract.

Section F. APPROVAL BY THE DEPARTMENT.

Upon submission and recommendation by the Board to the Department of any research, educational, or promotional programs for milk and dairy products as provided for herein, together with recommendations by the Board reflecting estimated expenditures thereunder, the Department may approve such plans and authorize the Board to implement and administer such programs and to incur expenditures in connection therewith.

ARTICLE IV - FINANCIAL PROVISIONS

Section A. INITIAL ASSESSMENT RATE.

1. From and after the effective date of this Marketing Order, each milk producer in this State shall pay to the Department an assessment at the rate of one-half of one percent (1/2%) of the gross dollar sales value received by such producer for all milk solids, milk fat, and fluid components produced by him or her and sold, delivered to, or otherwise taken possession of by handlers from each such producer. The gross dollar sales value for a milk producer who processed his or her own production shall be the quantity of milk solids, milk fat, and fluid components received from his or her own production multiplied by the applicable price or prices established by the Department for milk of the milk fat and milk solids content in the applicable marketing area pursuant to the provisions of the Agricultural Code.

2. All such sales by producers to handlers shall be reported and paid to the Department by the receiving handler not later than thirty (30) days after the last day of the month of purchase or receipt of any such deliveries of milk solids or milk fat.

3. If, after the first year, the Board recommends to the Department by a vote of not less than two-thirds (2/3) majority of the total membership of the Board, an increase in the rate of assessment above that established herein for the first year of operation, the Department shall carry out assent procedures thereupon as provided hereinafter.

4. All such assent procedures shall be conducted and the assents tabulated in accordance with the provisions of Subsections (a) and (b) of Section 58993 of the Act.

5. If the assent procedure for milk producers upon the question of increasing the assessment rate is held and if the Department finds that milk producers have approved the proposed increase in assessment rate in such assent procedure, it may make the proposed increase effective upon milk producers. If not, it shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect.

[The maximum assessment rate was increased to one percent (1%) as of July 1, 1971 by assent procedures.]

6. The Board may recommend and the Department may approve a reduction in the rate of assessment if it finds that such rate of assessment is not necessary to provide sufficient funds to cover operations under this Marketing Order.

7. Notwithstanding the provisions set forth in Article IV, Section A, Number 1 of this Order, the Board may recommend, and the Department may approve, a cents-per-hundredweight rate of assessment on milk produced and sold or delivered to a milk handler by milk producers, provided that the rate recommended by the Board does not exceed 10 cents per hundredweight.

[The CMAB adopted a cents/cwt. assessment in 1984 when the National Board implemented its 15 cents/cwt. assessment]

Section B. MODIFICATION OF ASSESSMENT RATE.

1. No increase in the assessment rate authorized in Section A hereof may be recommended by the Board or approved by the Department prior to one (1) year following the effective date of this Marketing Order.

2. Following the time specified in Subsection 1 of the Section, the Board may recommend and the Department may approve an increase in the assessment to a rate not exceeding one percent (1%) of the gross sales value of solids and milk fat by producers; provided, that no increase in the rate of assessment may be made effective by the Department unless and until such proposed increase in the rate has been recommended by the Board to the Department, and thereafter submitted by the Department to producers for their assent pursuant to procedures as provided hereinafter.

3. If, after the first year, the Board recommends to the Department by a vote of not less than two-thirds (2/3) majority of the total membership of the Board, an increase in the rate of assessment above that established herein for the first year of operation, the Department shall carry out assent procedures thereupon as provided hereinafter.

4. All such assent procedures shall be conducted and the assents tabulated in accordance with the provisions of Subsections (a) and (b) of Section 58993 of the Act.

5. If the assent procedure for milk producers upon the question of increasing the assessment rate is held and if the Department finds that milk producers have approved the proposed increase in assessment rate in such assent procedure, it may make the proposed increase effective upon milk producers. If not, it shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect.

[The maximum assessment rate was increased to one percent (1%) as of July 1, 1971 by assent procedures.]

6. The Board may recommend and the Department may approve a reduction in the rate of assessment if it finds that such rate of assessment is not necessary to provide sufficient funds to cover operations under this Marketing Order.

Section C. COLLECTION OF ASSESSMENTS.

[This section was amended effective February 1, 1998 in order to clarify assessment obligation for bulk milk leaving the state.]

1. Each producer shall be liable for the payments of assessments levied hereunder upon all milk produced in this state by him or her for processing.

2. Pursuant to the provisions of Section 58935 the Department shall collect all such assessments from the handlers who purchase or otherwise receive or acquire milk or milk fat from producers as provided in this Article. Each handler who purchases or receives or otherwise acquires any such milk solids or milk fat for and on behalf of any producer shall deduct such assessments from any monies owed by him or her to any such producer.

3. Producers who convey bulk milk produced by them in this state to handlers outside of this state shall certify to the receiving handlers that they are participating in a qualified local

program and shall require that the receiving handlers pay, on behalf of the conveying producer the assessment levied by this Marketing Order.

4. The Department shall prescribe rules and regulations with respect to the application and collection of assessments authorized herein.

Section D. PENALTIES FOR NON-PAYMENT OF ASSESSMENTS.

To any assessment unpaid within the time specified by the Department, the Department may add an amount not exceeding ten percent (10%) of such unpaid assessment to defray the cost of enforcing the collection of such unpaid assessment.

Section E. BUDGETS.

1. At the beginning of each fiscal year hereunder and from time to time thereafter as may be necessary, the Board shall formulate and present to the Department, with its approval, budgets covering expenses of administration of the Board and the Department, and estimated expenses to be incurred in any proposed programs of research, education, and promotion.

2. Upon recommendation by the Board, the Department may approve any such budgets, or amendments thereto, so recommended by the Board, if it finds that the same are proper and necessary to defray the expenses of the Board and the Department, and for carrying out any programs of research, education, and promotion authorized herein.

3. All funds derived from the assessment of milk producers shall be expended for programs of research, education, or promotion applicable to milk, dairy products, and other food products as authorized herein and in the Act and for the necessary expenses incurred by the Board and the Department in the administration of such programs and this Marketing Order.

Section F. REFUNDS.

Any funds collected as assessments by the Department pursuant to this Marketing Order, and not required to defray the expenses incurred under this Marketing Order, may be refunded at the close of any fiscal year, upon recommendation by the Board and approval by the Department, on a pro rata basis, to all persons from whom such funds were collected; provided, that upon termination of this Marketing Order all funds remaining and not required by the Department to defray the expenses of this Marketing Order, shall be returned by the Department upon a pro rata basis to all persons from whom such assessments were collected.

Section G. BONDS.

The Department may require that any and all persons handling substantial amounts of money collected pursuant to the provisions of this Marketing Order shall execute and deliver to the Department a bond in such amount as the Department may designate with surety thereon satisfactory to the Department, conditioned upon the faithful performance of the duties of such person pursuant to this Marketing Order.

ARTICLE V - GENERAL PROVISIONS

Section A. ADMINISTRATIVE RULES AND REGULATIONS.

Upon recommendation of the Board, the Department is authorized to issue and make effective such administrative rules and regulations and interpretations as may be authorized by the Act and necessary to carry out the purposes and attain the objectives of this Marketing Order.

Section B. COORDINATION WITH OTHER STATE OR FEDERAL PROGRAMS.

No programs approved hereunder shall interfere or conflict with similar programs established under other State or Federal laws. Insofar as possible, duplication of programs or expenditures of money therefore shall be avoided. Insofar as may be practicable and consistent with attainment of the objectives of this Marketing Order, the administration of this Marketing Order and any of the programs authorized hereunder may, upon recommendation of the Board, be coordinated with any other similar Marketing Orders or programs so as to avoid any such duplication of program or expense.

ARTICLE VI - BOOKS AND RECORDS

Section A. BOOKS AND RECORDS.

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

Section B. REPORTS TO THE BOARD.

Upon request of the Board, and with approval of the Department, each person subject to this Marketing Order shall furnish to the Board such other information, in addition to the reports specifically required herein, relating to operations under this Marketing Order as may be required by the Board to administer properly the programs authorized in Article III hereof.

Section C. CONFIDENTIAL INFORMATION.

Any information furnished to the Department or to the Board by any person required to do so by the Act or this Article, shall be kept confidential as to its particular source, but may be released in such combined form as to protect the confidentiality of its particular source, and shall not be disclosed by any person authorized to receive such information to any other person, save to a person with like right to obtain the same, or to any attorney employed by the Department to give legal advice thereupon, or required by court order to do so.

Section D. IMMUNITY.

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

ARTICLE VII - APPEALS

Section A. APPEALS.

Any person regulated by this Marketing Order may petition the Department to review any order or decision of the Board. Such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL.

Pending the disposition of any appeal provided for in Section A of this Article, the parties shall abide by the decision of the Board, unless the Department shall rule otherwise. The Department shall, if the facts available to the Department, in the opinion of the Department reasonably support the contention of the petitioner, grant any such petition and the Department may amend or revise any order of decision of the Board upon which such appeal has been taken.

ARTICLE VIII - RELATION TO OTHER LEGISLATION

Section A. ANTITRUST LAWS.

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act, Section 16600 of the Business and Professions Code, or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the Act complained of was done in compliance with the provisions of this Marketing Order and in furtherance of the purposes and provisions of the Act shall be a complete defense to any such action or proceeding.

ARTICLE IX - DURATION OF IMMUNITIES

Section A. DURATION.

The benefits, privileges, and immunities conferred by virtue of the provisions of this Marketing Order shall cease upon its termination by the Department, except with respect to acts done under and during the period when the provisions of this Marketing Order are in force and effect.

ARTICLE X - AGENTS

Section A. AGENTS.

The Secretary of the Department may, by a designation in writing, name any person, including any officer or employee of the State or any employee, branch or division of the California Department of Food and Agriculture, to act as his or her agent or representative in connection with any of the provisions of this Marketing Order.

ARTICLE XI - DEROGATION

Section A. DEROGATION.

No provision contained herein shall be construed to be in derogation or in any modification of the rights of the Secretary of the Department as the head of an agency of the State, to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XII - SEPARABILITY

Section A. SEPARABILITY.

If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder thereof or the applicability thereof to any person, circumstance or thing, shall not be affected thereby.

ARTICLE XIII - EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME.

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

Section B. SUSPENSION OR TERMINATION.

1. Suspension or Termination. The Department shall suspend or terminate this Marketing Order or any provision thereof, whenever it finds, after a public hearing has been held thereupon as required by the Act, that said Marketing Order, or any provision thereof, is illegal or does not tend to effectuate the declared purposes of the Act within the standards and subject to the limitations and restrictions of said Act; provided, however, that no such suspension or termination shall become effective until the expiration of the then current fiscal year.

2. Petition for Termination. If the Department receives a petition from milk producers of the State pursuant to the provisions of Section 59083 of the Act requesting the Department to conduct a hearing upon the question of continuation of this Marketing Order, the Department shall conduct such a hearing as provided in the Act, and if it finds, from the testimony received at said hearing that there is a serious question whether milk producers support continuation of the Marketing Order, it shall submit the question to milk producers through the assent procedure as provided in Subsections (a) and (b) of Section 58993 of the Act. If such milk producers indicate by such method their desire to continue this Marketing Order, the Department shall continue it, if not, the Department shall terminate this Marketing Order; provided, that no such termination shall become effective until the close of the fiscal year then current.

Section C. EFFECTIVE OF TERMINATION, SUSPENSION OR AMENDMENT.

Unless otherwise expressly provided in the Notice of Amendment, Suspension, or Termination, no amendment, suspension, or termination of this Marketing Order shall either: (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of this Marketing Order not so amended, suspended, or terminated: (b) release, condone, or dismiss any violation of any provision of this Marketing Order or any rule or regulation issued hereunder, occurring prior to the effective time of such amendment suspension, or termination, or (c) affect or impair any rights or remedies of the Department or any person with respect to any such violation.