

STATE OF CALIFORNIA  
DEPARTMENT OF FOOD AND AGRICULTURE  
MARKETING BRANCH



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

CALIFORNIA AGRICULTURAL MARKETING PROGRAMS:  
*A DETAILED OVERVIEW*

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# CALIFORNIA AGRICULTURAL MARKETING PROGRAMS

## ARTICLE I. MARKETING PROGRAM LEGISLATION

### A. Development

Marketing programs were first made available under California law in 1933 and can be equally applied to all producers of an agricultural commodity. Programs authorized by legislation were based on principles developed over a long period of experience on the part of growers and handlers who had sought to improve marketing conditions. Voluntary programs were developed by industry groups as early as 1900. These voluntary programs had no effective means of requiring compliance. As a result, the programs soon broke down as a result of noncompliance by an ever-increasing number of individuals. The greater the initial success of a program, the greater was the incentive for individuals to market their product without complying with the terms of the program.

The Agricultural Prorate Act and the California Agricultural Adjustment Act were both enacted in 1933. Federal legislation providing for uniform application of a program was also enacted in 1933. An industry could now develop a program with some assurance that all persons affected would be treated equally. The idea underlying this legislation dates from the first cooperative efforts of agricultural producers to improve the quality of marketing and balance shipments with market demand.

From this beginning, rather broad legislation has developed in the field of marketing programs. The principal example is the California Marketing Act of 1937 (act) under which producers or handlers of any agricultural commodity could establish a marketing order. Because of the large number and variety of crops produced in California and the manner in which marketing programs are adaptable to the problems of specialty crops, it is natural that a wider range of programs has developed in California compared to other states. Recently, however, several states have enacted legislation authorizing programs for promotion and research. Also, a few states now

authorize broader programs much like California's programs described below.

### B. Validity of Legislation

The difficulties encountered in enforcement of the early marketing programs have been largely overcome. There are numerous court decisions upholding the validity of these programs. These decisions confirmed the constitutionality of the several marketing acts and determined that states were within their rights to establish marketing programs that apply equally to all producers and/or handlers of a commodity.

### C. Specific Enactments

As of January 1, 2016, there were 36 separate statutes that permit agricultural marketing programs under California law. These are the California Marketing Act, the Agricultural Producers Marketing Law, the Beef Council Law, the Dairy Council Law, the Salmon Council Law, the Seafood Council Law and thirty commission laws, each enacted by separate legislation.<sup>1,2</sup>

### D. Federal Legislation

The Agricultural Marketing Agreement Act of 1937 is the federal legislation authorizing marketing orders and agreements covering the marketing of commodities in more than one state. As with California legislation, the federal law itself does not impose regulations over the marketing of a commodity. It merely provides the authority under which an industry can develop programs to fit its own needs and deal with its own marketing problems. Some commodity groups availed themselves of parallel state and federal programs to deal with their marketing problems.

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<sup>1</sup> The Seafood Council Law, and 12 commission laws, while existing in statute, are not currently active. See Appendix "C"

<sup>2</sup> For a listing of active California agricultural marketing programs by type, see Appendix "D".

## ARTICLE II. PURPOSE OF MARKETING PROGRAMS

The principal purposes of any marketing program developed under California legislation are to aid producers and/or handlers in preventing economic waste in the marketing of their commodity; develop more efficient and equitable production and marketing methods; and aid producers in maintaining their purchasing power at a more adequate, equitable, and reasonable level. Marketing programs are “self-help” programs by which producers or handlers within the state can work together to solve marketing problems they cannot solve individually.

These different laws affirm the above policy in varying terms and provide different ways in which the legislation may be used. In all cases, the welfare of consumers is taken into account and use of the legislation, to an extent more than necessary to attain the objectives referred to in the laws, is not authorized.

Not all programs deal with marketing problems in the same way. For example, some programs are developed to supply the market with a higher quality product in a quantity at least equal to market demand at reasonable prices. Other programs provide for promotion of the product involved in an attempt to increase demand. Still others provide for research relating to production, processing, distribution, or marketing of the product. In some instances the programs provide for only one approach to deal with marketing problems; in others a combination of approaches are used. Some programs apply only to producers; a few apply only to handlers. Still others are joint programs that apply to both producers and handlers.

There are three types of state marketing programs currently in use in California. These are marketing orders (including agreements), commissions and councils<sup>3</sup>. The following narrative discusses each of the three program types. Marketing orders are covered in greater detail than the others. Much of the

additional detail provided for marketing orders applies to the other two program types as well.

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<sup>3</sup> See Appendix “A” for a comparison of key provisions of board, council and commission laws.

## ARTICLE III. MARKETING ORDERS

### A. Provisions of Marketing Orders

The field of marketing orders is divided between federal and state legislation. Federal legislation does not cover all agricultural commodities, and some commodities that are included do not have all of the authorities provided in state legislation. However, any marketing order that covers a crop produced in more than one state can only operate under federal legislation.

In those instances, where both state and federal legislative authorities are available, an industry contemplating an order must first decide what approach best solves its marketing problems before making a final decision as to whether a state or federal order or a combined program with both authorities would be most appropriate. Sometimes, only a federal program is possible, at least in some respects, because federal authority supersedes state authority.

Another important authority that exists in federal marketing agreement act is the ability to regulate the quality and/or size of a commodity that is imported into the U.S. (Section 8e authority). In order to regulate incoming product, the commodity concerned must be specifically named in the federal act. Section 8e currently applies to the following commodities:

Avocados	Dates	Hazelnuts
Grapefruit	Table Grapes	Kiwifruit
Olives	Onions	Oranges
Irish Potatoes	Pistachios	Raisins
Tomatoes	Walnuts	

The provisions authorized by the California Marketing Act are divided into the following categories of activity:

- Provisions for determining the existence of a surplus and providing for the control and disposition of the surplus.

- Provisions for limiting the total quantity of a commodity or any grade, size, or quality thereof that may be marketed during any period or periods.
- Provisions for limiting quantities purchased or handled by handlers during a specific period or periods.
- Provisions for allocating the quantity of the commodity to be handled by handlers during any period or periods.
- Provisions for regulating the period or periods during which a commodity can be handled, processed, or otherwise marketed.
- Provisions for establishing surplus, stabilization, or byproduct pools for any commodity or any grade, size, or quality thereof.
- Provisions for establishing uniform grading and inspection of any agricultural commodity.
- Provisions for establishing plans of advertising and sales promotion.
- Provisions relating to the prohibition of unfair trade practices.
- Provisions for production adjustment payments.
- Provisions for conducting research studies in production, processing, or distribution.
- Provisions for detecting, controlling, preventing damage or eradicating insects, predators, diseases, or parasites.
- Provisions for collecting and disseminating weather data.

In recent years, very few marketing order programs have carried on activities other than advertising, promotion, or research; surplus control activities are not allowed by Department policy.

### B. Development of a Marketing Order

#### 1. Preliminary Study

Experience has proven that it is inadvisable to attempt to rush a marketing order to completion. When rushed to be available for operation at the



beginning of a marketing season or for some other reason, errors often occur that seriously impair the operation or even the legality of the program.

Marketing orders involve the welfare of the entire industry. The provisions incorporated in any program must be given careful consideration and study so all segments of the industry are protected as well as benefited by the program. Consideration of secondary results or effects is often as important as consideration of the primary objectives to be obtained.

Provisions that might be proven as ideal for one commodity might not be suited to another. A marketing order serves as a means of dealing with an individual problem or set of problems and, as such, requires a careful analysis of the commodity industry involved. The analysis should include the marketing practices, the firms (affected parties) involved, and the particular problems to be dealt with. The order must then be crafted to meet the conditions of the commodity in question. If such a marketing order cannot be drafted to assure there is a reasonable likelihood the problems can be addressed and equity in the industry maintained, the effort to establish the order should not proceed.

Developing a marketing order is a rather lengthy process. The major amendment of an existing order uses the same process and is quite often equally as lengthy. Unduly rushing into an order may result in the need for numerous amendments downstream. The unsatisfactory results prior to amendment, the costs of amending the order, and the length of time involved in the amendment process nearly always exceed the benefits of rushing the implementation of a program.

## ***2. Marketing Order or Marketing Agreement***

The California Marketing Act provides for two forms of commodity marketing programs: (1) marketing orders, and (2) marketing agreements. Marketing orders are discussed at length in the following pages and much of what is discussed applies to marketing agreements as well. The primary difference between the two forms is that marketing orders, once made effective, are binding on all affected producers and/or handlers of the commodity regulated, while the

provisions of marketing agreements are binding only on those producers and/or handlers that sign on to the agreement.

The terms (authorized activities) are the same for marketing orders and marketing agreements. So, why do some commodity groups choose to create a marketing agreement instead of a more conventional marketing order? Some reasons are listed below:

- Relative ease of implementation – Once drafted, the Department issues the proposed marketing agreement for consideration at a public hearing. If the Department finds, based on the testimony and evidence presented that the proposed marketing agreement would accomplish the declared purposes of the act, the proposed agreement is issued for a sign-up period. There is no implementation referendum required as there is with a proposed marketing order. If a “sufficient number” of handlers handling a sufficient volume of assessable product sign the agreement within the sign-up period, the Department may make the agreement effective. A sufficient number/volume means enough signatories to generate sufficient funds to accomplish the objectives stated in the agreement.
- Relative ease to “opt out” of the agreement – A marketing order program is mandatory on all producers and/or handlers of the commodity as defined in the order. The marketing order stays in effect until suspended or terminated by the Department. Once every five years, the order is subject to reapproval by either a public hearing or a referendum. Entities that become signatories of a marketing agreement may opt out at the end of each fiscal year.
- No costs for reapproval or continuation processes – Since signatories may opt out of an agreement at the end of each fiscal year, a periodic reapproval process is not required.

## ***3. Origin of a Marketing Order***

The origin of nearly every marketing order can be traced to a few persons in the industry segment who were actively seeking some means of improving the

marketing conditions or dealing with other serious marketing problems.

Marketing order legislation has been in existence for a sufficient length of time to acquaint most people in agriculture with the fact that assistance involving marketing orders can be obtained. After receiving more detailed information regarding potential assistance, additional discussion among industry people generally crystallizes, and a group or committee usually assumes leadership in determining whether a marketing order program is feasible. If, after further investigation, there is interest in the possibility of developing a program, the group then contacts the appropriate state (CDFA) or federal (USDA) agency and requests the attendance of official personnel at an industry meeting for further discussion. If it appears that a marketing program would be of assistance, the procedure is then generally to organize further meetings at which industry opinions can be ascertained.

#### *4. Discussions with the Industry*

Before proceeding to any lengthy work on a proposed marketing program, meetings with the industry are necessary to determine whether there is support for the program. There may be particular characteristics in the production and marketing of some commodities that would prevent the equitable operation of certain types of marketing programs. If it is found that a program is not feasible, then stopping work on the program may be necessary until the differences can be settled. Unless an industry is generally in accord, there is little likelihood that a marketing program will be successful. While the Marketing Act provides for the number of producers and/or handlers who must approve a program prior to its becoming effective, any marketing order program must have the support of the vast majority of potential assessment payers to achieve its objectives.

#### *5. Preliminary Draft of an Order*

When it has been determined that an industry has a similarity of interest in a problem and a program has some likelihood of success, a committee of people from the industry and the department is organized to prepare a preliminary draft of the marketing order. This preliminary draft is quite often a compromise of differences that may exist within the industry. After

the preliminary draft is prepared and is generally agreed upon by industry leaders and the department, the following formal procedures usually begin.

#### *6. Request for a Public Hearing*

Prior to the institution of any marketing order, a public hearing must be held on the proposed provisions to be included in the order. Industries requesting consideration of a marketing order are required to deposit a sufficient amount of money with the secretary to cover costs incurred in developing the list of producers and/or handlers affected by the proposed program. This list is used to mail a Notice of Hearing and, depending on the outcome of the hearing, to conduct a referendum of those affected. The required deposit amount should be enough to cover all administrative costs incurred by the department through tallying the votes cast in the referendum. The department's experience over the years has enabled staff to accurately estimate those costs.

Should the proposed marketing order be approved by a referendum vote of those affected and the secretary make the program effective, then the advisory board created by the program may reimburse those that made the initial deposit from the collected assessments.

#### *7. Conducting the Public Hearing*

When the industry group has developed a proposed marketing order to the point where reasonable agreement exists, then a public hearing is in order. Unless some basic agreement exists, a public hearing may bring forth such wide and varied proposals for elements of the marketing order as to make an ultimate decision on the final document difficult and costly.

Testimony and evidence will be taken concerning the economics of the industry concerned, the challenges facing the industry, and how the proposed marketing order will address these challenges. Testimony and evidence is also taken regarding each provision of the proposed marketing order. The hearing provides all interested persons from the industry, as well as the general public, an opportunity to introduce testimony and evidence into the hearing record. All testimony

is taken under oath and a verbatim transcript of the proceedings is prepared.

The hearing panel is composed of a trained hearing officer and from one to three analysts or agricultural economists from the department. A hearing reporter sits to the side of the panel to transcribe the testimony presented. Anyone is welcome to testify. However, witnesses are encouraged to prepare their testimony in advance and provide written copies to the hearing panel and hearing reporter.

After testimony is presented, the hearing panel will question the witness regarding their testimony. The objective of questioning is never to challenge or debate a witness, but to ensure that a clear and comprehensive hearing record is produced. Questions will clarify any confusion the panel has regarding statements made during testimony. The panel may also ask for any specifics to help support general conclusions made by a witness.

The public hearing may take several days, although most hearings last less than one day. If controversy arises or numerous amendments are proposed, the hearing may be recessed from time to time. The hearing length largely depends on how much the industry is in agreement as to the need for the program and the extent to which support for the program has been developed prior to the hearing. Also, public interest aspects must be considered. At the conclusion of the hearing, the presiding officer may permit a period of time during which interested persons may file further statements in the form of briefs to be made a part of the hearing record.

#### **8. Legislative Standards Governing Issuance**

After obtaining all testimony and evidence, a review is made to determine whether the evidence indicates a need for the program and whether the proposed order would likely be helpful in dealing with the identified marketing problems. There are certain legislative requirements that must be met before a proposed marketing order may be issued to affected producers and/or handlers for approval. Broadly stated, these legislative standards are much more stringent for marketing orders that would correlate supply with demand than for marketing orders that carry out programs of advertising, promotion,

research, grading or similar activities. The standards include the requirement that the proposed order must conform to the legislative enactment and that the rights and interests of consumers must be protected. If the secretary makes an affirmative finding regarding these conditions, (s)he may issue the proposed marketing order to the industry for a vote.

#### **9. Voting**

If the secretary determines that a proposed marketing order is generally supported by the testimony and evidence received at the public hearing, then the secretary will instruct the department to conduct a vote of those who would be directly affected. Copies of the proposed marketing order are mailed together with the necessary forms for voting.

Voting under the act for both producers and handlers may be done by using either the *assent* or the *referendum* method (discussed below). At the public hearing, testimony is received about which method should be used. The lists of producers for voting are usually developed from information submitted by handlers, as required by the department.

Depending on who will be directly affected by a proposed marketing order, voting may involve producers only, handlers only, or both producers and handlers. In those cases when both producers and handlers are directly affected, voting is conducted independently for each group with approval of the marketing order requiring separate approval of each group. For both the assent and referendum methods of voting, approval is required by a specified percentage of the number of producers or handlers and by a specified percentage of the volume of the commodity produced or handled during a given period. The period may be either the previous marketing season or the current marketing season, if harvest and delivery of the crop is complete.

#### **10. Industry Vote by Assent (not used in many years)**

If the secretary determines that approval shall be obtained through the assent procedure, a time period during which the assent voting will be conducted must first be set. The time period for receipt of assents may be extended. There is no limit on the number of extensions or extension time for assent

votes. With the assent method of voting, persons who do not assent in writing to the proposed marketing order are counted as having voted “no.”

For a proposed marketing order to gain producer approval through the assent process, written assent must be given by not less than 65 percent of all producers by number who produced not less than 51 percent of the total volume of the commodity produced for marketing in the given period; or by not less than 51 percent of all the producers by number who produced not less than 65 percent of the total volume produced for market during the period.

For a proposed marketing order to gain handler approval through the assent process, written assent must be given by not less than 65 percent of all handlers by number *or* by handlers who handled not less than 65 percent of the total volume of the commodity handled in the given period. For marketing orders involving processors engaged in the canning of fresh fruits or vegetables or canning or packing of dried fruits, written assent must be given by not less than 65 percent of all the processors, both by number *and* by volume. While voting using the assent method remains an option, this method has not been used in recent years.

### ***11. Vote by Referendum***

Under the referendum procedure, a voting period not to exceed 30 days is allowed. If needed to meet the 40-percent participation requirement (discussed below), an extension not to exceed 15 days is also allowed. A referendum ballot is sent to each qualified producer or handler along with a copy of the proposed marketing order. The ballot makes reference to the marketing order and makes provision for each person to vote either “yes” or “no.” At the close of the referendum period, the totals of “yes” and “no” votes are tabulated.

Unlike the assent approval requirements, referendum approval requirements for producers and all handlers are the same. For a proposed marketing order to gain producer and/or handler approval through the referendum process, at least 40 percent of all the producers and/or handlers of the commodity must vote in the referendum. In addition, one of the following must occur:

Not less than 65 percent of the number of those voting representing not less than 51 percent of the volume accounted for by those voting; *or*

Not less than 51 percent of those voting, representing not less than 65 percent of the volume accounted for by those voting, must vote in favor of the program.

### ***12. Voting Role of Cooperatives***

In determining whether an industry has approved a proposed marketing order, the approval of a nonprofit agricultural cooperative marketing association, which is authorized by its members to vote on their behalf, is considered as the approval of all producers who are members of, or stockholders in, the association. In voting on behalf of its members, a cooperative may allow members to vote individually should the member not agree with the position taken by the cooperative.

### ***13. Final Approval and Issuance***

If the tally of the votes indicates that the industry has given the required approval, the proposed marketing order may be made effective by the secretary. This is accomplished by an order of the secretary specifying that the marketing order shall be issued and made effective as of a given date. At least five days’ notice of the secretary’s decision is required before the effective date of the marketing order.

### ***14. Total Time Required***

The total time required to implement a marketing order from the date the first drafting of a program is begun to final approval by the secretary is normally from four to six months. The total time required depends mostly upon the extent of industry organization and support for the program, the compactness of the area involved, the number of producers or handlers, and urgency of existing problems needing to be addressed.

### ***15. Amendments***

Amendments to a marketing order, other than minor amendments, must be developed in the same manner as the original order. Minor amendments are for clarification or administrative purposes only and do not change the purpose or provisions of a marketing order. Minor amendments may be made effective by the secretary on recommendation of the advisory board. At least 75 percent of the board of directors

must support the minor amendment for it to be recommended to the secretary.

Major amendments must be discussed at a public hearing and submitted for a vote of assessment payers before they may become effective. This emphasizes the necessity of giving the original program sufficient thought and study before submitting it to a public hearing and approval vote. Generally, the time and costs required to amend a program by major amendment are somewhat less than to develop the original marketing order.

## C. Administration of Marketing Orders

### 1. Administrative Policy

The enactment of agricultural marketing laws has been directly affected with the public interest. The marketing act provides for use of the police power of the state for the purpose of protecting the health, peace, safety and general welfare of the people of the state. Therefore, it is necessary that all actions under a marketing order be in accordance with the general public policy of administration followed by state agencies.

While the constitutionality of the basic concepts of the marketing act has been supported by many court decisions, the manner in which any program is administered is subject to court action at any time. Members of an industry must bear in mind that every action under a marketing order must consistent with the terms and provisions of the act and the marketing order.

In issuing regulations and approving activities, the secretary must review and approve the recommendations submitted by the advisory board. Regulations, when issued, have the force and effect of law. A great responsibility is thus put upon advisory boards. They should not jeopardize their marketing order or other marketing orders by any action that cannot be defended successfully in court. The department has developed certain procedures regarding recommendations made in fulfillment of the duties of an advisory board. These procedures may appear to be lengthy and burdensome, but they are designed to be in conformity with legal

requirements and are followed so that all actions can be defended successfully in a court of law.

All persons must be treated impartially and equitably. Recommendations and decisions must be based on the facts and circumstances existing within the industry. In this manner, a program will develop its industry's confidence and respect.

### 2. Administrative Body

All marketing orders provide for a representative body from those directly affected by the order. These bodies are termed "boards" or "advisory boards." Board members are appointed by the secretary, generally after receiving recommendations from the industry. The act also provides that a board may recommend to the secretary the appointment of one person who is neither a producer nor a handler to represent the general public.

The broad duties of the board are specified in the act and in each particular marketing order. The duties are administrative in nature and, because of legal requirements, are subject to approval by the secretary. Advisory boards consist of a certain number of members, as specified in the marketing order. Most orders have an alternate member for each member who acts in the place of the member in his or her absence.

Provision is made in most marketing orders for industry nominations for membership on its board of directors. Nominations may be received at meetings at which persons are recommended for appointment. This permits the producers or handlers in the industry to indicate who they wish to represent them on the board. Another means by which recommendations for appointment to boards are gathered is nomination by mail. In this case, nomination forms are mailed to each assessment payer for use in nominating persons for membership. Often the nomination by mail process is followed up by preference voting by mail.

State procedures require each person appointed to a board to sign an oath of office. This qualifies the person appointed to act in an official capacity as a member of the board. As required by the department's Conflict of Interest Code, all advisory board members and alternate members must also file

an Annual Statement of Economic Interest disclosure form.

The term of office of board members varies depending on provisions of the marketing order. Some board terms of office are on a staggered basis. Generally, it is also possible for a person to serve more than one term of office.

Members of advisory boards are appointed to serve the best interests of the entire industry. The recommendations made by the producers or handlers to the secretary regarding board membership are therefore of considerable importance. For new orders, nominees for the initial board are generally recommended at the public hearing.

## **D. Board Organization**

### ***1. Selection of Officers***

The initial meeting of a board is usually called by the department. This meeting is called soon after the members of the board have accepted their appointments. In some cases, acceptance of appointment is done at the meeting. Acting as chairperson pro tem, a departmental representative proceeds to call for election of board officers. The officers are the usual officers of any similar group such as chairperson, vice chairperson, secretary and treasurer.

### ***2 Employment of a Manager or CEO***

One of the more important items for consideration by the board at its initial meeting is the employment of an executive or manager of the board. Because this employee will assume the responsibility for day-to-day administration of the board policies and programs, considerable thought must be given to filling the position. A person capable of organizing and supervising the program must be selected. Knowledge of the industry concerned and a basic understanding of the problems and provisions of the marketing order are also important. This employee will be the principal contact between the board, industry, and the department.

Selection of the executive is not necessarily done at the first meeting. If such is the case, time should be allowed so the board may canvass the field to recruit the best person available to fill the post. In many

cases, management of an advisory board is provided under contract. This is particularly applicable to marketing orders with small budgets that cannot afford a full-time staff.

### ***3. Employment of Other Personnel***

The personnel required by a board are, in large measure dependent on the kinds of activities being carried out. A marketing order involving grading and inspection may require a larger number of employees, at least seasonally, than one involving only research or advertising and promotion. The department can usually be of assistance in providing information as to personnel needs for new marketing orders.

One approach which has been found successful is to have the board designate the positions and salary ranges and then give the chief executive authority to employ personnel to fill these positions. Since the chief executive is accountable to the board for performance of the administrative work of the board, he or she should have authority to employ personnel capable of performing the duties assigned. Likewise, the executive should have authority to discharge employees. This arrangement is far more satisfactory than an arrangement where individual board members, or the board as a whole, perform these duties.

### ***4. Establishment of Board Headquarters***

There are several important factors to consider in selecting the location of the board office. These factors include geographic location of production and marketing areas, the location of offices of cooperating agencies, and the availability and cost of office space.

In obtaining specific office space, once the location is determined, the particular kinds of activities carried out again must be considered. The number of office personnel, the seasonal character of the work, availability of extra space during seasonal peaks and costs all must be reviewed by the board or by persons designated by the board.

## E. Board Meetings

### 1. Notices of Meetings

As a regular procedure, notices of meetings are mailed to board members and to others (upon request) by board management on behalf of the chair. Requirements regarding notice of meetings and inclusion of the public within the meeting process are provided in the Bagley-Keene Open Meeting Act – state law pertaining to all state bodies, including advisory boards, councils and commissions and committees created by those bodies. Key requirements of the open meeting act are:

- The meeting notice must be mailed out at least 10 days prior to the meeting.
- The notice must also be posted on the program's website and CDFR website.
- The notice must include a detailed agenda of the items to be discussed and acted on at the meeting.
- Board action on any item not specifically listed on the agenda is prohibited.
- The agenda must include opportunity for public comment on each agenda item.

All meetings are open to the public with the exception of closed sessions to discuss items identified in the open meeting act as appropriate for closed session (primarily personnel actions and pending litigation).

Members and the public are thus notified of the meeting dates before each meeting. The department is also notified of all meetings. Issuance of a public notice of board meetings in some cases is sent to all handlers and shippers directly affected, as well as other interested persons, whether or not represented on the board. In following such a procedure, the board calls the attention of interested parties to the meeting and dispels any suggestion of secret or closed meetings. Local newspapers are generally cooperative in publishing news items concerning meetings.

### 2. Time and Place of Meetings

Some marketing orders require regular or periodic meetings. When such is the case, definite dates can be fixed well ahead of time. However, many

programs are such that meetings are not held at regularly spaced intervals. Where such a condition exists, the times and places of the meetings are quite often affected by the reasons for the meetings. In all cases other than for emergencies, however, the open meeting act requires that an agenda and meeting notice must be provided to members, alternate members, and interested parties at least 10 days in advance.

### 3. Attendance at Meetings

The question of permitting persons other than board members to attend meetings has arisen in several cases. Board and committee meetings are public meetings and are open to anyone who desires to attend. There may be problems concerning personnel or legal matters for which closed sessions may be held under the open meeting act with only board members and the department representative present. However, such cases should not be frequent and, as required by the act, must be mentioned in the meeting notice and agenda.

The board is a public agency, and as such its deliberations are open to all interested parties. Permitting persons to be heard at these meetings is also a matter for board consideration. It should be board policy to allow interested persons to appear and speak in an orderly manner on pertinent matters. If attendance by persons other than members is large, a spokesperson for groups may be permitted to speak.

### 4. Timely Recommendation of Regulations

Regulations, such as those pertaining to quality standards, must be made effective by action of the secretary. In setting a date for a meeting at which the recommendation of a regulation is one of the items for consideration, the time when the regulations are to be effective must be taken into account. The board must call its meetings early enough to send its recommendations and supporting data to the secretary. Time must be allowed for the secretary to consider the reasonableness of each proposal, make it effective, and provide proper notice to the industry of the regulation. Generally, where the commodity involved is highly perishable or where price levels fluctuate rapidly, the board usually desires to recommend regulations as close to the effective time as possible. In other instances, more time can be

used without any adverse effects. This is often the case where seasonal or long-period regulations are involved and where semi-durable commodities or commodities having stable prices are involved.

### **5. Voting**

Most actions taken by a board do not directly involve regulations. Examples are actions relating to promotion and research activities. As a rule, these actions are based upon a majority vote of the board members present, provided there is a quorum. However, for board actions involving recommendation of regulations, most marketing orders specify a greater number of “yes” votes. Because of this requirement, there is more assurance of general agreement on any proposal that will directly regulate the industry. Issues of a controversial nature are not ones that lend themselves to cooperative effort aimed at a solution. Marketing orders are not “cure-all” measures, and their operations should usually be limited to those activities supported by a majority of the industry.

### **6. Minutes of Meetings**

Minutes of each board and committee meeting are required to be prepared and should provide a complete and accurate record of the official actions of the board. Pertinent data considered in making recommendations should be included. Copies of minutes are sent to the department and to board members. A complete file of the minutes is also maintained at the board office and is available for inspection by interested persons during regular office hours.

## **F. Annual Report**

Each advisory board established pursuant to the marketing act is required to report annually to the members of the industry who are subject to its marketing order. The annual report may be a special publication or one of the issues of a regular series of a publication prepared and identified as the annual report issue. The annual report must contain, at a minimum; 1) a listing of income received and expenditures made and the balance of funds at the close of the fiscal period; 2) delineation of the goals of the order and a report of progress made in

achieving those goals; and 3) other information on the activities and programs, as deemed appropriate.

## **G. Finance**

### **1. Payment of Assessments**

Each marketing order pays its own direct costs and its share of costs incurred by the department to administer the marketing programs. To defray the necessary expenses incurred in the formulation, issuance, operation and enforcement of any marketing order, each producer or handler directly affected pays an assessment on each unit of the commodity marketed, or on some other uniform basis determined to be reasonable and equitable.

A marketing order that affects only producers would provide for assessments paid only by producers. Likewise, those that affect only handlers would provide for assessments paid only by handlers.

### **2. Maximum Assessment Rates**

The marketing act provides for certain maximum assessment rates that may be collected pursuant to a marketing order. The maximum amount that may be collected for administrative purposes is 2.5 percent of the gross dollar volume of sales by producers to handlers. For programs involving advertising and promotion, an assessment not in excess of 4 percent of the gross dollar volume of sales by producers to handlers may be collected for this activity. A maximum of 6.5 percent can be levied both on producers and handlers if both are directly affected by the marketing order.

### **3. Handling of Funds**

From inception of the act, all assessment funds collected pursuant to a marketing order were deposited in a bank account established by the state. Funds collected were credited to the commodity involved and disbursed by the department. This changed with legislation passed in 1982. This legislation, which took effect in 1983, authorized advisory boards to receive, invest and disburse assessment funds directly. Currently, all boards handle their own funds.

The department continues to collect assessment funds for the three dairy marketing programs. The



assessments are collected via the Dairy Accounting System which is the most efficient means to collect and account for assessments paid by dairy producers and processors. These funds are deposited weekly in banks selected by the respective board and then disbursed by the board.

#### **4. Budget**

Each marketing order requires the board to prepare and submit an annual budget to the secretary for approval. This budget sets forth the estimated income and expenses for the year. The department is available to give some assistance in preparing an initial budget. The experience of department staff, gained over time in connection with other programs, is useful in assisting a new program to develop its budget.

#### **5. Financial Statements**

Monthly statements of income and expenditures, along with beginning and ending cash balances, are prepared by the board according to the department's *Accounting Guidelines and General Rules*. Copies of these statements are submitted to the department. Expenses are indicated for each item in the budget, together with the balance remaining in the budget. The department is thereby kept advised of the financial position of each board.

#### **6. Temporary Financing**

When a marketing order is being developed, some expenses will be incurred by the department. Likewise, some program costs will need to be met before funds from assessments are available. In the developmental stages, expenses are generally met from funds raised by interested industry groups. Estimates are made of departmental expenses. The industry group then makes a deposit with the department of enough money to cover these costs. If the order becomes effective, these initial contributions may be repaid to those who have advanced the money.

Once the order is made effective, money to meet expenses prior to receipts from regular assessments can be obtained by an advance assessment on the industry members directly affected. Advance assessments are based on the expected amount of assessments for the coming season. Adjustments are

made when the actual assessment payments are known. Alternatively, a loan may be negotiated to meet expenses prior to the receipt of regular assessment income. Banks have loaned money to a marketing order advisory board until such time as funds become available. Both of these methods of financing have proven successful.

#### **7. Collection of Assessments**

Assessments are collected either in advance or on a current basis. When advance collections are made, each individual involved is required to deposit an estimated percentage of his or her seasonal assessments. As the season progresses, additional deposits are called for. Where current payment is made, billings are periodically prepared on the basis of actual volume of the commodity handled. In all instances, the more nearly current collections can be made, the more satisfactory is the operation. In any event, the department and the boards attempt to collect all assessments due and utilize the authority provided in the act when necessary.

Generally, assessments are remitted promptly, but where legal proceedings are needed, such action is taken by the department through the Attorney General's Office. Close cooperation is maintained with board offices, and full information is exchanged regarding any delinquent accounts. The department's Marketing Branch audits all handlers to ensure that assessment payments are made correctly.

#### **8. Expenditure of Funds**

All disbursements are made by the boards. Purchases of goods and services are made as authorized in the budget, and bills are submitted to the board for direct payment to vendors. All bills are paid in accordance with state procedures as outlined in the department's *Accounting Guidelines and General Rules*. Costs incurred by the department to administer a marketing order are billed monthly in an invoice sent to the board.

#### **9. Reimbursement of Board Members' Expenses**

The members and alternate members of each advisory board are entitled to reimbursement of their actual travel and other expenses incurred in the performance of their official duties. In addition, board members may be compensated not to exceed

\$100 per day for each day spent in attendance at, or traveling to and from, board meetings or while on board business.

## H. Authorized Activities

The act authorizes four general areas of activity. The most important activity from the standpoint of marketing order expenditures is advertising and sales promotion. Another important activity from the standpoint of the number of marketing orders involved is production, post-harvest handling, processing and distribution research. The act also has regulatory provisions for the establishment of quality standards with inspection and for supply management or volume control activities.

### 1. Advertising and Sales Promotion

The act provides authority for advertising and sales promotion of the product by recognized means. The first consideration is the marketing problems to be dealt with and the type of promotional activity which will help solve those problems. Often, marketing research is done to better define consumer preferences, consumer behavior, and to better understand markets.

Advertising through newspapers, magazines, billboards, or similar media is one approach. Radio or television advertising is another approach although costs can be prohibitive except for the larger-budget programs. Nutrition research and education has become a major category of advertising and public relations for many programs. Recipe development and publicity through home economists and newspaper food editors is another. Dealer service personnel (marketing representatives) who contact the trade in promoting the sale of the commodity is still another. These and other types of promotion, either individually or collectively, may be used by an industry in an advertising and promotion program.

#### a. Selection of an Advertising or Public Relations Agency

For some advertising and promotion efforts, a marketing order advisory board can effectively use the services of an advertising or public relations agency. Once the main types of promotional activities have been considered, the board can

indicate to the advertising industry its desire to employ an agency. A common procedure is to permit interested agencies to present to the board an outline of the functions and facilities the agency offers to its clients. The board then reviews the proposals and, based upon the board's evaluation of individual agency capabilities, facilities, and experience in advertising, and agency is selected. In some cases, the board office staff may be able to carry out promotional functions. The amount of money available and the type of program desired help to make this determination.

#### b. Development of an Advertising Plan

Once an advertising and promotion program has been initiated, the board will need to periodically review program activities to learn of progress, needs, and trends. In all instances, the first and most important issue is the development of a budget. A complete review of the situation is needed before a budget can be soundly developed. When the budget is developed, an advertising and promotion plan for a specific period may be divided into several plan periods. When different types of advertising strategies are to be carried out at different times, a plan for each strategy is desirable. The plan indicates the general media and procedures to be followed during the period, the amounts to be spent during the period, and the desired objectives. When the plan has been completed, an evaluation should be made and retained by the board for future use.

Disparagement of other commodities and the use of false or unwarranted claims are not permitted by the marketing act. Brand advertising is also generally not permitted.

### 2. Research

Authority is provided for carrying on research studies in the production, processing, or distribution of any agricultural commodity. For any research in production or processing carried on under a marketing order, the Vice President for Agricultural Sciences of the University of California and the advisory board must select the projects which are to be carried on. Insofar as is practicable, the projects are carried out by the University. However, if the Vice President and the board determine that the University has no facilities for a project or that some

other research agency has better facilities for a project, then the research can be carried on by the other agency.

#### *a. Reports on Research*

Where research is carried on under terms of a marketing order, reports by the research agency should be given to the board and also to the industry. The board and industry are thereby kept advised of progress being made, of problems encountered, and of the general activity being funded by the board. Progress is sometimes very slow and reports have to be written carefully to indicate what has and has not been accomplished. Likewise, reports to the industry must be made in terms that can be understood. All too often research is dropped because of a gradual decline in interest. The lack of interest can often be traced directly to lack of information in laymen's terms regarding what is being done and the progress being made.

### *3. Quality Standards*

In discussing marketing orders as a tool in setting grade standards above State or federal minimum requirements, it must first be recognized that there are no federal minimum grade standards for the domestic market. The federal standards are "standards of identity". In addition, practically all minimum grade standards established in the California Food and Agricultural Code apply to commodities that are marketed in fresh form. Therefore, a California industry wishing to have minimum standards on a raw product for processing must use another basis to establish minimum grade standards. In any event, marketing order standards cannot be established below any minimum standards provided in law for the commodity.

It is necessary to set the minimum standards applying to commodities marketed for fresh use low enough so as not to eliminate edible food in years of short supply. This then results in situations where, in years of abundant supply, some method of distribution is needed (1) to avoid chaotic market situations and, (2) to avoid a situation where good fruit and vegetables are left unharvested while those of lesser quality reach the market and contribute to disorderly marketing. One of these methods is to raise the minimum grade standards and eliminate the poorest

quality of the commodity. Also, marketing orders can provide for mandatory inspection pursuant to minimum grade standards. The intent of quality standards is to make good quality agricultural products available to the consuming public. The authority for quality standards has only been used by a small number of state marketing orders in recent years.

### *4. Volume Control*

The main thrust of most supply management or volume control programs is to try to avoid market gluts and shortages and to even out the flow of the commodity to market. However, in a few instances, this means permanently withholding part of the commodity from the market.

Supply control programs are used judiciously and with restraint. Since supply control is a negative approach to marketing, it is important that all other reasonable alternatives, such as improving quality, improving the marketing climate through advertising and promotion, and research into new uses and new products are considered first. Surplus control is utilized as a last resort and generally is temporary in nature. For this reason, establishment of supply control programs are for one season at a time. Volume control authority has not been used by any State marketing order since the 1970s.

### *5. Departmental Approval of Regulations*

When a board recommends the establishment of quality standards, the recommendation is forwarded to the department for action. Supporting data should accompany the recommendation. If the proposal is approved, a formal written Order is issued by the secretary making the regulation effective. The regulation is then binding on the entire industry and has the force and effect of law.

### *6. Notification and Effective Date*

Those marketing orders with regulatory authority provide for industry notification by the department or board of effective regulations. In some cases, the industry is notified directly by the department. In such instances, the board is notified immediately upon the approval of the action. These marketing orders provide for a time interval between the giving of notice and the effective date of the regulation,

which generally ranges from 24 hours to five days or more.

### **7. Other provisions**

The provisions most commonly used in marketing orders have been discussed in some detail above. Actually, the legislation is very broad and other programs are possible having as their goal benefits to the commodity or commodities concerned. For example, the act also provides for the prohibition of unfair trade practices and for the detection and control of pests and diseases.

## **I. Enforcement**

### **1. Necessity for Enforcement**

When an industry undertakes to address some of its problems through a marketing order, it also assumes the responsibility for having all persons treated equitably by provisions of the order. Every effort is made by the department to see that the terms of a marketing order are enforced upon those affected in a fair manner. State and local law enforcement agencies are available to give assistance in enforcement matters.

### **2. Investigations**

The policy of the department is to investigate a matter carefully and thoroughly before any type of court action is taken. Whenever possible, the matter is discussed with the chief executive of the board and with the persons involved. Where the case is clear, and efforts to resolve the matter informally fail, legal steps are taken and penalties which are set forth in the act and the marketing order are applied. If legal steps are necessary, they are usually taken through the Attorney General's Office.

### **3. Compliance**

When it becomes generally known that action will be taken against violators, even those whose inclination may be to violate a program, usually hesitate to do so. The penalties are, in most cases, a sufficient deterrent. In addition, the industry and trade reaction to the publicity of a conviction or even a lawsuit for a known violation can be severe. From a public relations standpoint, most firms and individuals avoid actions which would lead to court or other formal enforcement procedures.

## **J. Termination of a Marketing Order**

### **1. Need for Termination**

The need may arise, because of changing economic conditions in an industry, to terminate or discontinue the operations of a marketing order. Producers or handlers are reluctant to adopt a marketing order unless they can be assured that the marketing order can be discontinued by using reasonable procedures. They want to be assured that the marketing order will not remain in effect indefinitely unless the industry so desires. On the other hand, they do not want a small dissident group to upset a constructive program. Under provisions of the Marketing Act, there are a number of ways in which a marketing order may be discontinued or terminated.

### **2. Marketing Order Provisions**

Termination of a marketing order, meaning the termination of the document and its authorities, may be accomplished by including a specific termination date in the order (sunset clause). Termination is automatic only when a termination date is fixed in the order. A marketing order may also include a provision that requires the periodic reapproval of the order by an industry vote. If the secretary finds from any such vote that the majority of the industry does not favor continuation, the marketing order may be terminated.

### **3. Public Hearing Procedures**

If no provision is made in a marketing order for reapproval or for termination in less than five years, a public hearing must be held at least once every five years to ascertain industry and public opinion on the effectiveness and need for continuation of the order. If a substantial question exists as to whether the marketing order is contrary to or does not effectuate the declared purposes or provisions of the Act, then it is submitted to the industry for reapproval. The vote for reapproval is the same as used for the original approval of the marketing order.

A public hearing on the question of the reapproval of a marketing order may also be called based on a petition by at least twenty-five percent (25%) by number and volume of the producers or handlers directly affected. After determination whether a reapproval vote is warranted and whether the vote

shall be by assent or referendum, the marketing order is submitted for reapproval of those producers and handlers that are directly affected. An order will be considered reapproved if it has been assented to or favored in a referendum in the same manner as is required for a new marketing order. If the secretary finds that a marketing order is not reapproved, he or she will order its termination.

If at any time the secretary finds that a substantial number of persons that are directly affected by an order are in opposition to it, he or she may, upon his or her own motion, hold a public hearing to consider suspension or termination. The secretary's decision is based upon the testimony and evidence received at the hearing. In light of the evidence, the secretary may terminate, suspend, or submit the order for amendment or reapproval, or make a finding that there is not sufficient opposition to the order to warrant any action and therefore continue the marketing order. If the decision is to terminate, then the affairs of the program must be permanently closed in an orderly manner at the close of the current marketing season.

#### **4. Industry Request**

The secretary is also required to terminate any marketing order if requested to do so in writing, within a 90-day period, by at least fifty-one percent (51%) of all *producers* directly affected who produced at least fifty-one percent (51%) of the volume of the product, or by at least fifty-one percent (51%) of all *handlers* directly affected who handled at least fifty-one percent (51%) of the volume of the product.

#### **5. Termination of Inactive Programs**

An advisory board may decide for some reason not to fund and carry out during the coming season, the activities which are authorized in the marketing order. In this case, the board would not recommend an assessment rate or budget. The act provides that if a marketing order is inactive for three consecutive seasons, the secretary may terminate the order without a public hearing or vote. Termination of most marketing orders takes place in this manner.

## **K. Success of a Marketing Order**

### **1. Industry Responsibility**

A marketing order is usually much more successful if those affected want the program to be successful and work to make it successful. If a real need for a marketing order exists, if those affected understand and appreciate its purposes and objectives, and if they fully and conscientiously participate in carrying it out, its successful operation is virtually assured.

A marketing order is not an automatic device. Effectuating a marketing order merely authorizes an industry to undertake certain prescribed action. It remains for the industry to take the initiative. The participation of the secretary is to ensure that actions taken are legally and technically sound. The services of the secretary in this respect are more to assist than to regulate. As with any democratic institution, the benefits derived from a marketing order are in direct proportion to the efforts and cooperation of those who stand to benefit.

### **2. Board Responsibility**

Members of advisory boards will in many instances need to provide a considerable amount of their time and incur some expenses in the fulfillment of their responsibilities. If industry interest and active support given an order are great, the board's task is easier. The board itself can do much to encourage general industry participation. Aggressive action in working with industry problems and in advising the industry of the problems and how they can be dealt with will develop interest in the board. This will, in turn, cause the board to be regarded as the focal point of industry action in connection with industry problems. Board members should recognize industry welfare above sectional welfare or individual welfare. Fairness and impartiality in their actions will gain confidence of the industry and make easier the duties they perform.

### **3. Department Responsibility**

In the exercise of the authority granted by the Marketing Act, the interests of consumers must be protected as well as those of assessment payers. Economic and legal questions which are inherent in any exercise of legislative authority must be reviewed. The department must carry out its

responsibilities in such a manner that practical operation of the marketing order is permitted while other requirements are observed. Achieving this balance is quite often easier said than done. A reasonable operation can be maintained by obtaining

a working knowledge of the industry and fitting that knowledge to the legislative authorizations and requirements.

## ARTICLE IV COMMISSIONS

### A. Provisions of Commissions

The nineteen<sup>4</sup> commission programs that are currently in effect are authorized to engage in the following activities:

- To promote the sale of the commodity by advertising and other promotional means.
- To educate and instruct the public regarding uses, healthful properties, proper handling methods and nutritional value of the commodity.
- To educate and instruct the wholesale and retail trade regarding proper methods of handling and selling the commodity.
- To make market, transportation, and other surveys and analyses.
- To present facts to and negotiate with state, federal and foreign agencies on matters which affect marketing of the commodity.
- To conduct scientific research, including the study, analysis, accumulation, and dissemination of information obtained from the research or elsewhere respecting cultural practices, marketing, handling and distribution.

While the Avocado Commission Law was amended in 1985 to also provide authority for quality standards, the regulatory and enforcement authority for implementing avocado quality standards remains with the secretary.

Some commission laws have been amended in recent years to provide authority for the commission to engage in any activity authorized in the marketing act provided that to the extent the commission engages in such activity, it acts in an advisory capacity to the secretary.

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<sup>4</sup> A twentieth commission was enacted effective January 1, 2018. The Spiny Lobster Commission Law is effective only to the extent necessary for the department to conduct an implementation vote of eligible fishermen.

### B. Development of Commissions

As with marketing order programs, a significant amount of work by the industry is necessary to develop a commission. Commission laws are developed as assembly or senate bills. Proponents must have the legislation drafted and then introduced (authored) by a member of the assembly or senate. With successful passage through the legislature and the Governor's signature, the commission law goes into effect.

After a commission law is enacted, the secretary is required to establish a list of producers and/or handlers eligible to vote on implementation of the law. The secretary establishes a referendum period in accordance with the provisions of the commission law which usually varies between 10 and 60 days in length. If the initial voting period established is less than 60 days, the secretary is authorized by most commission laws to extend the period. However, the total referendum period may not exceed 60 days.

Prior to the referendum vote to activate a commission, money must be deposited with the secretary to cover departmental expenses to conduct the vote. Upon establishment, the commission is authorized to reimburse those who deposited the money.

The provisions of the commission law do not become operative until the referendum of affected producers and/or handlers is held and the following criteria are met. Firstly, at least forty percent (40%) of the total number of producers and/or handlers on the list must participate in the referendum. Secondly, one of the following must also take place:

- Sixty-five percent (65%) or more of those voting, who marketed at least a majority of the commodity volume represented by those voting must vote in favor of the provisions of the law, *or*

- A majority of those voting who marketed at least sixty-five percent (65%) of the commodity volume represented by those voting must vote in favor of the provisions of the law.

This is similar to the referendum requirements in the Marketing Act.

If the secretary finds that a favorable vote has been given in the referendum, he or she so certifies. The secretary then gives notice to all producers and handlers that the commission will become operative.

The total time required to effectuate a commission can vary widely. The commission bill can spend from six months to two years in the legislature depending on the time of introduction and the degree of support for the bill. If passed and signed by the Governor, the law will become effective as of January 1 of the year following passage of the bill, unless it has an urgency clause. Development of the list and holding of the referendum by the secretary can take from four to six months. Thus the total time required can be from one to three years.

Amendments to a commission law also come about as a result of legislation. This makes it important to draft original legislation carefully to avoid the time and cost involved in amending the law.

### C. Administration of Commissions

As is the case with marketing orders every action under a commission law must be in accordance with the law. All persons directly affected by the law must be treated impartially and equitably. Operation in this manner will generate confidence in the law by those in the industry.

After the commission becomes operative, the law usually requires that the secretary carry out a nomination process for the purpose of nominating and electing persons for appointment to the commission's board of directors. The initial board is appointed by the secretary. All persons on the secretary's list(s) of eligible producers and/or handlers are given advance written notice of the nominations and election process to take place. The process may be carried out by mail, by meetings or a

combination of the two. If the geographic area served by the commission is divided into districts the representation (number of board members) for each district is set forth in the commission law and elections are held for each district.

Subsequent to the first election of members, persons to be elected are usually selected pursuant to nomination and election procedures established by the commission. The secretary must concur with the procedures proposed.

As with marketing order advisory boards, commission members must be producers or handlers, or employees representing producers or handlers, who have a financial interest in producing or handling the commodity covered by the law. Commission laws also generally provide for a public member to serve on the commission. The public member cannot have any financial interest in the affected industry.

The powers and authorities granted to a commission are specified in the commission law. The State of California is not liable for the acts or contracts of any of the commissions.

Commissions are empowered to appoint their own officers, including a chairperson, one or more vice chairpersons and any other officers deemed necessary. Commissions also are empowered to employ a chief executive and other personnel, including legal counsel.

As required by the Bagley-Keene Open Meeting Act, notices of meetings are mailed to all commissioners as well as the secretary at least ten days in advance of any scheduled meeting. Notices must also be mailed to any person requesting notice of commission meetings or meetings of committees created by a commission. Furthermore, such notices must also be posted on a website hosted by the commission and preferably posted on the department's website.

For most commissions the secretary or his or her representative is a non-voting, ex-officio commission member. Commission meetings, except for closed sessions, are open to the public without any preconditions.



When the secretary is required to concur in a commission decision the commission laws require a response to the commission within 15 working days from notification of such decision. The secretary may require commissions to correct or cease any action not consistent with the law or not in the public interest. Unlike marketing orders, most commission activities are not subject to the secretary's approval.

The commission laws provide for the holding of a public hearing or a referendum every five years for continuation of the program. If a public hearing is required, the secretary conducts the hearing. If a referendum is required the commission usually conducts the referendum but ballots are usually counted by the secretary who makes the finding as to the continuation or suspension of the commission.

With a two-thirds vote of the commission members that its operation has not met the purposes for which it was intended, the commission may recommend that operations be suspended. This suspension would not take place until the end of the current marketing season. Additionally, assessment payers may petition the secretary to suspend the operations of the commission. The secretary then holds a hearing and may find that the program should be issued for a referendum vote.

Commissions have an informal hearing process for addressing claims against the commission, or its members or employees, by individuals who are aggrieved by its actions. Appeals from decisions of the commission may be made to the secretary. After reviewing the record of the proceeding, the secretary renders a decision about whether or not to sustain the appeal.

#### **D. Finance**

As with marketing orders, commissions raise the bulk of their operating funds by assessment of those directly affected. Each commission law spells out who is responsible for paying assessments as well as the maximum assessment rate allowed.

At the beginning of each marketing season, the assessment rate for that season is set by each commission. The annual budget is also created to ensure that there will be sufficient funds available to finance the year's planned activities. For most commissions, the secretary must concur with the statement of contemplated activities and budget prior to expenditure of any funds (except for commission salaries).

Each commission handles the collection of its own assessment funds. Every handler is required to remit assessments in a timely manner. If the assessment is remitted on behalf of producers, the handler may deduct the assessment from amounts owed to producers. Handlers are required to keep accurate records of the commodity received and shipped by them.

Each commission member is entitled to a daily allowance of \$100 in addition to travel expenses and meal allowances while in attendance at or traveling to and from commission business.

Each commission is required to reimburse the secretary for expenses incurred in carrying out his or her duties and responsibilities under the commission law. The department bills each commission monthly for these expenses.

Commissions are required to keep accurate books and records of all of their dealings. These books and records are subject to an annual audit financial audit. The accounting firm that performs the audit is generally selected by the commission with the concurrence of the secretary. The audit is made a part of an annual report to the industry. Along with the annual financial audit, the accounting firm also performs a set of Agreed-upon Procedures to verify compliance with the department's Accounting Guidelines and General Rules and the commission's internal policies and procedures. These Agreed-upon Procedures are carried out in conjunction with the annual financial audit.

## ARTICLE V COUNCILS

There are currently three council programs operating under California Food and Agricultural Code. These are:

The Dairy Council of California

The California Beef Council

The California Salmon Council

The Dairy Council was made effective in 1945, the Beef Council was made effective in 1957 and the Salmon Council was made effective in 1989.

### A. Provisions of Councils

The three council laws enable the dairy, cattle and salmon industries to develop, maintain and expand State, nationwide and foreign markets for milk and dairy products, beef and beef products, and salmon produced sold or distributed in California. The laws authorize programs to formulate and effectuate promotion and consumer or other educational programs designed to increase consumption of the product. Each law also provides for scientific research to develop or discover the health, food, therapeutic, dietetic, industrial, or other uses for beef, dairy products or salmon.

### B. Development of Councils

As with Commissions, the three council laws were developed as specific legislation and incorporate many provisions similar to most marketing orders. The councils differ from any of the other State marketing programs in that no approval by producers and/or handlers was needed subsequent to passage of the legislation. With the passage of the laws, the councils took effect and became operative.

The total time required to effectuate a council program can vary from six months to two years. The council laws passed through the legislature, then became effective on January 1 of the year following

passage. As with commissions, amendments to council laws come about through legislation.

### C. Administration of Councils

The councils are composed of producers and handlers who are appointed by the secretary. The secretary may also appoint a public member to each council. Terms of office are staggered to allow roughly one-third of the members to be appointed each year.

The secretary is authorized to maintain a list of those affected under the laws. He or she may either hold nomination meetings or use the list to solicit nominations for membership on the councils. The Beef Council Law permits nomination by organizations in the industry.

Vacancies occurring during any unexpired term of office are filled by the secretary. The secretary also has the power to remove any member from a council for cause.

The councils are permitted to select annually a chairperson and vice chairperson who together with three to five other council members constitute the executive committee. The executive committee has whatever powers the council may delegate to it. The council and executive committee both are authorized to have at least two meetings per year in addition to any other meetings that may be required.

The council laws contain language stating that no member or employee can be held responsible individually for liability on any contract or agreement of the council. Additionally, all obligations of the council are payable only from council funds.

The powers and duties of the councils are as follows:

- To recommend to the secretary administrative regulations for each of the programs.

- To investigate matters affecting their administration and to report violations to the secretary.
- To employ and discharge a manager and other employees that are deemed necessary and to outline their duties and fix their compensation.
- To establish offices and incur expenses.
- To cooperate with councils, agencies or other organizations involved in similar activities and to recommend contracting with them on projects.
- To contract for sales promotion or to recommend such contracts to the secretary.
- To recommend to the secretary the institution and promotion of scientific work on uses of their products.
- To receive, invest and disburse funds.

The councils differ in several respects. Although each may work on scientific research, the Beef Council needs only to work with organizations of recognized professional standing. The Dairy Council insofar as is practical is directed to work with the University of California unless it finds that some other organization would be better suited to do the research.

The Beef Council is required to prepare an annual statement of the activities in which it has been engaged the previous year and in which it proposes to engage during the ensuing year. Each council is required to submit statements of recommended activities and proposed budgets for the coming fiscal year. The Dairy Council must obtain the written concurrence of the secretary regarding the plan and the budget.

Councils are required to keep accurate books and records and these records are open to inspection and audit by the department. Expenditures for political contributions or for lobbying are not authorized for

councils. Additionally, no member or employee of the Beef Council is allowed to appear before a state or federal legislative committee unless requested to do so, or to lobby as a representative of the Council.

Each of the councils is required to make an annual report to its assessment payers. The report is to contain, at a minimum, income and expenses, fund balances, and a report of progress in achieving program goals.

The Beef Council Law is unique among California marketing programs in that its provisions remain operative permanently unless a referendum among the state's producers is triggered by the secretary, at the request of the Council, or upon receipt of a petition from 3,000 or more producers. There can also be a referendum by petition for a voluntary fee payment system. The Dairy Council has a more conventional continuation procedure. Every four years, the secretary is required to hold a hearing and, if needed, a referendum regarding whether the council shall stay in effect.

#### **D. Finance**

The councils estimate total assessment income and develop annual budgets sufficient to support the year's planned activities. After consultation with the councils, the secretary is required to prepare and annual budget for each which sets forth the proposed expenses by the department.

The members of each of the councils are entitled to receive one hundred dollars per day for each day spent in attendance at meetings or while on council business. They are also reimbursed for traveling and other expenses incurred in the performance of their official duties. Each law has a limit on the number of days of compensation that any member can received in a given month.

## ARTICLE VI ROLE OF THE MARKETING BRANCH

The department's Marketing Branch (branch) has been given the responsibility of administering all of the State marketing program legislation discussed above. In order to carry out this responsibility branch economists attend all board, commission and council meetings as the secretary's representative. Working closely with the Department's Legal Office, branch economists provide guidance and counsel to the programs regarding their laws and authorities under the laws. With respect to marketing orders and agreements, the branch is responsible for reviewing all recommendations to the secretary made by the advisory boards. The branch also does all the work necessary to put advisory board recommendations into effect.

Industry groups interested in exploring a new marketing board, commission or council may contact the branch to receive information on how to go about exploring and developing a new program. The branch is responsible for carrying out the steps necessary to develop a marketing order and for implementing new council or commission laws enacted by the legislature.

This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.			
	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>	<p>Promotion, advertising, education, production research, quality standards, inspection and supply control*.</p> <p>* No marketing order currently utilizes supply control authority.</p>	<p>Promotion, advertising, education, marketing research, and research.</p> <p>Subject to CDFA's approval, any council may petition to adopt and administer any activity authorized by the California Marketing Act.</p>	<p>Promotion, advertising, education, marketing research, and production research.</p> <p>Subject to CDFA's approval, any commission may petition to adopt and administer any activity authorized by the California Marketing Act.</p>
<b>PROCEDURE TO ESTABLISH</b>	<p>A. Industry prepares preliminary draft of order.</p> <p>B. If deemed appropriate by CDFA, CDFA conducts public hearing.</p> <p>C. CDFA conducts industry vote if hearing testimony demonstrates that proposed marketing order may benefit the industry.</p> <p>D. If industry meets specified voting requirements, CDFA orders the marketing order into effect.</p> <p>[Note: For agreements, if the hearing record so warrants, the agreement is issued for sign-up. A vote is not required.]</p>	<p>A. Industry drafts proposed statute and seeks approval through legislative process.</p> <p>B. If proposed legislation is enacted, CDFA conducts industry vote.</p> <p>C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies council.</p>	<p>A. Industry drafts proposed statute and seeks approval through legislative process.</p> <p>B. If proposed legislation is enacted, CDFA conducts industry vote.</p> <p>C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies commission.</p>

### APPENDIX “A” - MARKETING PROGRAMS: COMPARISON OF AUTHORITIES

**This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.**

			<b>COMMISSION</b>
<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 agreement 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.
<b>MEMBERSHIP AND SELECTION PROCESS</b>	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.

### APPENDIX "A" - MARKETING PROGRAMS: COMPARISON OF AUTHORITIES

**This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.**

	<b>MARKETING ORDER or AGREEMENT</b>	<b>COUNCIL</b>	<b>COMMISSION</b>
<b>CONTINUATION</b>	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 Dairy Council requires a public hearing at least once every four years, while 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.
<b>TERMINATION</b>	<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>
<b>NON-COMPLIANCE PENALTIES</b>	Criminal and civil	Similar	Similar

## APPENDIX “B” – MARKETING PROGRAMS AUTHORIZED ACTIVITIES

## MARKETING ORDERS AND AGREEMENTS

Established Under the California Marketing Act of 1937				Unique Authorities
Alfalfa Seed Research Board		A		
Artichoke Advisory Board	A	A		
Beans(Dry) Advisory Board	A	A	I	
Cantaloupe Advisory Board	A	I	A	(A) - Good Agricultural Practices <sup>5</sup> (I) - Weather Data Dissemination
Carrot (Fresh) Advisory Board	A	A		
Celery Research Advisory Board		A		
Cherry Advisory Board	A	A		
Citrus Nursery Board		A		
Citrus Research Board	(A) - Education	A		(A) Pest and Disease Control
Figs (Dried) Advisory Board	A	A	A	(I) - Unfair Trade Practices and Stabilization Pool (A) - Substandard Fig Pool
Garlic & Onion Dehydrator Advisory Board			A	
Garlic & Onion Research Board		A		
Leafy Greens Marketing Agreement	(A) - Education			(A) - Good Agricultural Practices <sup>6</sup>
Leafy Greens Research Board		A		
Melon Research Board		A		
Milk Advisory Board	A	A		



## APPENDIX "B" CONTINUED

		Production and or Postharvest Research	Quality Standards and Inspection	Unique Authorities
Milk (Fluid) Processor Board	A			
Cling Peach Advisory Board	A	A	I	
Pear Advisory Board	A	A	A	(A) -Pest Management
Pistachio Research Board		A		
Potato Research Advisory Board		A		
Dried Plum (Prune) Board	A	A	I	
Raisin (Grower) Marketing Board	A	A		
Rice Research Board		A		(A) - Weather Data Dissemination
Strawberry (Processing) Advisory Board	I	A	A	(A) - Unfair Trade Practices
Tomato (Processing) Adv. Board			A	
Wild Rice Board	A	A	I	(I) - Stabilization Pool
Buy California Agreement (Multiple Commodities)	A	A		
Winegrape Inspection Agreement		A	A	

## COUNCILS

Established Under Separate Statutes of the California Food and Agricultural Code	Promotion, Advertising and Education	Production and or Postharvest Research	Quality Standards and Inspection	Unique Authorities
Beef Council	A	A		
Dairy Council of California	(A) – Education	A		
Salmon Council	A	A		(I) - Purchase of Fishing Rights

## APPENDIX “B” CONTINUED

## COMMISSIONS

Established Under Separate Statutes of the California Food and Agricultural Code	Promotion, Advertising and Education	Production and or Postharvest Research	Quality Standards and Inspection	Unique Authorities
Apple Commission	A	A	I	
Asparagus Commission	A	A		
Avocado Commission	A	A	I	
Blueberry Commission	I	A	I	
Cut Flower Commission	A	A		
Date Commission	I	A		
Grape Rootstock Improvement Commission		A		
Olive Oil Commission		A	A*	
Pepper Commission		A		
Rice Commission	A	A		
Sea Urchin Commission	A	A		
Sheep Commission	A	A		
Spiny Lobster Commission ( <i>Proposed</i> )				
Strawberry Commission (Fresh & Processed)	A	A		
Table Grape Commission	A	A		
Walnut Commission	A			
Wheat Commission	A	A		
Winegrape Commission – Lake Co.	A	A		
Winegrape Commission – Lodi/Woodbridge	A	A		
Winegrape Commission – Sonoma County	A	A		

\*Under California Marketing Act authority

## APPENDIX “C” – FOOD AND AGRICULTURAL CODE – DIVISION 22 – COMMODITY MARKETING LAWS

LAW:	PART 2 CHAPTER:	BEGINNING WITH SECTION:	ACTIVE/INACTIVE
<i>Dairy Council of California</i>	1	64001	Active
<i>California Beef Council</i>	2	64501	Active
California Table Grape Commission	3	65500	Active
California Iceberg Lettuce Commission	4	66501	Inactive
California Avocado Commission	5	67001	Active
California Kiwifruit Commission	6	68001	Inactive
California Pistachio Commission	7	69001	Inactive
California Rice Commission	9.5	71000	Active
California Wheat Commission	10	72001	Active
California Navel Orange Commission	11	73001	Inactive
Winegrowers of California Commission	12	74001	Inactive
California Wine Commission	12.5	74501	Inactive
California Grape Rootstock Improvement Commission	12.6	74701	Active
California Winegrape Growers Commission	12.7	74801	Active for Local Commissions
California Egg Commission	13	75001	Inactive
California Apple Commission	13.5	75501	Active
California Cherry Commission	14	76001	Inactive
California Sheep Commission	15	76201	Active
<i>California Salmon Council</i>	16	76501	Active
California Walnut Commission	16.5	77001	Active
California Pepper Commission	17	77201	Active
California Strawberry Commission	17.5	77401	Active
California Forest Products Commission	18	77501	Inactive
California Date Commission	19	77701	Active
California Cut Flower Commission	20	77901	Active
California Asparagus Commission	21	78201	Active
<i>California Seafood Council</i>	23	78401	Inactive
California Tomato Commission	24	78601	Inactive
Mendocino Winegrape and Wine Commission	24.5	78801	Inactive
California Sea Urchins Commission	25	79000	Active
California Spiny Lobster Commission ( <i>Proposed</i> )	25.5	79150	5/2018 Implementation Vote
California Blueberry Commission	26	79231	Active
California Nursery Producers Commission	27	79401	Inactive
California Apiary Research Commission	28	79601	Inactive
Olive Oil Commission of California	29	79800	Active

APPENDIX “D” – CURRENT CALIFORNIA MARKETING PROGRAMS – 51 ACTIVE <sup>7</sup>

MARKETING ORDERS - 26		AGREEMENTS – 3		COUNCILS - 3		COMMISSIONS – 19 <sup>7</sup>	
1	Alfalfa Seed Research	1	California Grown	1	Beef	1	Apple
2	Artichoke	2	Leafy Green Handler	2	Dairy	2	Asparagus
3	Dry Bean	3	Winegrape Inspection	3	Salmon	3	Avocado
4	Cantaloupe					4	Blueberry
5	Fresh Carrot					5	Cut Flower
6	Celery Research					6	Date
7	Cherry Marketing & Research					7	Grape Rootstock Improvement
8	Citrus Nursery					8	Olive Oil
9	Citrus Research					9	Pepper
10	Dried Fig					10	Rice
11	Garlic & Onion Dehydrator					11	Sea Urchin
12	Garlic & Onion Research					12	Sheep
13	Leafy Greens Research					13	Spiny Lobster ( <i>proposed</i> )
14	Melon Research					14	Strawberry
15	Milk Processor					15	Table Grape
16	Milk Producer					16	Walnut
17	Cling Peach Grower					17	Wheat
18	Pear					18	Winegrape - Lake County
19	Pistachio Research					19	Winegrape – Lodi
20	Dried Plum					20	Winegrape – Sonoma
21	Potato						
22	Raisin Marketing						
23	Rice Research						
24	Wild Rice						
25	Processing Strawberry						
26	Processing Tomato						

<sup>7</sup> The Spiny Lobster Commission Law was enacted in 2017 and became effective on January 1, 2018. However, it is only effective to the extent necessary for the department to conduct a referendum vote of affected fishermen to determine whether to fully implement the Commission Law. If made fully effective, the Commission would become the 52<sup>nd</sup> active program.