October 10, 2018

Food and Agriculture Code (FAC) Sections Suspended Should a Federal Milk Marketing Order (CA FMMO) be Enacted for California

The United States Department of Agriculture issued an order creating a California Milk Marketing Order (CA FMMO) regulating milk produced on or after November 1, 2018. The California milk pricing system was codified in The California Food and Agriculture Code (FAC) Division 21, Part 3, Chapters 1, 2, 2.5, 3, and 3.5. These chapters constitute a single comprehensive scheme for the regulation of the production and handling of milk. Chapters 2 and 3 (FAC 61893, 62726) contain language that suspends any State activities that are duplicative of, in conflict with or unnecessary with implementation of the CA FMMO. While the code does not identify which activities those are, or how the suspension will occur, it does require the Secretary to “take such steps and procedures as are necessary to wind up and conclude the administration and enforcement” of some provisions of those chapters for the period prior to the actual suspension date. The attached document seeks to clarify which provisions the Secretary will concluded enforcement of.

Within Chapters 2 and 3 you will find language posted in strikethrough format. Those provision will not be enforced by the Secretary. Chapters 1 and 2.5 do not contain the suspension language included in Chapters 2 and 3 and therefore do not have any strikethrough text. However, given the close tie between all chapters, portions of Chapters 1 and 2.5 will not be enforceable.

Chapter 2.5 provides for the Milk Produce Security Trust Fund (MPSTF). The language in this Chapter assumes that the MPSTF will function as a part of a California pricing system. The Department is working in conjunction with the MPSTF Board to identify language that needs to be amended to conform to a FMMO, and to identify which industry members will take the lead in pursuing those amendments.

Should you have any questions on the comment period, please contact Donald Shippelhoute at (916) 900-5124 or at donald.shippelhoute@cdfa.ca.gov.
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ARTICLE 1. Definitions [61301 - 61317]
( Article 1 enacted by Stats. 1967, Ch. 15. )

61301. Unless the context otherwise requires, the definitions in this article govern
the construction of this chapter.
(Enacted by Stats. 1967, Ch. 15.)

61302. “Bulk milk” or “bulk cream” means milk or cream, respectively, which has not
been pasteurized or packaged in bottles, cartons, dispenser cans, or other
consumer packages, and which is handled or delivered, in bulk, in tanks, cans, or
other bulk containers.
For this purpose, skim milk or cream which has been preheated or pasteurized not
more than once, as provided in Section 34004 or 34005 of this code, and is handled
or delivered in bulk is not pasteurized.
(Enacted by Stats. 1967, Ch. 15.)

61303. “Consumer” means any person that buys milk, cream, or any dairy product
for consumption and not for resale.
(Enacted by Stats. 1967, Ch. 15.)

61304. “Cream” has the meaning of that term as defined in Section 32504.
(Enacted by Stats. 1967, Ch. 15.)

61305. “Dairy product” means any product classified as Class 1 or Class 2 under
Section 61932, 61933, or 61936; any frozen product or frozen product mix
classified as Class 3 under Section 61934; any product classified as Class 4b under
subdivision (b) of Section 61935; butter; pasteurized process cheese; and any filled
product or any imitation milk product in which the use of market milk or any
component of market milk is required by Section 38925. This definition applies to
the designated products whether processed or manufactured in the state or outside
of the state and irrespective of the classification of those products at a point of
origin outside the state.
(Amended by Stats. 1990, Ch. 58, Sec. 1.)
61306. (a) "Distributor" means any handler, as defined in Section 61826, and includes brokers and agents and the nonprofit cooperative associations described in Article 2 (commencing with Section 61331) of this chapter in the transactions in which such article provides that the associations are distributors. It also includes both of the following:
(1) Any person who regularly operates mobile vehicles on routes predominantly for sales of market milk, market cream, or dairy products on such routes to wholesale customers.
(2) A wholesale customer only as to milk, cream, or any dairy product that is actively and directly processed, manufactured, or packaged by such wholesale customer.
(b) Distributor does not, however, include any of the following:
(1) Any wholesale customer which is not actively and directly engaged in manufacturing, processing, or packaging milk, cream, or any dairy product.
(2) Any producer that delivers milk or cream only to a distributor or manufacturer. (Amended by Stats. 1982, Ch. 751, Sec. 1.)

61306.5. "Educational and research activities" means any effort to develop and improve the management practices of dairy producers and processors, including, but not limited to, practices associated with the environmental sustainability of land, air quality, and water quality. (Added by Stats. 2016, Ch. 260, Sec. 5. Effective January 1, 2017.)

61307. "Manufacturing milk" has the meaning of that term as defined in Section 32509. (Added by renumbering Section 61401 by Stats. 1996, Ch. 759, Sec. 18. Effective January 1, 1997.)

61307.2. "Manufacturing milk handler" means any person who, as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of manufacturing milk in unprocessed or bulk form from a producer, a producer-handler, or another manufacturing milk handler for the purpose of manufacture, processing, sale, or other handling, regardless of whether the manufacturing milk is produced within or outside this state. (Added by renumbering Section 61402 by Stats. 1996, Ch. 759, Sec. 19. Effective January 1, 1997.)

61307.4. "Manufacturing milk plant" means any place, structure, or building where a handler receives manufacturing milk. (Added by renumbering Section 61403 by Stats. 1996, Ch. 759, Sec. 20. Effective January 1, 1997.)

61308. "Manufacturer" means any person that is engaged in the business of manufacturing any dairy product.
“Market milk” has the meaning of that term as defined in Section 32510.

“Market cream” has the meaning of that term as defined in Section 35811.

“Milk” has the meaning of that term as defined in Section 32511.

“Packaged milk,” “packaged cream,” or “packaged dairy product” means market milk, market cream, or any dairy product, respectively, which is packaged in cartons, bottles, dispenser cans, or other consumer packages for sale to wholesale customers or consumers.

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, nonprofit cooperative association, nonprofit corporation, or any other business unit or organization.

“Producer” means any person that operates a dairy herd which produces milk or cream commercially and whose bulk milk or bulk cream is received or handled by any distributor, manufacturer, or any nonprofit cooperative association of producers. It includes the nonprofit cooperative associations described in Article 2 (commencing with Section 61331) of this chapter in the transactions in which such article provides the associations are producers.

“Producer-distributor” means any person that is both a producer of milk or cream and a distributor of milk, cream, or any dairy product. For the purpose of this chapter, a “producer-distributor” is a producer in any transaction which involves the delivering of bulk milk or bulk cream produced by him to a distributor, manufacturer, or any nonprofit cooperative association of producers, and is a distributor in any transaction which involves the pasteurization of bulk market milk or bulk market cream, or the packaging of such milk or cream in bottles, cartons, dispenser cans, or other consumer packages, or the sale or delivery of packaged milk, packaged cream, or packaged dairy products.
61316. “Restricted use market milk” has the meaning of that term as defined in Section 32516.5.
(Added by Stats. 1996, Ch. 759, Sec. 21. Effective January 1, 1997.)

61317. “Wholesale customer” means any person other than a distributor that buys packaged milk, cream, or any dairy product for resale to consumers or to other wholesale customers.
(Amended by Stats. 1982, Ch. 751, Sec. 4.)

ARTICLE 2. Nonprofit Cooperative Associations [61331 - 61333]
(Article 2 enacted by Stats. 1967, Ch. 15.)

61331. For the purposes of this chapter, a nonprofit cooperative association which is organized and existing under Chapter 1 (commencing with Section 54001) of Division 20 of this code, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a producer in any of the following transactions:
(a) Any transaction which involves its receipt or handling of bulk market milk, bulk market cream, or any bulk dairy product which was produced or delivered by such producers.
(b) Any transaction which involves the sale or delivery of bulk market milk, bulk market cream, or any bulk dairy product to any producer, distributor, manufacturer, or other nonprofit cooperative association of producers.
(c) The receipt by it of payment for bulk market milk, bulk market cream, or any bulk dairy product which was produced or delivered by such producers.
(d) Any transaction in connection with accounting to such producers for the proceeds derived from the sale or marketing of market milk, market cream, or any dairy product whether packaged or in bulk.
(Enacted by Stats. 1967, Ch. 15.)

61332. For the purposes of this chapter, a nonprofit cooperative association which is organized and existing under Chapter 1 (commencing with Section 54001) of Division 20 of this code, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a distributor in any transaction which involves the receipt of market milk, market cream, or any dairy product from any person other than a producer to whom it accounts on a patronage basis and in any transaction which involves the pasteurization of bulk milk or bulk cream, or the packaging of it in bottles, cartons, dispenser cans, or other consumer packages, or the sale or delivery of packaged milk, packaged cream, or any packaged dairy product.
(Enacted by Stats. 1967, Ch. 15.)

61333. A nonprofit cooperative association accounts to producers on a patronage basis when it accounts to each producer for his share of the net proceeds derived from the marketing operations of the association, according to quantity and quality
of fluid milk and fluid cream furnished to the association for marketing and according to any marketing pools and quotas established by the association.

(Enacted by Stats. 1967, Ch. 15.)

ARTICLE 3. General Provisions [61341 - 61345]
( Article 3 enacted by Stats. 1967, Ch. 15. )

61341. The director may adopt regulations for the proper administration and enforcement of the provisions of this chapter. Any violation of any such regulation is subject to the remedies, procedures, and penalties which are provided in Article 10 (commencing with Section 61571) of this chapter.

(Amended by Stats. 1979, Ch. 1025.)

61342. The provisions of this chapter shall be liberally construed as being complementary of, and supplemental to, the provisions of Chapter 2 (commencing with Section 61801) of this part. If a provision of this chapter and a similar provision of Chapter 2 is applicable to the same person and subject matter the provisions of Chapter 2 shall control. If a provision of this chapter is applicable to any person and subject matter as to which Chapter 2 makes no express provision, the provision of this chapter shall control.

(Enacted by Stats. 1967, Ch. 15.)

61343. Any person and subject matter to which this chapter is applicable is not subject to the provisions of the Unfair Practices Act, Chapter 4 (commencing with Section 17000), Part 2, Division 7 of the Business and Professions Code.

(Amended by Stats. 1976, Ch. 1079.)

61344. This chapter shall be liberally construed. If any article, section, subdivision, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional or invalid as applied to any person or as applied under certain circumstances, that decision shall not affect the validity of the remaining provisions of this chapter or the application of this chapter to any other person or under any other circumstances.

The Legislature hereby declares that it would have enacted each article, section, subdivision, sentence, clause, or phrase of this chapter regardless of the fact that one or more other articles, sections, subdivisions, sentences, clauses, or phrases are declared unconstitutional or invalid.

(Added by Stats. 1987, Ch. 156, Sec. 1. Effective July 10, 1987.)

61345. (a) Chapter 2 (commencing with Section 61801), Chapter 2.5 (commencing with Section 62500), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of milk and related educational and
research activities. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable.
(b) If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of any other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.

ARTICLE 4. Unlawful Practices [61381 - 61391]
(Heading of Article 4 amended by Stats. 1982, Ch. 751, Sec. 5.)

61381. Any false or misleading advertising, as defined in Sections 32914 and 36062 of this code, and Sections 17500, 17501, and 17502 of the Business and Professions Code, of milk, cream, or any dairy product is an unlawful practice.
(Amended by Stats. 1982, Ch. 751, Sec. 10.)

61382. Discrimination in price between distributors or between wholesale customers, or between consumers, that purchase milk, cream, or any dairy product of like grade and quality under like conditions of service if the effect of that discrimination may be substantially to lessen competition or to injure or destroy or prevent competition with the person that either grants or knowingly receives the benefit of the discrimination is an unlawful practice. This section does not, however, prevent differentials which make only due allowance for differences in the cost of the raw product which is used in the milk, cream, or dairy product, or the cost of manufacture, processing, sale, or delivery which results from the different methods or quantities in which the commodities are manufactured, processed, sold, or delivered.
(Amended by Stats. 1982, Ch. 751, Sec. 11.)

61383. The sale or offer to sell or giving of any article in any transaction which involves the sale or disposal of milk, cream, or any dairy product, for less than the cost of the article, as “cost” is defined in Section 61384, to secure or retain the milk, cream, or dairy products business of any wholesale customer or any person that buys as a consumer is an unlawful practice.
(Amended by Stats. 1982, Ch. 751, Sec. 12.)

61384. (a) The sale by any retailer, wholesale customer, manufacturer, or distributor, including any producer-distributor or nonprofit cooperative association acting as a distributor, of milk, cream, or any dairy product at less than cost is an unlawful practice. This subdivision applies to finished products, and does not apply to sales of bulk milk between handlers.
(b) For the purposes of this section, the following terms have the following meanings:
(1) “Cost,” as applied to manufacturers and distributors, means the total consideration paid or exchanged for raw product, plus the total expense incurred for manufacturing, processing, handling, sale, and delivery.
(2) “Cost,” as applied to wholesale customers, means the invoice price charged to the wholesale customer, or the expense of replacement, whichever is lower, plus the wholesale customer’s cost of doing business.
(3) “Cost of doing business,” as applied to wholesale customers, means a wholesale customer’s total operating expense divided by the customer’s total sales income.
(4) (A) Except as provided in subparagraph (B), “total consideration paid or exchanged for raw product,” in the case of market milk or market cream used in the manufacture of class 1, 2, and 3 products, means the department’s current announced regulated minimum price of the market milk or market cream, payable by handlers to producers, except as provided in Section 62708.5.
(B) Notwithstanding subparagraph (A), in situations involving sales on a bid basis to public agencies or institutions, the definition in subparagraph (A) shall only apply to market milk or market cream that is utilized for class 1 purposes, as those purposes are defined in Chapter 2 (commencing with Section 61801).
(c) Proof of cost, based on audits or surveys conducted in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, and modified, if necessary, to satisfy the requirements of this section, shall establish a rebuttable presumption of that cost at the time of the transaction of any sale. This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action.
(d) Nothing in this section shall be deemed to prohibit any of the following activities:
(1) The meeting, in good faith, of a lawful competitive price or a lawful competitive condition.
(2) A distributor’s action in making conditional sales of equipment or other property, extending credit for merchandise purchased, or paying a customer’s obligations not otherwise prohibited by this chapter to another distributor in connection with the transfer of the customer’s business from the latter to the former.
(e) The secretary shall establish, by regulation pursuant to Section 61341, the procedures which shall be used to make the determinations required by this section, including the following:
(1) Any modifications to the generally accepted accounting principles described in subdivision (c) necessary to satisfy the requirements of this section.
(2) Procedures for evaluating efforts to meet lawful competitive prices or conditions.
(3) Other procedures necessary or appropriate to facilitate the application or enforcement of this section.
(Amended by Stats. 2007, Ch. 351, Sec. 1. Effective January 1, 2008.)

61385. Any false statement or representation which is knowingly made, by any wholesale customer or consumer, or anyone that is acting on the behalf of either, to any distributor or manufacturer, or any representative of a distributor or
manufacturer, that a competitor of the distributor or manufacturer has offered or is offering to sell, or is selling milk, cream, or any dairy product to the wholesale customer or consumer at a lower price than the manufacturer or distributor has offered or is offering to sell, or is selling it is an unlawful practice.
(Amended by Stats. 1982, Ch. 751, Sec. 14.)

61391. Solicitation by, or collusion or joint participation between or among, any manufacturer, distributor, producer, wholesale customer, consumer, or any representative of any of them, to commit any of the unlawful practices which are prescribed in this article, or the use of any misrepresentation, threat, intimidation, or boycott to effectuate the commission of those unlawful practices, makes any person that participates in those unlawful practices subject to the penalties of this chapter.
(Amended by Stats. 1984, Ch. 626, Sec. 1.)

ARTICLE 5. Bonding and Payment for Manufacturing Milk [61400 - 61419]
(Article 5 added by Stats. 1981, Ch. 690, Sec. 1.)

61400. It is recognized by the Legislature that unfair and disruptive practices have developed concerning the purchasing of manufacturing milk, as defined in Section 32509, including the failure to pay, or the making of late payments, to producers of manufacturing milk. Such practices tend to disrupt and interfere with the purposes of this chapter by, among other things, creating an unfair advantage to purchasers of manufacturing milk used for manufacturing purposes over purchasers of market milk used for manufacturing purposes. It is necessary, in order to more fully achieve the purposes of this chapter, to provide for the requirement of a payment bond and a schedule for payment concerning purchases of manufacturing milk in certain circumstances.
(Added by Stats. 1981, Ch. 690, Sec. 1.)

61404. The bond provided for in this article is required for each manufacturing milk handler.
(Amended by Stats. 1987, Ch. 156, Sec. 3. Effective July 10, 1987.)

61405. (a) Every manufacturing milk handler that operates only one plant within the state, before purchasing any manufacturing milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The amount of the bond shall be based upon the average daily quantity of manufacturing milk purchased by the handler during any calendar month during a calendar year. The minimum amount of the bond shall be as follows:
(1) Five thousand dollars ($5,000) for any handler that purchases an average daily quantity of less than 1,000 gallons.
(2) Ten thousand dollars ($10,000) for any handler that purchases an average daily quantity of at least 1,000 gallons but less than 4,000 gallons.
(3) Fifteen thousand dollars ($15,000) for any handler that purchases an average daily quantity of at least 4,000 gallons but less than 8,000 gallons.
(4) Twenty thousand dollars ($20,000) for any handler that purchases an average daily quantity of 8,000 gallons or more.

(b) Every manufacturing milk handler that operates more than one plant within the state, before purchasing any manufacturing milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a single bond covering all plants within the state and shall be in an amount determined by multiplying twenty thousand dollars ($20,000) by the number of plants operated by the handler in the state.

(c) Any milk purchase agreement between a handler and a producer may provide for surety bonds, guarantees, or other forms of security in addition to the bonding requirements in this article.

(Amended by Stats. 2004, Ch. 70, Sec. 1. Effective January 1, 2005.)

61405.1. If any handler increases his or her purchases of manufacturing milk during the license year so that the purchases exceed the amount for which the handler is bonded, the handler shall immediately post an additional bond as may be required to comply with this article.

(Added by Stats. 1987, Ch. 156, Sec. 5. Effective July 10, 1987.)

61406. The bond required by Section 61405 shall be in a form approved by the director, and shall be conditioned upon the payment in the manner that is required by the terms of purchase between the manufacturing milk handler and the producer of all amounts due to producers for manufacturing milk purchased by the licensee or applicant during the license year. The bond shall be to the state in favor of every producer of manufacturing milk.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61407. If a handler fails to pay any producer or producers in the manner that is required by this chapter, the director shall proceed forthwith to ascertain the names and addresses of all the producers that the handler has failed to pay, together with the amounts due and owing to them and each of them by the handler, and shall request all of those producers to file a verified statement of their respective claims with the director. The producer need only verify that he or she is owed an amount by the handler. The actual amount in that case may be ascertained by the director.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61407.1. (a) After determining the claims of the producers pursuant to Section 61407, the director shall bring an action on the bond on behalf of the producers.
(b) Any producer not satisfied with the amount of the producer’s claim as determined by the director, or with the ratio the producer’s claim bears to all claims
against the bond as determined by the director, may intervene in an action commenced upon the bond so that the correct amount of his or her claim and the ratio it bears to all the claims may be adjudicated.

(Added by Stats. 1987, Ch. 156, Sec. 6. Effective July 10, 1987.)

61407.2. If the recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, the amount recovered shall be divided pro rata among the producer-creditors.

(Added by Stats. 1987, Ch. 156, Sec. 7. Effective July 10, 1987.)

61407.3. Payments by a handler to a producer, for the purposes of any action on a handler’s bond for any year, shall be credited first to interest and then to principal due, owed, and unpaid. Amounts to be applied to the principal shall be applied first to the amount owed for the most recent deliveries and then successively, in descending order, to the amounts owed to the next most recent deliveries.

(Added by Stats. 1987, Ch. 156, Sec. 8. Effective July 10, 1987.)

61407.4. (a) The director may bring an action against a surety bond company if the company fails to do any of the following:

(1) Acknowledge promptly and act reasonably upon receiving a bond demand from the director.
(2) Promptly investigate and process claims.
(3) Make fair and equitable settlement of claims.
(4) Pay the bond amount to the director.

(b) The authority provided in subdivision (a) is in addition to the authority provided for in subdivision (h) of Section 790.03 of the Insurance Code.

(c) In addition to the bond proceeds, the surety bond company may be ordered to pay interest at the prevailing prime rate on the amounts owed from the date the claim was filed, all of the department’s court costs, and reasonable attorney’s fees.

(Amended by Stats. 1987, Ch. 1074, Sec. 2. Effective September 24, 1987.)

61408. If a manufacturing milk handler fails to pay any producer in the manner that is required by this chapter, the director may require the filing of a new or additional bond in the amount determined by the director to be sufficient to satisfy claims for the payment of producers thereafter supplying manufacturing milk to the manufacturing milk handler. The failure of a manufacturing milk handler to have filed a new bond within 10 days after notice from the director constitutes grounds for the revocation or suspension of the manufacturing milk handler’s license of the manufacturing milk handler.

(Amended by Stats. 1987, Ch. 156, Sec. 10. Effective July 10, 1987.)

61409. The failure of any manufacturing milk handler that purchases manufacturing milk from producers to execute and deliver the bond as provided and required in
this article is a violation of this chapter. The failure of any handler to post any additional bond as may be required is also a violation of this chapter.  
(Amended by Stats. 1987, Ch. 1074, Sec. 3. Effective September 24, 1987.)

61410. The failure of any manufacturing milk handler that purchases manufacturing milk from producers to execute and deliver the bond as provided and required in this article shall constitute grounds for suspension, revocation, or refusal of the manufacturing milk handler’s license. The failure of any handler to post any additional bond as may be required to comply with this article shall also be grounds for suspension, revocation, or refusal of the license pursuant to these procedures.  
(Amended by Stats. 1985, Ch. 446, Sec. 2.)

61411. Except as otherwise provided in Section 61411.2 or 61411.3, the purchase of any manufacturing milk in excess of 1,000 gallons monthly from any manufacturing milk producer without a written contract that has been executed and complies with all the requirements of this article is an unlawful practice. The contract shall include all of the following:  
(a) The amount of manufacturing milk which is to be purchased for any period.  
(b) The price to be paid for all manufacturing milk received.  
(c) The date and method of payment for the manufacturing milk. Payment shall be made for the amount of manufacturing milk delivered during the first 15 days of any calendar month not later than the first day of the next following month and for the amount delivered during the remainder of the month not later than the 15th day of the next following month.  
(d) The charges for transportation, if hauled by the handler, which shall be the lower of either of the following:  
(1) A rate not in excess of the rate charged for actual or reasonably similar services by highway carriers, as the term “highway carrier” is defined in Section 3511 of the Public Utilities Code.  
(2) The actual amount paid by a handler for that transportation.  
The contract may contain any other provisions that are not in conflict with this chapter. A signed copy of the contract shall be filed by the producer with the director within five days of the date of its execution.  
This section does not apply to the purchase of milk which does not meet market milk standards in Chapter 2 (commencing with Section 35751) of Part 2 of Division 15, when the milk has been processed on a dairy farm that held a valid market milk permit during the 30-day period preceding the purchase.  
(Amended by Stats. 1991, Ch. 1101, Sec. 1.)

61411.1. The production of manufacturing milk in excess of amounts to be purchased under contracts executed pursuant to Section 61411 shall be voluntary on the part of the producer and shall not be a condition, oral or written, of the execution or renewal of any contract.  
(Repealed and added by Stats. 1986, Ch. 227, Sec. 4.)
Section 61411 does not apply to the purchase of manufacturing milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a handler if the quantity purchased from any one producer does not exceed 5,000 gallons in any one month. However, if the producer is a cooperative association acting as a producer, the total quantity purchased shall not exceed 30,000 gallons per month.

For a single transaction between a producer and handler, payment shall be made for the amount of milk delivered during the first 15 days of any calendar month not later than the first day of the next following month and payment shall be made for the amount of milk delivered during the remainder of the month not later than the 15th day of the next following month, unless the milk is subject to a pooling plan as authorized in Chapter 3 (commencing with Section 62700) and the pooling plan provides for different dates and methods of payment, in which case the date and method of payment for the milk shall be as provided for in the pooling plan.

(Amended by Stats. 1991, Ch. 1101, Sec. 2.)

Section 61411 does not apply to manufacturing milk purchased under cash-on-delivery terms.
(Added by Stats. 1987, Ch. 156, Sec. 14. Effective July 10, 1987.)

Any contract between a producer and a handler shall be voidable by the producer for a 45-day period following the occurrence of either of the following:
(a) The handler has failed to pay the producer the full price specified in the contract or has failed to comply with the terms specified in subdivision (c) of Section 61411, and the failure has not been corrected by the handler within one business day after notification by the producer or director. The 45-day period shall commence on the day after the payment was due.
(b) The handler has failed on three separate occasions within a 12-month period to pay the producer the full price specified in the contract or has failed to comply with the terms specified in subdivision (c) of Section 61411. The 45-day period shall commence on the day after the third occurrence.
(Amended by Stats. 1987, Ch. 1074, Sec. 6. Effective September 24, 1987.)

If a notice has been issued by the director that the future deliveries to the handler shall not be covered under the Milk Producers Security Trust Fund created pursuant to Chapter 2.5 (commencing with Section 62500), all contracts between producers and the handler are voidable by the producers. Producers shall have the option to void their contracts for a 45-day period from the date the notice is issued or until the date the director establishes for reinstatement of the handler’s eligibility under the trust fund, whichever is later.
(Amended by Stats. 1987, Ch. 1074, Sec. 7. Effective September 24, 1987.)

(a) (1) Every milk handler who receives manufacturing milk subject to this article shall deduct as an assessment from payments made to producers for
manufacturing milk the sum of one and two-tenths cents ($0.012) per hundredweight of manufacturing milk.

(2) The amount of the assessments deducted pursuant to paragraph (1) shall be paid to the secretary on or before the 45th day following the last day of the month during which the manufacturing milk was received.

(b) (1) Every milk handler who receives manufacturing milk subject to this article that purchases or handles manufacturing milk from producers shall pay a fee of six-tenths of one cent ($0.006) per hundredweight of manufacturing milk.

(2) The amount of the fee shall be paid to the secretary on or before the 45th day following the last day of the month in which the manufacturing milk was received.

(c) Moneys from the amounts paid to the secretary pursuant to subdivisions (a) and (b) may be used to administer and enforce this chapter.

(Amended by Stats. 2016, Ch. 260, Sec. 7. Effective January 1, 2017.)

61413. The director may fix the rates of assessments or fees required by Section 61412 at lesser amounts, and may adjust the rates of assessments or fees from time to time, whenever he or she finds that the cost of administering this article can be defrayed from revenues derived from the lower rates, provided that the rate of assessments deducted from payments to producers for manufacturing milk and the rate of fees paid by manufacturing milk handlers shall at all times be in the ratio of two to one.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61414. (a) Any assessment or fee or either of them payable pursuant to any provision of this article is a debt of the person by whom the assessment or fee or either of them is payable and shall be due and payable to the director upon the date set forth in Section 61412. If the person does not pay the assessment or fee or either of them upon the required date, the director may file a complaint against that person in a state court of competent jurisdiction for the collection of the assessment or fee or either of them.

(b) If any such person does not pay to the director the assessments or fees or either of them provided for in this article, on or before the date specified in Section 61412, the director may add to the unpaid assessments or fees or either of them an amount not exceeding 10 percent of the unpaid assessment or fees or either of them to defray the cost of enforcing the collection of the unpaid assessments or fees or either of them.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61415. The failure of any handler to pay for manufacturing milk delivered to the handler at the time and in the manner specified in the contract with the producer is an unlawful trade practice.

(Added by Stats. 1983, Ch. 857, Sec. 2.)

61415.1. (a) Handlers shall pay producers either by check or cash. Handlers electing to pay producers in cash shall, in all cases, obtain a dated, signed receipt from each
producer. These receipts shall be made a part of the permanent records of the handler. Handlers paying by check shall issue checks which are reducable to cash by the producer in no more than one business day.

(b) The giving of a promissory note is not payment within the meaning of this chapter.

(Amended by Stats. 1987, Ch. 1074, Sec. 8. Effective September 24, 1987.)

61415.2. (a) If a handler does not pay for manufacturing milk delivered to him or her at the time and in the manner specified in the contract, the handler shall pay the producer interest on the unpaid amount from the time the payment was due until paid at the rate of 12 percent per annum. The interest is in addition to any other penalties provided in this chapter.

(b) If there is no contract for the delivery of milk to the handler or the delivery was made as a single transaction between the producer or handler, the handler shall pay the department interest on the unpaid amount from the time the payment was due until paid at the interest rate specified in subdivision (a). The interest is in addition to any other penalties provided in this chapter.

(Amended by Stats. 1991, Ch. 1101, Sec. 3.)

61415.3. If a handler fails to pay for manufacturing milk delivered to him or her at the time and in the manner specified in this chapter, the director may assess a penalty for each payment date that the producers were not fully paid. Any penalty assessed shall be a minimum of one hundred dollars ($100) for each payment date. If the amount not properly paid is more than forty thousand dollars ($40,000), the penalty assessed shall be five thousand dollars ($5,000) or one-fourth of 1 percent of the amount not properly paid, whichever is less.

(Amended by Stats. 1987, Ch. 1074, Sec. 10. Effective September 24, 1987.)

61416. The director may revoke or suspend any license of a handler if the director finds as a result of a noticed hearing that the handler has not paid for any manufacturing milk delivered to him or her at the time and in the manner specified in the contract with the producer.

(Added by Stats. 1983, Ch. 857, Sec. 3.)

61416.1. The director, pursuant to the procedure in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may also refuse to grant or renew any license to a handler if the director is satisfied that the handler has failed to pay for any manufacturing milk delivered to him or her at the time and in the manner specified in the contract with the producer.

(Added by Stats. 1986, Ch. 227, Sec. 5.)

61417. In lieu of revoking or suspending a handler’s license under Section 61416, the director may impose any other conditional and probationary orders, pursuant to a noticed hearing, that may be proper for the enforcement of this chapter or to
enforce any provision of any regulation adopted by the director pursuant to Section 61341.

(Added by Stats. 1983, Ch. 857, Sec. 4.)

61418. If the respondent does not comply with any conditional or probationary orders, the director may suspend or revoke the license in accordance with the procedure provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1985, Ch. 446, Sec. 3.)

61419. (a) Whenever the director is satisfied, either by investigation or after a hearing, that a handler is unable to pay for any manufacturing milk purchased from any producer, and is further satisfied that to permit the handler to continue to purchase and receive any manufacturing milk from producers would be likely to cause serious and irreparable loss to producer-creditors and other producers, the director may thereupon and forthwith shorten the time for hearing that is provided for in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and thereupon may issue an order to show cause why the license of the handler should not be forthwith suspended or revoked. The time of notice of the hearing shall not, however, be less than five days. At the hearing the handler that is proceeded against shall be ordered to show cause why the license should not be suspended or revoked, or continued under conditions and provisions, if any, that the director may consider just and proper and for the protection of the best interests of the producer-creditors and producers from whom the handler has been and is receiving any manufacturing milk. Following the hearing, the decision of the director shall become effective at the director's discretion.

(b) The hearing, in the case of an emergency, may be called upon written notice which is served personally or by mail on the handler that is involved. If the notice is sent by mail, the hearing date shall be no sooner than 10 days after the notice is sent. It may be held at the nearest office of the director or at any place that may be most convenient in the discretion of the director for the attendance of all of the parties that are involved.

(Added by Stats. 1983, Ch. 857, Sec. 6.)

ARTICLE 6. Records [61441 - 61443]

(Article 6 enacted by Stats. 1967, Ch. 15.)

61441. Every distributor, person who sells at wholesale, or manufacturer of milk, cream, or any dairy product shall maintain and keep, for a period of three years from their initial recordation, or for a period of three years from their expiration date, whichever period is longer, all of the following records:

(a) A record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which the milk or cream was put.

(b) A record of all milk, cream, or dairy products sold, classified as to kind and grade of milk, cream, or dairy product, showing where the milk, cream, and dairy
products were sold, the quantities sold, the amounts received for the sales, and the written price schedules maintained by the distributor, person who sells at wholesale, or manufacturer for all milk, cream, and dairy products sold.  
(c) A record of the wastage or loss of milk or any dairy product.  
(d) A record of all costs of manufacturing, processing, handling, sale, and delivery, including overhead costs.  
(e) A record of all property or financial transactions, other than those for which records are maintained under subdivision (b), between the distributor, person who sells at wholesale, or manufacturer and wholesale customers.  
(f) Other records that the director may deem necessary for the proper enforcement of this chapter.  
(Amended by Stats. 1987, Ch. 156, Sec. 20. Effective July 10, 1987.)

61442. The director shall have access to, and may enter at all reasonable hours, any place where any dairy product is being processed, bottled, stored, kept, or sold, or where the books, papers, records, or documents pertaining to any transaction which relates to any dairy product is kept. He may inspect and copy such books, papers, records, or documents in any place within the state.  
(Added by renumbering Section 61443 by Stats. 1979, Ch. 1025.)

61442.1. Within 60 days of the effective date of this section, each manufacturing milk handler shall provide the director with a list of the name, address, and date of every current contract between the handler and manufacturing milk producers. Monthly thereafter, the handler shall report to the director the same information on all terminated, new, and amended contracts which has not been previously reported. The director may assess a one hundred dollar ($100) penalty against any manufacturing milk handler who fails to file the required report for each report not filed.  
(Added by Stats. 1987, Ch. 156, Sec. 21. Effective July 10, 1987.)

61443. Any record or report which is made to the director pursuant to this article, or any contract required to be filed pursuant to this chapter, is confidential and shall not be divulged, except if necessary for the proper determination of any court proceeding or hearing before the director.  
(Amended by Stats. 1987, Ch. 156, Sec. 22. Effective July 10, 1987.)

ARTICLE 7. Investigations and Hearings [61471 - 61478]  
(Amended by Stats. 1967, Ch. 15. )

61471. The director may, upon his or her own motion or upon the receipt of any verified complaint, investigate any transaction that involves the violation of any provision of this chapter by any person. The director may call and conduct a hearing in furtherance of that investigation.  
(Amended by Stats. 1993, Ch. 187, Sec. 1. Effective January 1, 1994.)
61472. If a hearing is called by the director, the director shall cause a copy of the complaint, together with a notice of time and place of hearing of the complaint, to be served personally or by mail upon that person. Service shall be made at least 10 days before the hearing.
(Amended by Stats. 1993, Ch. 187, Sec. 2. Effective January 1, 1994.)

61473. The hearing shall be held in the city or place in which is situated the business location of the person that is complained of, or in which the transaction complained of is said to have occurred.
(Enacted by Stats. 1967, Ch. 15.)

61474. The person complained of shall, at least three days prior to the date fixed for the hearing, serve upon the complaining party and file with the director a verified answer to all the allegations which are contained in the complaint.
(Enacted by Stats. 1967, Ch. 15.)

61475. At the time and place which is appointed for such hearing the director shall hear the parties to such complaint, and shall enter in the office of the director at Sacramento a decision dismissing such complaint or specifying the facts which are established on such hearing. A copy of such decision shall be furnished to each of the respective parties to it.
(Enacted by Stats. 1967, Ch. 15.)

61476. The director may do any of the following:
(a) Administer oaths and take testimony thereunder.
(b) Issue subpoenas which require the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles, or instruments.
(c) Compel the disclosure by such witnesses of all facts which are known to them relative to the matters under investigation.
(Enacted by Stats. 1967, Ch. 15.)

61477. Any party that disobeys any order or subpoena of the director is guilty of contempt and shall be certified to the superior court of the state, in and for the county wherein such contempt occurs, for punishment for such contempt in accordance with Sections 11180 to 11191, inclusive, of the Government Code.
(Enacted by Stats. 1967, Ch. 15.)

61478. Any act of the director pursuant to any provision of this chapter may be reviewed by any court of competent jurisdiction.
(Enacted by Stats. 1967, Ch. 15.)

ARTICLE 8. Manufacturing Milk Handler Licenses [61490 - 61494]
For the purposes of this article, each subsidiary manufacturing milk plant, or branch manufacturing milk plant, whether under one ownership or not, shall be considered as an individual manufacturing milk handler.  

"Manufacturing milk handler" means any person defined as a manufacturing milk handler pursuant to Section 61402.  

It is unlawful for a manufacturing milk handler who is not licensed under Article 12 (commencing with Section 62141) of Chapter 2 to handle manufacturing milk without first obtaining a manufacturing milk handler’s license pursuant to this article. In addition, pursuant to Section 61490, any handler shall obtain a separate license for each milk plant owned or operated. The license provided for in this article is in addition to any license which is required by Division 15 (commencing with Section 32501), or by any law or ordinance of any county or municipality of this state.  

Application for the license provided by this article shall be made on forms prescribed by the director, accompanied by an application fee as prescribed in Section 61494, and state the name and address of the applicant and any details specifically related to the nature of the applicant’s business that the director may require. The applicant shall further satisfy the director of his or her character, responsibility, and good faith in seeking to carry on the business stated in the application.  

One-half of the valid license renewals shall be issued for a period of 24 months beginning January 1, 1988. The application fee for the renewal of the 24-month license shall be twenty-five dollars ($25). The remaining valid license renewals shall be issued for a period of 12 months beginning January 1, 1988. The application fee for the renewal of the 12-month license shall be twelve dollars and fifty cents ($12.50). Beginning January 1, 1989, all renewals of licenses shall be issued for a 24-month period, and shall be twenty-five dollars ($25). Except as otherwise provided, beginning January 1, 1988, every new license issued shall expire on the 31st day of December of the following year. Application for a new license or a renewal license, together with the appropriate application fee, shall be made prior to the handling of manufacturing milk or the...
expiration date of the license held. If it is not so made, the applicant shall pay an
dditional twenty-five dollars ($25) before the license shall be issued.
(Repealed and added by Stats. 1987, Ch. 534, Sec. 3.)

ARTICLE 9. Disposition and Use of Funds [61531- 61531.]
(Article 9 enacted by Stats. 1967, Ch. 15.)

61531. All money received by the director pursuant to this chapter shall be paid
monthly into the State Treasury to the credit of the Department of Food and
Agriculture Fund. Funds which are so collected may only be used to defray the
expenses in connection with the administration of this chapter, Chapter 2
(commencing with Section 61801), and Chapter 2.5 (commencing with Section
62500).
(Repealed and added by Stats. 1987, Ch. 1074, Sec. 12. Effective September 24, 1987.)

ARTICLE 10. Actions and Penalties [61571 - 61573]
(Article 10 enacted by Stats. 1967, Ch. 15.)

61571. The violation of any provisions of this chapter is a misdemeanor which is
punishable by a fine not less than one hundred dollars ($100) and not exceeding
one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding six
months, or by both such fine and imprisonment. The amount of penalty which is
assessed pursuant to this section on each count of violation shall be based upon the
nature of the violation and the seriousness of the effect of such violation upon
effectuation of the purposes and provisions of this chapter.
(Amended by Stats. 1983, Ch. 1092, Sec. 127. Effective September 27, 1983. Operative
January 1, 1984, by Sec. 427 of Ch. 1092.)

61572. Any person who violates this chapter, or any regulations adopted under this
chapter, is liable civilly in an amount not less than one hundred dollars ($100) and
not exceeding one thousand dollars ($1,000) for each and every violation, that sum
to be recovered by the director in any court of competent jurisdiction. The amount
of penalty which is assessed pursuant to this section on each count of violation shall
be based upon the nature of the violation and the seriousness of the effect of the
violation upon effectuation of the purposes and provisions of this chapter. The court
may, in addition to the civil penalty, award reasonably incurred investigative and
enforcement costs, and attorney’s fees, to the director. The court may also award
attorney’s fees to any person successfully defending a civil action under this
section. In any civil action initiated by the director under this section, the director
shall join in the action, and assert civil penalties against, all parties participating in
the commission of the unlawful practice. Any sum which is recovered under this
section shall be deposited in the State Treasury to the credit of the Department of
Food and Agriculture Fund.
(Amended by Stats. 1989, Ch. 522, Sec. 1.)
61573. The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order which is made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions or orders, although their properties, interests, residences, or places of business may be in several counties and the violations separate and distinct. Any proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.  
(Enacted by Stats. 1967, Ch. 15.)

CHAPTER 2. Stabilization and Marketing of Market Milk [61801 - 62403]
(Chapter 2 repealed and added by Stats. 1977, Ch. 1192.)

ARTICLE 1. Legislative Declarations [61801 - 61812]
(Article 1 added by Stats. 1977, Ch. 1192.)

61801. The production of market milk is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health and welfare of the people of this state.  
(Amended by Stats. 1982, Ch. 751, Sec. 21.)

61802. The Legislature hereby declares all of the following:  
(a) Market milk is a necessary article of food for human consumption.  
(b) The production and maintenance of an adequate supply of healthful market milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and the production, transportation, processing, and storage of market milk in this state is an industry affecting the public health.  
(c) Because of the perishable quality of milk, the nature of milk production, the varying seasonal production and demand factors, and other economic factors affecting the milk industry, the potential exists for economic disruption, in the absence of regulation, in the production, marketing, and sale of market milk which may constitute a menace to the health and welfare of the inhabitants of this state and may tend to undermine sanitary regulations and standards of content and purity, however effectually the sanitary regulations may be enforced.  
(d) Health regulations alone are insufficient to prevent economic disturbances in the production of milk which may disrupt the future supply of market milk and to safeguard the consuming public from future inadequacy of a supply of this necessary commodity.  
(e) It is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including market milk, and to eliminate economic waste, destructive trade practices, and improper accounting for market milk purchased from producers.
(f) It is recognized by the Legislature that the economic factors concerning the production, marketing, and sale of market milk in California may be affected by the national market for milk for manufacturing purposes.

(g) It is recognized by the Legislature that in recent years the supply of manufacturing milk in California, as defined in Section 32509, has consistently declined and continues to decline, and that market milk has virtually supplanted manufacturing milk for manufacturing purposes in this state, and that it is therefore necessary to conform the pricing standards governing minimum producer prices for market milk established under this chapter to current economic conditions.

(h) It is recognized by the Legislature that the levels of retail prices of milk and milk products paid by consumers are affected by a large number of economic and other factors apart from minimum producer prices for market milk established under this chapter, many of which factors are not within the power of the director to regulate or control, particularly since the Legislature repealed provisions concerning establishment of minimum wholesale and retail prices. It is further recognized by the Legislature that, in order to accomplish the purposes of this chapter and to promote the public health and welfare, it is essential to establish minimum producer prices at fair and reasonable levels so as to generate reasonable producer incomes that will promote the intelligent and orderly marketing of market milk in the various classes, and that minimum producer prices established under this chapter should not be unreasonably depressed because other factors have affected the levels of retail prices paid by consumers.

(Amended by Stats. 1993, Ch. 1112, Sec. 1. Effective January 1, 1994.)

61803. It is recognized by the Legislature that conditions within the milk industry of this state are such that it is necessary to establish marketing areas wherein different prices and regulations are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigation and public hearing, to prescribe such marketing areas and modify the same when advisable or necessary.

(Repealed and added by Stats. 1977, Ch. 1192.)

61804. The foregoing statements in this article of facts, policy, and application of this chapter are hereby declared a matter of legislative determination.

(Repealed and added by Stats. 1977, Ch. 1192.)

61805. The purposes of this chapter are to do all of the following:

(a) Provide funds for administration and enforcement of this chapter, by assessments to be paid by producers and handlers of market milk in the manner prescribed in this chapter.

(b) Authorize and enable the secretary to prescribe marketing areas and to determine minimum prices to be paid to producers by handlers for market milk that are necessary due to varying factors of costs of production, health regulations, transportation, and other factors in the marketing areas of this state. In determining minimum prices to be paid producers by handlers, the secretary shall endeavor under like conditions to achieve uniformity of cost to handlers for market
milk within any marketing area. However, no minimum prices established or determined under this chapter shall be invalid because uniformity of cost to handlers for market milk in any marketing area is not achieved as a result of the minimum producer prices so established or determined.

(c) Authorize and enable the secretary to formulate stabilization and marketing plans, subject to the limitations prescribed in this chapter with respect to the contents of the stabilization and marketing plans, and to declare the plans in effect for any marketing area.

(d) Enable the dairy industry, with the aid of the state, to develop and maintain satisfactory marketing conditions, bring about and maintain a reasonable amount of stability and prosperity in the production of market milk, and provide means for conducting educational and research activities.

(Amended by Stats. 2016, Ch. 260, Sec. 8. Effective January 1, 2017.)

61806. It is the intent of the Legislature that the powers conferred in this chapter shall be liberally construed.

(Repealed and added by Stats. 1977, Ch. 1192.)

61807. Nothing in this chapter permits or authorizes the development of conditions of monopoly in the production of market milk. In the establishment of the terms and conditions under which market milk shall be purchased from producers, the terms and conditions are those which will, in the several localities and markets of the state, and under the varying conditions of production, insure an adequate and continuous supply of pure, fresh, wholesome market milk to consumers of the market milk.

(Amended by Stats. 1982, Ch. 751, Sec. 24.)

61808. The Legislature hereby declares that this chapter is intended to formulate a comprehensive scheme for the regulation of marketing milk. If, however, any provision of, or addition or amendment to, this chapter, either as originally enacted in 1935 at the 51st Regular Session of the California Legislature, or as amended, added to, recodified, or reenacted at any subsequent session of the California Legislature, should be held to be unconstitutional, the unconstitutionality of such provision does not affect any other provision of this chapter.

(Repealed and added by Stats. 1977, Ch. 1192.)

61809. If any article, section, subdivision, sentence, clause, or phrase of any provision of this chapter is for any reason held to be unconstitutional, such decision does not affect the validity of the remaining provisions of this chapter. The Legislature hereby declares that it would have enacted each article, section, subdivision, sentence, clause, or phrase of this chapter irrespective of the fact that one or more other articles, sections, subdivisions, sentences, clauses, or phrases is declared unconstitutional.

(Repealed and added by Stats. 1977, Ch. 1192.)
Chapter 1 (commencing with Section 61301), Chapter 2.5 (commencing with Section 62500), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of market milk. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable.
If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of the other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.
(Amended by Stats. 1987, Ch. 1074, Sec. 13. Effective September 24, 1987.)

No provision of this chapter, or of any stabilization and marketing plan formulated by the director pursuant to this chapter, is any limitation upon the right of any handler or producer-handler including any nonprofit cooperative association of producers which association is also a handler, by reason of the form or nature of the legal entity under which such handler conducts business, to sell or handle market milk, or any dairy product at prices or upon terms and conditions according to, and within, the several methods of handling, at or subject to which the market milk or dairy product lawfully may be sold or handled by any other handler.
This section does not make lawful or permit the payment by any such handler to a producer for market milk of prices less than the minimum prices prescribed in the applicable stabilization and marketing plan.
(Repealed and added by Stats. 1977, Ch. 1192.)

Neither the repeal of former Chapter 2 of this part, the reenactment of this chapter nor the amendment of any provision of this chapter shall have the effect of terminating or invalidating any stabilization and marketing plan, including provisions thereunder regarding minimum prices to be paid producers for market milk, established by the director pursuant to this chapter or former Chapter 2 prior to the effective date of the repeal, enactment, or amendment. The director shall, however, establish minimum prices pursuant to the provisions of the enactment, or amendment at the earliest practicable date after the effective date of the amendment.
(Amended by Stats. 1983, Ch. 383, Sec. 1. Effective July 26, 1983.)

ARTICLE 2. Definitions [61821 - 61839]
(Amended by Stats. 1977, Ch. 1192.)

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.
(Added by Stats. 1977, Ch. 1192.)

“Board” means any advisory board created as authorized in this chapter.
61823. “Bulk market milk” means market milk which has not been pasteurized or packaged in bottles, cartons, dispenser cans, or other consumer packages, and is handled or delivered, in bulk, in tanks, cans, or other bulk containers. *(Added by Stats. 1977, Ch. 1192.)*

61824. “Consumer” means any person that purchases market milk, or any dairy product for consumption. *(Added by Stats. 1977, Ch. 1192.)*

61825. “Dairy product” or “milk product” includes any product manufactured from milk or any derivative or product of milk. *(Added by Stats. 1977, Ch. 1192.)*

61826. “Handler” means any person who, as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of market milk in unprocessed or bulk form from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling, regardless of whether such market milk is produced within or outside this state. *(Added by Stats. 1977, Ch. 1192.)*

61827. “Market cream” means cream, as defined in this code, and any combination of cream and milk, or any fluid product of milk or cream sold under any trade name whatsoever, which complies with all of the following requirements:
(a) Is not packaged in hermetically sealed containers.
(b) Conforms to the health and sanitary regulations of the place where it is sold or disposed of for human consumption. *(Added by Stats. 1977, Ch. 1192.)*

61828. “Market milk” has the meaning of that term as defined in Section 32510 and has the same meaning as “restricted use market milk” as defined in Section 32516.5. Unless the context otherwise indicates, “market milk” includes market cream, the components and derivatives of market milk, and dairy products manufactured from market milk or its components and derivatives. *(Amended by Stats. 1996, Ch. 759, Sec. 22. Effective January 1, 1997.)*

61829. “Market skim milk” means skim milk, as defined in this code, that is derived from market milk and conforms to the health and sanitary regulations of the place where sold or disposed of for human consumption. *(Added by Stats. 1977, Ch. 1192.)*
61830. “Marketing area” is any area within this state declared to be such in the manner that is prescribed in this chapter.  
(Added by Stats. 1977, Ch. 1192.)

61831. “Milk” has the meaning of that term as defined in Section 32511.  
(Repealed and added by Stats. 1977, Ch. 1192.)

61831.5. “Milk used for manufacturing purposes” means all milk used for those products defined in Part 3 (commencing with Section 36601) of Division 15.  
(Added by Stats. 1977, Ch. 1192.)

61832. “Milk plant” means any place, structure, or building where a handler receives market milk.  
(Amended by Stats. 1979, Ch. 373.)

61833. “Packaged market milk” or “packaged market cream” means market milk or market cream respectively, which is packaged in cartons, bottles, dispenser cans, or other consumer packages, for sale to wholesale customers, or consumers.  
(Repealed and added by Stats. 1977, Ch. 1192.)

61834. “Person” means any individual, firm, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, nonprofit cooperative association, nonprofit corporation, or any other business unit or organization.  
(Amended by Stats. 1994, Ch. 1010, Sec. 130. Effective January 1, 1995.)

61835. “Processing” means receiving, pasteurizing, and packaging market milk. It includes the manufacturing of milk products from market milk.  
(Added by Stats. 1977, Ch. 1192.)

61836. “Producer” means any person that produces market milk from five or more cows in conformity with the applicable health regulations of the place in which it is sold, and whose bulk market milk is received, acquired, or handled by any handler or any nonprofit association of producers. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of this chapter in the transactions in which such article provides that the associations are producers.  
(Added by Stats. 1977, Ch. 1192.)

61837. “Producer-handler” means any person that is both a producer and a handler of market milk. For the purposes of this chapter a producer-handler is a producer in any transaction which involves the sale or delivery of bulk market milk which was produced by him to a handler or to any nonprofit cooperative association of
producers, and is a handler in any transaction which involves the purchase, acquisition or receipt by him of market milk, the pasteurization or packaging of market milk, or the sale or delivery of packaged market milk to any person.  
(Added by Stats. 1977, Ch. 1192.)

**61838.** “Stabilization and marketing plan” means any plan formulated and made effective by the director within the legislative standards provided by this chapter. It includes, among other things, the establishing of prices to be paid by handlers for any or all of the various classes of market milk.  
(Added by Stats. 1977, Ch. 1192.)

**61839.** “Wholesale customer” means any person except a distributor that buys packaged milk, cream, or any dairy product for resale to consumers or to other wholesale customers.  
(Amended by Stats. 1982, Ch. 751, Sec. 27.)

**ARTICLE 3. Nonprofit Cooperative Associations [61871 - 61873]**  
(Article 3 added by Stats. 1977, Ch. 1192.)

**61871.** For the purposes of this chapter, a nonprofit cooperative association organized and existing under Chapter 1 (commencing with Section 54001) of Division 20, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a producer in any of the following transactions:  
(a) Any transaction which involves its receipt or handling of bulk market milk produced or delivered by such producers.  
(b) Any transaction which involves the sale or delivery of bulk market milk to any producer, handler, or manufacturer, or other nonprofit cooperative association of producers.  
(c) The receipt by it of payment for bulk market milk, packaged market milk, or any other product of market milk produced or delivered by such producers.  
(d) Any transaction in connection with accounting to such producers for the proceeds derived from the sale or marketing of bulk market milk, packaged market milk, or any other product of market milk produced or delivered by such producers.  
(Repealed and added by Stats. 1977, Ch. 1192.)

**61872.** For the purposes of this chapter, a nonprofit cooperative association organized and existing under Chapter 1 (commencing with Section 54001) of Division 20, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a handler in any transaction which involves the receipt by it of market milk from any person other than a producer to whom it accounts on a patronage basis and in any transaction which involves the pasteurization of bulk market milk or the packaging of it in bottles, cartons, dispenser cans, or other consumer packages, or the sale or delivery of packaged market milk.  
(Repealed and added by Stats. 1977, Ch. 1192.)
A nonprofit cooperative association accounts to producers on a patronage basis when it accounts to each producer for his share of the net proceeds derived from the marketing operations of the association, according to quantity and quality of market milk furnished to the association for marketing and according to any marketing pools and quotas established by the association.

(Repealed and added by Stats. 1977, Ch. 1192.)

ARTICLE 4. Administration [61891 - 61904]

(Article 4 added by Stats. 1977, Ch. 1192.)

61891. The director shall enforce the provisions of this chapter and of any stabilization and marketing plan initiated pursuant to the provisions of this chapter. The director shall adopt those regulations necessary for the proper administration and enforcement of the provisions of this chapter.

(Added by Stats. 1977, Ch. 1192.)

61892. The director shall have and may exercise any or all the powers conferred by the Government Code upon the head of a department of the state with respect to hearings and investigations under this chapter.

(Added by Stats. 1977, Ch. 1192.)

61893. The director is the instrumentality of this state for the purpose of administering and enforcing the provisions of this chapter and to execute the legislative intent expressed in this chapter, and is hereby vested with the administrative authority described in this chapter. Notwithstanding other laws to the contrary, in the event a milk marketing order under the jurisdiction of the United States Department of Agriculture or other appropriate federal agency, is created by referendum or under the applicable laws and procedures relating thereto, in this state or in any geographical area within this state, the provisions of this chapter or any part thereof which is in conflict with such federal order, or which is unnecessary or is a duplication thereof, shall be suspended in the geographical area covered by and during the existence of such federal order. The director shall take such steps and procedures as are necessary to wind up and conclude the administration and enforcement of the provisions of this chapter, or any part thereof, for the period prior to the suspension date.

(Added by Stats. 1977, Ch. 1192.)

61894. For the purposes of enforcing this chapter, the director may investigate any and all transactions, between producers and handlers, between nonprofit cooperative associations and producers, among handlers, or between handlers and wholesale customers, among wholesale customers, between handlers and consumers, or between wholesale customers and consumers. For that purpose, the director shall have access to, and may enter at all reasonable hours, any place where market milk is being stored, bottled, or manufactured, where market milk or any market milk product is being bought, sold, or handled, or where the books,
papers, records, or documents which relate to those transactions are kept. He may inspect and copy those books, papers, records, or documents in any place within the state.

(Amended by Stats. 1982, Ch. 751, Sec. 28.)

61895. The director may require the registration of producers.

(Added by Stats. 1977, Ch. 1192.)

61896. The director may formulate any stabilization and marketing plan as prescribed in this chapter and declare it effective after public hearing and reasonable notice by mail or otherwise to all producers, handlers, and consumer organizations who have filed requests with the director or the Director of Consumer Affairs.

(Added by Stats. 1977, Ch. 1192.)

61897. A full and accurate record of business or acts performed, or of testimony taken, by the director pursuant to this chapter shall be kept and placed on file in the office of the director.

(Added by Stats. 1977, Ch. 1192.)

61898. In addition to the compilation of information which pertains to market milk from the reports required by this chapter, the director shall collect, assemble, compile, and distribute statistical data relative to market milk, other milk and milk products, and such other information as may relate to the dairy industry and the provisions of this chapter.

(Added by Stats. 1977, Ch. 1192.)

61899. Any order of the director made pursuant to this chapter which substantially affects the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action shall be commenced within 30 days after the effective date of the order complained of, or within 30 days after the injurious effect complained of becomes reasonably apparent.

(Added by Stats. 1977, Ch. 1192.)

61900. The director may confer, enter into agreements, or otherwise arrange with the constituted authorities of this state, other states, or agencies of the United States with respect to plans which relate to the stabilization and distribution of market milk within this state or as between this state and other states or the United States, and may exercise his powers pursuant to this chapter to effectuate and enforce such plans.

(Added by Stats. 1977, Ch. 1192.)

61901. All money received by the director pursuant to this chapter shall be paid monthly into the State Treasury to the credit of the Department of Food and
Agriculture Fund. Funds which are so collected may only be used to defray expenses in connection with the administration of this chapter, Chapter 1 (commencing with Section 61301), and Chapter 2.5 (commencing with Section 62500).

(Amended by Stats. 1987, Ch. 1074, Sec. 14. Effective September 24, 1987.)

**61902.** If the director determines that it is probable that one or more factors or conditions which affect prices of market milk have changed on a relatively uniform basis throughout two or more marketing areas, he may consolidate the hearings on the matter of price changes for such areas. No price change shall be made as a result of such a consolidated hearing unless the amount of the change or the resulting prices are uniform throughout the areas which are affected. *(Repealed and added by Stats. 1977, Ch. 1192.)*

**61903.** Any person who has testified under oath at a public hearing held by the director pursuant to this chapter may be granted, upon request prior to the close of the hearing, a period of time not to exceed 10 calendar days following the closing date of the public hearing, in which to file with the director a written posthearing brief in amplification, explanation, or withdrawal of that person’s testimony. Any such posthearing brief shall be made available by the director to any interested person for inspection. Except as herein provided, the director, in formulating any stabilization and marketing plan, pursuant to this chapter, following a public hearing, shall not accept or consider any posthearing brief. Nothing in this section shall require the director to prepare, or to make available, any verbatim transcript or other record or summary of the hearing within the 10-calendar-day period referred to in this section. However, any verbatim transcript or other record or summary of the hearing prepared for or by the director shall be made available to any interested party for inspection at the office of the director in Sacramento and, upon reasonable request, at the regional office of the director nearest the location at which the public hearing was held. *(Amended by Stats. 1983, Ch. 261, Sec. 1.)*

**61904.** Any provisions of a stabilization and marketing plan formulated, established, or rejected by the director pursuant to this chapter, shall be accompanied by written statements, which shall be made available by the director to any interested person upon request, stating in substance the considerations upon which such plan provisions and minimum prices are based, or upon which such provisions and prices were rejected. *(Added by Stats. 1977, Ch. 1192.)*

**ARTICLE 5. Classes of Market Milk [61931—61937]**

*(Article 5 added by Stats. 1977, Ch. 1192.)*

**61931.** Market milk may be classified for the purposes of this chapter as provided in this article. *(Repealed and added by Stats. 1977, Ch. 1192.)*
Class 1 comprises:
(a) Any market milk, market skim milk, half-and-half, or concentrated milk that is supplied to consumers in the fluid state, with the exception of the following:
(1) (A) Any UHT market milk product, as defined in Chapter 9 (commencing with Section 39701) of Part 3 of Division 15, that is sold for use outside the state.
(B) Any market milk products that are ultrapasteurized and sold for use outside the 48 contiguous states in the United States.
(2) Any market half-and-half that is ultrapasteurized and packaged in hermetically sealed containers.
(3) Any market half-and-half that is packaged in presterilized containers under aseptic conditions to meet the marketing requirements for these products in states other than this state. However, this paragraph does not authorize the sale within this state of any milk product as a UHT product unless the product meets the standards and requirements for UHT products specified in Chapter 9 (commencing with Section 39701) of Part 3 of Division 15.
(b) Any market milk, market skim milk, or market cream that is used in any other milk product, or products resembling milk products, in which the use of market milk, or any components or derivatives of market milk, is required by, or pursuant to, this code, except any product defined in Section 61933 as class 2.
(c) Any market milk, market skim milk, market cream, market milk fat, or market milk solids-not-fat that is used in the standardizing or fortifying of any milk product that is defined in this section as class 1.
(d) Any market milk, market skim milk, or market cream that is used in any product not otherwise classified, which is required by any regulations adopted by the director pursuant to Article 2 (commencing with Section 36631) of Chapter 1 of Part 3 of Division 15 to be made from market milk or any components or derivatives of market milk.
(e) Any market milk, market skim milk, market cream, market milk fat, or market milk solids-not-fat used in any filled product or imitation milk product, when the product imitated or resembled, is defined in this section as class 1.
(Amended by Stats. 1993, Ch. 36, Sec. 6. Effective June 22, 1993.)

Class 2 comprises any market milk, market skim milk, or market cream used in the manufacture of market cream, homogenized market cream, sour cream, sour cream dressing, sour half-and-half or light sour cream, uncreamed, creamed, or partially creamed cottage cheese, soft fresh cheese (fromage frais), buttermilk, kefir, and yogurt. Class 2 also comprises any market milk, market skim milk, or market cream used in the manufacture of any product for which a definition and standard is prescribed in Division 15 (commencing with Section 32501), except any product that is included in class 1, class 3, class 4a, or class 4b.
(Amended by Stats. 2012, Ch. 323, Sec. 4. Effective January 1, 2013.)

Class 3 comprises all market milk, market skim milk, or market cream used in the manufacture of frozen dairy products.
(Repealed and added by Stats. 1977, Ch. 1192.)
(a) Class 4a comprises all market milk, market skim milk, or market cream used in the manufacture of butter, dried milk, dried skim milk, nonfat dry milk solids, defatted milk solids, dried buttermilk, and all market milk, market skim milk, or market cream which is supplied to consumers as condensed milk, condensed skim milk, evaporated skim milk, evaporated cream or clotted cream, or evaporated milk, and any milk products which are UHT products, as defined in Chapter 9 (commencing with Section 39701) of Part 3 of Division 15, or ultrapasteurized, and sold for use outside of the 48 contiguous states in the United States, or yogurt, soft fresh cheese (fromage frais), uncreamed, creamed, or partially creamed cottage cheese, sour cream, sour half-and-half, or light sour cream which is sold for use outside the boundaries of the United States, or any product for which no definition and standards are prescribed in Division 15 (commencing with Section 32501), except the products defined in paragraph (2) of subdivision (a) of Section 61932.

(b) Class 4b comprises all market milk, market skim milk, or market cream used in the manufacture of cheese other than cottage cheese.

(Repealed and added by Stats. 1991, Ch. 242, Sec. 3.)

If the director establishes a temporary definition and standards for any new milk product pursuant to Article 2 (commencing with Section 36631), Chapter 1, Part 3 of Division 15, he shall assign such new product to that class under this article which includes the most nearly comparable product as determined by the director.

(Repealed and added by Stats. 1977, Ch. 1192.)

Market milk, market skim milk, or market cream, utilized in bulk by handlers as condensed milk, condensed skim milk, evaporated skim milk, evaporated cream or clotted cream, or evaporated milk, shall be assigned by the director to the classification of ultimate usage of such market milk, market skim milk, or market cream.

(Repealed and added by Stats. 1977, Ch. 1192.)

The director shall designate marketing areas which he deems necessary or advisable to effectuate the purposes of this chapter, and in which he finds the conditions affecting the production, handling, and sale of market milk, are reasonably uniform.

(Added by Stats. 1977, Ch. 1192.)
61962. The director may establish additional areas, or modify areas previously established, if he deems the establishment or modification of such areas necessary or advisable to effectuate the purposes of this chapter.
(Added by Stats. 1977, Ch. 1192.)

61963. If the director finds, after a public hearing in and for each particular marketing area under consideration for consolidation, that conditions of production and handling are reasonably uniform in two or more such marketing areas in which stabilization and marketing plans are in effect, he may consolidate the areas.
(Added by Stats. 1977, Ch. 1192.)

ARTICLE 7. Formation and Adoption of Stabilization and Marketing Plans [61991–61998]
(Added by Stats. 1977, Ch. 1192.)

61991. Except as otherwise provided in Section 61992, the director shall, prior to the formulation of a stabilization and marketing plan for market milk for any marketing area, conduct a public hearing in the area for the purpose of determining whether or not the formulation of a stabilization and marketing plan for market milk for such area is desired by producers whose major interest in the market milk business is in the production of market milk for the marketing area and that both:
(a) Represent not less than 65 percent of the total number of producers whose major interest in the market milk business is in the production of market milk for the marketing area.
(b) Produce not less than 65 percent of the total volume of the market milk produced for the marketing area by all such producers.
(Added by Stats. 1977, Ch. 1192.)

61992. A hearing need not, however, be held if a petition requesting a stabilization and marketing plan is presented to the director by the producers whose major interest in the market milk business is in the production of market milk for the marketing area, and that both:
(a) Represent not less than 65 percent of the total number of producers whose major interest in the market milk business is in the production of market milk for the marketing area.
(b) Produce not less than 65 percent of the total volume of the market milk produced for the marketing area by all such producers.
(Added by Stats. 1977, Ch. 1192.)

61993. If the director finds that a stabilization and marketing plan is necessary to accomplish the purposes of this chapter, he shall formulate a stabilization and marketing plan for market milk for such area and issue a notice of public hearing upon the plan which is formulated to all producers and handlers of record with the department that may be subject to the provisions of such plan.
(Added by Stats. 1977, Ch. 1192.)
The notice of the hearing may be effected by mail, or by publication pursuant to Section 6062 of the Government Code in the area which is designated. It shall specify the time and place of such hearing, which shall not be prior to 15 days from the mailing, or from the final publication of such notice. If no daily newspaper of general circulation is published in the area which is designated, publication pursuant to Section 6066 of the Government Code shall be considered proper publication of notice.

(Added by Stats. 1977, Ch. 1192.)

At the hearing, interested parties shall be heard and records kept of the proceedings of such hearing for determination by the director whether the plan proposed will accomplish the purposes of this chapter.

(Added by Stats. 1977, Ch. 1192.)

If, after the public hearing, the director determines that the proposed plan will tend to accomplish the purposes of this chapter within the standards which are prescribed in it, he or she shall issue an order to all producers and handlers of record with the department and subject to the provisions of the plan, declaring the plan in effect within 62 days from the date of the hearing. The director shall announce any order under this section at least 10 calendar days prior to the effective date of the plan.

(Amended by Stats. 1983, Ch. 261, Sec. 2.)

A handler that is subject to the provisions of any stabilization and marketing plan shall not purchase milk from any producer that does not comply with this chapter and such plan.

(Added by Stats. 1977, Ch. 1192.)

No stabilization or marketing plan shall contain provisions the purposes of which are to establish limitations upon the production of market milk.

(Added by Stats. 1977, Ch. 1192.)

ARTICLE 8. Amendment and Termination of Stabilization and Marketing Plans [62031-62032]

(Amended by Stats. 1977, Ch. 1192.)

The director may amend or terminate any stabilization and marketing plan, after notice and public hearing as prescribed in Article 7 (commencing with Section 61991), if he or she finds that the plan is no longer in conformity with the standards which are prescribed in, or will not tend to effectuate the purposes of, this chapter. Any order under this article amending or terminating any stabilization and marketing plan shall be subject to Section 61996.

(Amended by Stats. 1983, Ch. 101, Sec. 56.)
A hearing on the amendment or termination of a stabilization and marketing plan may be held upon the motion of the director and shall be held upon receipt of a petition which is signed by producers, or by the board of directors of any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition. Such petition shall represent not less than 55 percent of the total number of all producers and not less than 55 percent of the total production of all producers that are eligible to petition the director for the formulation of such a plan.

(Added by Stats. 1977, Ch. 1192.)


(Added by Stats. 1977, Ch. 1192.)

62061. Each stabilization and marketing plan shall contain provisions for prohibiting producers and handlers from engaging in the unlawful trade practices applicable to them that are set forth in Article 10 (commencing with Section 62091) of this chapter.

(Added by Stats. 1977, Ch. 1192.)

62062. Each stabilization and marketing plan shall contain provisions whereby the director establishes minimum prices to be paid by handlers to producers for market milk in the various classes. The director shall establish the prices by designating them in the plan, or by adopting methods or formulas in the plan whereby the prices can be determined, or any combination of the foregoing. If the director directly designates prices in the plan, the prices shall be in reasonable and sound economic relationship with the national value of manufactured milk products. If the director adopts methods or formulas in the plan for designation of prices, the methods or formulas shall be reasonably calculated to result in prices that are in a reasonable and sound economic relationship with the national value of manufactured milk products.

In establishing the prices, the director shall take into consideration any relevant economic factors, including, but not limited to, the following:

(a) The reasonableness and economic soundness of market milk prices for all classes, giving consideration to the combined income from those class prices, in relation to the cost of producing and marketing market milk for all purposes, including manufacturing purposes. In determining the costs, the director shall consider the cost of management and a reasonable return on necessary capital investment.

(b) That prices established pursuant to this section shall insure an adequate and continuous supply, in relation to demand, of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria, are fair and reasonable.

(c) That prices, including the prices of components of milk, established by the director for the various classes of market milk bear a reasonable and sound economic relationship to each other.
In establishing the prices, the director shall also take into consideration all the purposes, policies, and standards contained in Sections 61801, 61802, 61805, 61806, 61807, 62076, and 62077.

(Amended by Stats. 1993, Ch. 1112, Sec. 2. Effective January 1, 1994.)

62062.1. Any designation of a class 1 price by any method or formula that is used to develop class 1 prices paid to producers in the various marketing areas, shall provide, on a calendar year basis, a statewide weighted average minimum price level for a hundred weight of milk testing 3.5 fat and 8.7 solids not fat that is in reasonable relationship with minimum class 1 milk prices paid to producers in contiguous states. If the statewide weighted average class 1 prices paid to producers are not in a reasonable relationship with the class 1 prices paid to producers in contiguous states, the secretary shall immediately hold a hearing to consider adjustments to the class 1 prices.

(Added by Stats. 1994, Ch. 601, Sec. 1. Effective January 1, 1995.)

62062.5. The minimum prices otherwise established pursuant to this chapter shall be increased by any security charges that are imposed pursuant to Chapter 2.5 (commencing with Section 62500).

(Added by Stats. 1987, Ch. 156, Sec. 24. Effective July 10, 1987.)

62063. Subject to the provisions of Sections 62074 and 62075, each stabilization and marketing plan shall contain provisions whereby the director shall provide methods for the establishment of minimum prices for market milk received within a marketing area regardless of whether the milk is subsequently sold or distributed within or without the marketing area within the jurisdiction of this state, and may contain the provisions whether or not the market milk is subsequently sold or distributed outside the jurisdiction of this state.

(Amended by Stats. 1983, Ch. 383, Sec. 4. Effective July 26, 1983.)

62064. Each stabilization and marketing plan shall provide all of the following:
(a) For the establishment of prices for market milk, whether or not such market milk is subsequently sold or distributed in another marketing area within this state where a stabilization and marketing plan is in effect.
(b) That, if area of usage pricing is in effect, producers shall be paid not less than the minimum prices established for the marketing area wherein such market milk is ultimately sold or distributed.
(c) That, if area of usage pricing is in effect and such market milk is subsequently sold or distributed in any place within the jurisdiction of this state where no stabilization and marketing plan is in effect, such market milk shall be paid by the handler to the producer at not less than the average of prices which are paid by handlers, whose plants are located within such area, to producers for market milk. If, however, no plants are located within such area, the price which shall be paid by the handler to the producer shall not be less than the average of prices which are paid by handlers to producers for market milk, at the plants in the nearest
marketing areas adjacent to the area where such market milk is sold or distributed, as established by the stabilization and marketing plans in effect in such adjacent marketing areas.
(Added by Stats. 1977, Ch. 1192.)

**62065.** No amendment of this article terminates or invalidates any provision of any stabilization and marketing plan which has been established by the director prior to the effective date of such amendment. Each such plan shall, however, be brought into conformity with such amendment at the earliest practicable date after the effective date of such amendment.
(Added by Stats. 1977, Ch. 1192.)

**62066.** Notwithstanding any other provision of this code to the contrary, the director, in establishing minimum prices to be paid by handlers to producers, for market milk in any marketing area, may establish, as the applicable minimum prices, those prices applicable within the marketing area of ultimate usage of such market milk, those prices applicable within the marketing area where the plant of first receipt of such market milk is located, those prices applicable in the marketing area where the producers place of production is located, or any of the above or any combination of the above.
(Added by Stats. 1977, Ch. 1192.)

**62067.** Each stabilization and marketing plan may contain provisions which require handlers to report to each producer from whom market milk is secured all of the following:
(a) The volume of market milk received from such producer in pounds of milk.
(b) The milk fat, solids-not-fat, or other component tests of such milk.
(c) The amount of market milk in pounds of milk fat, solids-not-fat or other components paid for in the several classes or pools.
(d) The prices paid for the various classes for each month.
(Added by Stats. 1977, Ch. 1192.)

**62068.** Each stabilization and marketing plan may contain provisions which authorize any handler that purchases market milk under contract from any producer to pool such market milk for producer payment purposes in accordance with such contracts, irrespective of whether such market milk is actually and physically received at the same milk products plant or diverted, in accordance with such plan. Such provisions may do any of the following:
(a) Provide that market milk that is received from producers by milk products plants under the same ownership, may be pooled for purposes of payment to producers.
(b) Provide that if a handler pools market milk, as provided in subdivision (a), the handler shall allocate, among all producers that participate in the class 1 usage, transportation savings which are applicable to market milk, not actually transported between the plant of first receipt and one or more other plants subject to the pool,
and used for class 1, and may pay to producers shipping market milk directly to a plant subject to the pool a price for usage of such market milk for class 1, which price represents the average of minimum producer prices payable by that particular plant for such class 1 usage.
(Added by Stats. 1977, Ch. 1192.)

62069. The director may establish minimum prices to be paid by handlers to producer-handlers for milk not used by the purchasing handler as class 1 milk. These provisions may provide that the milk, if used in classes other than class 1 by the purchasing handler, may be paid for at the minimum prices established by the director for this other usage but which shall not be less than the prices as found by the director to be paid by manufacturing milk plants in, or adjacent to, the area that use milk for similar purposes. The prices shall remain in effect only for the period during which, as determined by the director, there is a surplus of producer-handler milk.
(Amended by Stats. 2006, Ch. 538, Sec. 208. Effective January 1, 2007.)

62070. Each stabilization and marketing plan may further provide for maximum charges for plant processing and transportation service on the market milk or market milk components which are transported to the area where sold. The stabilization and marketing plan may enumerate the applicable maximum charges, and may establish individual charges for each function enumerated. In establishing any such maximum charges for such transportation services, the director shall base such maximum charges upon the rates which are charged for actual or reasonably similar services by highway carriers, as the term “highway carriers” is defined in Section 3511 of the Public Utilities Code.
(Added by Stats. 1977, Ch. 1192.)

62071. Each stabilization and marketing plan may provide for minimum charges for the various services performed or rendered by a nonprofit cooperative association in respect to class 1 market milk sold or delivered to another handler. Handler services include component testing for payment purposes, quality control, producer payroll, weighing and sampling of bulk market milk. Each stabilization and marketing plan may also include, but not be limited to, minimum charges for the handling of intermittent or irregular deliveries of market milk and plant standby services. The stabilization and marketing plan may enumerate applicable minimum charges and establish individual charges for each service enumerated or, in the alternative, the director may establish one or more minimum charges covering one or more of the separate handler services.
(Added by Stats. 1977, Ch. 1192.)

62072. In establishing minimum handler service charges under Section 62071, the director shall take into consideration all relevant factors, including, but not limited to, the following:
(a) The reasonably necessary costs of providing such services, including overhead, as determined by impartial cost surveys, examination of books and records, or both, of such portions of those handlers within the marketing area as are reasonably determined by the director to be sufficiently representative to indicate such costs of all reasonably efficient handlers within such marketing area.
(b) The relationship of the establishment of such minimum charges to the achievement and maintenance of the orderly marketing of market milk and to the effectuation of the purposes of this chapter.
(Added by Stats. 1977, Ch. 1192.)

62073. If any contract between a handler and a producer for the purchase of any market milk provides that the charges for the hauling of it shall be paid, in whole or in part, by the producer, and such hauling is done by the handler either directly or through an agent or by any person that contracts with, or is designated by, such handler for such hauling, the director may, and upon the written request of the producer or the written request of any association representing the producer shall, investigate the rates, terms, and conditions which are involved in such hauling in order to determine whether such rates, terms and conditions are in compliance with Section 62070.
If the director determines that such rates, terms, and conditions are not in compliance with Section 62070, he shall determine, within the standards which are prescribed in Section 62070, the maximum charges on account of such hauling that will comply with Section 62070 with respect to such purchase of market milk.
(Added by Stats. 1977, Ch. 1192.)

62074. If the director establishes a stabilization and marketing plan for market milk, the director shall establish minimum prices to be paid by handlers for market cream, market skim milk, or milk fat, or market skim milk components of such market milk.
(Added by Stats. 1977, Ch. 1192.)

62074.5. A stabilization and marketing plan may contain provisions necessary to encourage the availability of market milk for those usages for which class 1 and class 2 milk is mandatory.
(Added by Stats. 1985, Ch. 343, Sec. 1.)

62075. The director shall establish the minimum prices to be paid by handlers to producers for class I usage of market milk upon a milk fat, solids-not-fat or the subcomponents thereof, and fluid carrier basis. In establishing the minimum prices for classes of market milk other than class I, separate prices may be established for any one or more of the following:
(a) The milk fat contained in such milk.
(b) The solids-not-fat or subcomponents thereof contained in such milk.
(c) The fluid contained in such milk.
(d) Any combination of the milk fat, the solids-not-fat or subcomponents thereof, or the fluid contained in such milk.
In establishing prices to be paid by handlers to producers for class 2, class 3, class 4a, or class 4b market milk, the director shall take into consideration any relevant economic factors, including, but not limited to, the following:

(a) The relative market value of the various products yielded from such market milk.

(b) The market price of other milk which may be used for the same purposes that are set forth in such respective classes.

(c) The value of milk used for manufacturing purposes giving consideration to any relevant factors including, but not limited to, product prices, product yields, and manufacturing costs of class 4a or class 4b.

A handler shall not pay any producer less than the applicable price established for the usage to which the market milk, purchased from him is applied pursuant to accounting procedures established by the director. If the market milk is not applied to any purpose set forth in Article 5 (commencing with Section 61931), then a handler shall not pay any producer less than the lower of the prices established under the applicable stabilization and marketing plan for class 4a and class 4b usage.

All handlers who receive market milk within this state shall be obligated to pay minimum producer prices established under this chapter regardless of the area of origin of such milk, whether inside or outside the jurisdiction of the State of California.

Whenever a pooling plan is in effect as provided in Chapter 3 (commencing with Section 62700) and Chapter 3.5 (commencing with Section 62750) of this part, all market milk received by pool handlers shall be obligated to the pool at the applicable minimum price established in the Stabilization and Marketing Plans based on the classified usage of that milk. Handlers may pay producers for restricted use market milk at prices that are less than the amount credited to those handlers for restricted use market milk by the pooling plan.

ARTICLE 10. Unlawful Trade Practices [62091 - 62095.1]

(Article 10 added by Stats. 1977, Ch. 1192.)
62091. The unlawful trade practices described in this article apply to every handler whether or not a stabilization and marketing plan is in effect in the area in which the handler is licensed or carries on his business. This article applies to transactions conducted, either directly or indirectly, between producers and handlers.  
(Added by Stats. 1977, Ch. 1192.)

62092. The payment, allowance, or acceptance of any secret rebate, secret refund, or unearned discount by any person, whether in the form of money or otherwise, is an unlawful trade practice.  
(Added by Stats. 1977, Ch. 1192.)

62093. The giving of any milk, cream, dairy product, service, or article of any kind, except to a bona fide charity, for the purpose of securing or retaining the market milk business of any customer is an unlawful trade practice.  
(Added by Stats. 1977, Ch. 1192.)

62094. The payment, gift, or the offer or promise of any payment or gift, of money or other thing of value, directly or indirectly, or through any agent or other intermediary, to any person with the purpose or design of inducing such person to become or remain the wholesale customer of any handler is an unlawful trade practice.  
(Added by Stats. 1977, Ch. 1192.)

62095. The payment, gift, or the offer or promise of any payment or gift, of money or other thing of value by any person, directly or indirectly or through any agent or other intermediary, to any handler or producer, or the acceptance by any handler or producer of the payment or gift or thing of value is an unlawful trade practice if it is for any of the following:
(a) For the purpose of inducing a handler or producer to enter into a new contract, or to renew, extend, or modify an existing contract, for the purchase of market milk by a handler from a producer.
(b) As a condition upon which a handler will enter into a new contract, or renew, extend, or modify an existing contract, for the purchase of market milk from a producer.
(c) For the purpose of enabling a handler to pay to a producer, or a producer to receive from a handler, less than the minimum class usage prices established by the director to be paid by handlers to producers for market milk.
(d) Nothing in this section prevents a handler from paying to a producer, or a producer from receiving from a handler, prices in excess of the minimum prices established by the director if these prices are paid to all producers supplying the handler under the same terms and conditions.  
(Amended by Stats. 1987, Ch. 156, Sec. 25. Effective July 10, 1987.)
The payment by a handler, either directly or indirectly, of less than the minimum producer price established under the applicable stabilization and marketing plan adopted pursuant to this chapter, is an unlawful trade practice. This section does not apply to sales of bulk milk between handlers.  
(Amended by Stats. 2006, Ch. 505, Sec. 2. Effective January 1, 2007.)

ARTICLE 11. Sales to the United States [62121-62121.]  
(Article 11 added by Stats. 1977, Ch. 1192.)

62121. The director may require that each person that submits a bid for the sale to an agency of the United States government of market milk or any milk product which utilizes class 1 market milk shall file with the director, at the same time such bid is submitted, a complete copy of such bid and the following certification: “The undersigned certifies that in sales by the undersigned to agencies of the United States Government, pursuant to the attached bid, for market milk or milk products utilizing class 1 market milk, as such class 1 market milk is defined in Chapter 2 (commencing with Section 61801), Part 3, Division 21 of the Food and Agricultural Code, the undersigned is complying with all California statutes and regulations pertaining to the establishment and enforcement by the Director of Food and Agriculture of minimum prices to be paid producers for such class 1 market milk.”

All bids and certifications filed pursuant to this section shall be confidential and shall not be divulged except when necessary for the proper determination of any court proceeding or hearing before the director.  
(Repealed and added by Stats. 1977, Ch. 1192.)

ARTICLE 12. Handlers' Licenses [62141 - 62155]  
(Article 12 added by Stats. 1977, Ch. 1192.)

62141. The licenses provided for in this article are required for each handler. For the purposes of this article, each subsidiary milk plant or branch milk plant, whether under one ownership or not, shall be considered as an individual handler.  
(Added by Stats. 1977, Ch. 1192.)

62142. For the purposes of this article, “handler” shall include any person defined as a handler under Section 61826 or any person defined as a distributor under Section 61306 that purchases or handles market milk or market cream for processing, manufacture, or sale.  
(Added by Stats. 1977, Ch. 1192.)

62143. No person who qualifies as a handler under Section 62142 shall deal in market milk without first obtaining a license from the director. In addition, any person qualifying as a handler who purchases or handles market milk or market cream for processing or manufacture shall obtain a license for each milk plant
owned or operated. The license provided for in this article is in addition to any license which is required by Division 15 (commencing with Section 32501), or by any law or ordinance of any county or municipality of this state. Notwithstanding the provisions of Section 61832, “milk plant” as used in this article, means any place, structure, or building where a handler receives market milk and weighs, tests, standardizes, pasteurizes, homogenizes, separates, bottles or packages such milk. “Milk plant” does not include a place, structure, or building which is used for the purpose of receiving, weighing, or testing milk to be diverted or delivered to a licensed milk plant of the handler.

(Amended by Stats. 1982, Ch. 751, Sec. 30.)

62144. Applications for the license provided by this article shall be made on forms prescribed by the director, accompanied by a fee as prescribed in Section 62145, and state the name and address of the applicant and any details specifically related to the nature of the applicant’s business that the director may require. The applicant shall further satisfy the director of his or her character, responsibility, and good faith in seeking to carry on the business stated in the application.

(Amended by Stats. 1987, Ch. 534, Sec. 4.)

62145. One-half of the valid license renewals shall be issued for a period of 24 months beginning January 1, 1988. The application fee for renewal of the 24-month license shall be twenty-five dollars ($25). The remaining valid license renewals shall be issued for a period of 12 months beginning January 1, 1988. The application fee for the renewal of the 12-month license shall be twelve dollars and fifty cents ($12.50). Beginning January 1, 1989, all renewals of licenses shall be issued for a 24-month period and shall be twenty-five dollars ($25). Except as otherwise provided, beginning January 1, 1988, every new license issued shall expire on the 31st day of December of the following year. Application for a new license or a renewal license, together with the appropriate application fee, shall be made prior to the handling of market milk or the expiration date of the license held. If it is not so made, the applicant shall pay an additional twenty-five dollars ($25) before the license shall be issued.

(Repealed and added by Stats. 1987, Ch. 534, Sec. 6.)

62146. The director may refuse to grant or renew any license if he or she is satisfied that any applicant, or any person connected with the applicant, either directly or indirectly, has violated any of the following:
(a) This chapter or any stabilization and marketing plan or other regulation adopted under this chapter.
(b) Chapter 1 (commencing with Section 61301).
(c) Chapter 3 (commencing with Section 62700) or any pooling plan established thereunder.

(Amended by Stats. 1987, Ch. 156, Sec. 32. Effective July 10, 1987.)
62147. The director may also refuse to grant or renew any license to a handler if he is satisfied that the handler has failed to pay for any market milk delivered to him at the time and in the manner specified in the contract with the producer.  
(Added by Stats. 1977, Ch. 1192.)

62148. The proceedings to determine whether or not the director shall refuse to grant or renew a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and the director shall have all of the powers granted in such chapter.  
(Added by Stats. 1977, Ch. 1192.)

62149. The decision may include an order refusing to grant or renew the license applied for, or affixing other conditional and probationary orders that may be proper for the enforcement of any of the following:  
(a) This chapter or any stabilization and marketing plan formulated pursuant to this chapter.  
(b) Chapter 1 (commencing with Section 61301).  
(c) Any regulation duly adopted by the director pursuant to Section 61891.  
(d) Chapter 3 (commencing with Section 62700) or any pooling plan established thereunder.  
(Amended by Stats. 1987, Ch. 156, Sec. 33. Effective July 10, 1987.)

62150. After any decision in favor of the issuance or renewal of a license which includes any conditional or probationary orders, if the person to whom the license is issued does not comply with any such orders, the director may suspend or revoke the license in accordance with the procedure provided in Sections 62151, 62152, 62153, 62154, and 62155.  
(Added by Stats. 1977, Ch. 1192.)

62151. The director may revoke or suspend, as the case may require, any license which is issued pursuant to this chapter, if he or she is satisfied that any licensee or any person who is connected with the licensee has violated any of the following:  
(a) This chapter or any stabilization and marketing plan which is formulated pursuant to this chapter.  
(b) Any regulation which is adopted by the director pursuant to Section 61891.  
(c) Chapter 1 (commencing with Section 61301).  
(d) Chapter 3 (commencing with Section 62700) or any pooling plan adopted thereunder.  
The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers which are granted in that chapter.  
(Amended by Stats. 1987, Ch. 156, Sec. 34. Effective July 10, 1987.)
62152. The director may also revoke or suspend any license of a handler if he is satisfied that the handler has not paid for any market milk delivered to him at the time and in the manner specified in the contract with the producer. (Repealed and added by Stats. 1977, Ch. 1192.)

62153. The decision may include an order revoking or suspending the license held by the licensee, or affixing such other conditional and probationary orders as may be proper for the enforcement of this chapter or any provision of any stabilization and marketing plan formulated pursuant to the provisions of this chapter or of any regulation adopted by the director pursuant to Section 61891. (Repealed and added by Stats. 1977, Ch. 1192.)

62154. After any decision, which includes any conditional or probationary orders, if the respondent does not comply with any such orders, the director may suspend or revoke the license in accordance with the procedure which is provided in this article. (Repealed and added by Stats. 1977, Ch. 1192.)

62155. Whenever the director is satisfied, either by investigation or after a hearing, that a handler is unable to pay for any market milk purchased from any producer, and is further satisfied that to permit the handler to continue to purchase and receive any market milk from producers would be likely to cause serious and irreparable loss to producer-creditors and other producers, the director may thereupon and forthwith shorten the time for hearing that is provided for in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and thereupon may issue an order to show cause why the license of such handler should not be forthwith suspended or revoked. The time of notice of the hearing shall not, however, be less than five days. At such hearing the handler that is proceeded against shall be ordered to show cause why the license should not be suspended or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors and producers from whom the handler has been and is receiving any market milk. Following such hearing, the decision of the director shall become effective at his discretion. The hearing, in the case of such emergency, may be called upon written notice which is served personally or by mail on the handler that is involved. It may be held at the nearest office of the director or at such place as may be most convenient in the discretion of the director for the attendance of all of the parties that are involved. (Repealed and added by Stats. 1977, Ch. 1192.)

ARTICLE 13. Bonding and Payment for Market Milk [62181 - 62202]
(Heading of Article 13 amended by Stats. 1987, Ch. 156, Sec. 35.)
The bonds provided for in this article are required for each handler and apply to all purchases of milk by that handler. A handler bonded under this article is not required to be separately bonded under Section 61405.

(Amended by Stats. 1987, Ch. 156, Sec. 36. Effective July 10, 1987.)

(a) Every handler that operates only one plant within the state, before purchasing any market milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The minimum amount of the bond shall be based upon the average daily quantity of market milk purchased by the handler during any calendar month during a calendar year.

The minimum amount of the bond shall be as follows:
(1) Five thousand dollars ($5,000) for any handler that purchases an average daily quantity of less than 1,000 gallons.
(2) Ten thousand dollars ($10,000) for any handler that purchases an average daily quantity of at least 1,000 gallons but less than 4,000 gallons.
(3) Fifteen thousand dollars ($15,000) for any handler that purchases an average daily quantity of at least 4,000 gallons but less than 8,000 gallons.
(4) Twenty thousand dollars ($20,000) for any handler that purchases an average daily quantity of 8,000 gallons or more.

(b) Every handler that operates more than one plant within the state, before purchasing any market milk from a producer, shall execute and deliver to the secretary a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a single bond covering all plants within the state and shall be in an amount determined by multiplying twenty thousand dollars ($20,000) by the number of plants operated by the handler in the state.

(c) Any milk purchase agreement between a handler and a producer may provide for additional surety bonds, guarantees, or other forms of security in addition to the bonding requirements in this article.

(Amended by Stats. 2004, Ch. 70, Sec. 2. Effective January 1, 2005.)

If any handler so increases his purchases of market milk during the license year that such purchases exceed the amount for which the handler is bonded, such handler shall forthwith post such additional bond as may be required to comply with this article.

(Repealed and added by Stats. 1977, Ch. 1192.)

The bonds required by Sections 62182 and 62183 shall be upon a form approved by the director, and shall be conditioned upon the payment in the manner that is required by this chapter, of all amounts due to producers for market milk purchased by such licensee or applicant during the license year. It shall be to the state in favor of every producer of market milk.

(Repealed and added by Stats. 1977, Ch. 1192.)
62185. If a handler fails to pay any producer or producers for market milk in the manner that is required by this chapter, the director shall proceed forthwith to ascertain the names and addresses of all the producers that the handler has failed to pay, together with the amounts due and owing to them and each of them by such handler, and shall request all such producers to file a verified statement of their respective claims with the director. The producer need only verify that he is owed an amount by the handler. The actual amount in such case may be ascertained by the director.
(Repealed and added by Stats. 1977, Ch. 1192.)

62186. After determining the claims of such producers, the director shall bring an action on the bond on behalf of such producers. Any producer not satisfied with the amount of such producer’s claim as determined by the director, or with the ratio such producer’s claim bears to all claims against the bond as determined by the director, may intervene in such an action so that the correct amount of his claim and the ratio it bears to all the claims may be adjudicated.
(Repealed and added by Stats. 1977, Ch. 1192.)

62186.1. (a) The director may bring an action against a surety bond company if the company fails to do any of the following:
(1) Acknowledge promptly and act reasonably upon receiving a bond demand from the director.
(2) Promptly investigate and process claims.
(3) Make fair and equitable settlement of claims.
(4) Pay the bond amount to the director.
(b) The authority provided in subdivision (a) is in addition to the authority provided for in subdivision (h) of Section 790.03 of the Insurance Code.
(c) In addition to the bond proceeds, the surety bond company may be ordered to pay interest at the prevailing prime rate on the amounts owed from the date the claim was filed, all the department’s court costs, and reasonable attorney’s fees.
(Amended by Stats. 1987, Ch. 1074, Sec. 15. Effective September 24, 1987.)

62187. If a handler fails to pay any producer in the manner that is required by this chapter, the director may require the filing of a new or additional bond in an amount determined by the director that will be sufficient to satisfy claims for the payment of producers thereafter supplying market milk to the handler. The failure of a handler to have filed a new bond within 10 days after notice from the director constitutes grounds for the revocation or suspension of the license of the handler.
(Amended by Stats. 1987, Ch. 156, Sec. 39. Effective July 10, 1987.)

62188. If recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among the producer-creditors.
(Repealed and added by Stats. 1977, Ch. 1192.)
62189. The failure of any handler that purchases market milk from producers to execute and deliver the bond as provided and required in this article is a violation of this chapter. The failure of any such handler to post any additional bond as may be required to comply with any provision of this chapter is also a violation of this chapter.

(Added by Stats. 1977, Ch. 1192.)

62190. Payments by a handler to a producer, for the purposes of any action on a handler’s bond or bonds for any year or years, shall be credited first to interest and then to principal due, owing, and unpaid. Amounts to be applied to principal shall be applied first to the amount due for the most recent deliveries and then successively, in descending order, to the amounts due to the next most recent deliveries.

(Added by Stats. 1977, Ch. 1192.)

62191. (a) Except as otherwise provided in Section 62193 or 62194, the purchase of any market milk in excess of 1,000 gallons monthly from any producer is an unlawful trade practice unless a written contract, which complies with all of the requirements which are prescribed by this section, has been entered into with the producer.

(b) The contract shall include all of the following:

(1) The amount of market milk which is to be purchased for any period.
(2) The minimum quantity of the market milk which is to be paid for as class 1, if any is to be purchased for this purpose. The quantity shall be stated in pounds of market milk, pounds of market milk fat, or gallons of market milk, unless the price which is to be paid for the class 1 market milk is established separately for the market milk fat and market skim milk, in which case the quantity may, in the alternative, be stated in both pounds of market milk fat and pounds of market skim milk separately. The minimum quantity of market milk to be paid for as class 1 shall not be less than 70 percent of the total quantity provided in the contract to be purchased at a milk products plant, and not less than 60 percent of the total quantity of market milk fat, or the total quantity of market skim milk components, but not necessarily both, provided in the contract to be purchased at a country plant, as defined by the director in stabilization and marketing plans.
(3) The price to be paid for all market milk received.
(4) The date and method of payment for the market milk. Payment shall be made for the amount of the market milk delivered during the first 15 days of any calendar month not later than the first day of the next following month and for the amount delivered during the remainder of the month not later than the 15th day of the next following month unless the milk is subject to a pooling plan as authorized in Chapter 3 (commencing with Section 62700) and the pooling plan provides for different dates and methods of payment, in which case the date and method of payment for the milk shall be as provided for in the pooling plan.
(5) The charges for transportation if hauled by the handler.
(6) A provision that market milk received within the total quantity provided by the contract to be purchased for any period shall not be paid for at less than the minimum price for market milk used for class 2.
(c) The contract may contain other provisions that are not in conflict with this chapter. A signed copy of the contract shall be filed by the producer with the director within five days from the date of its execution.
(d) Paragraphs (2) and (6) of subdivision (b) shall not be applicable if an equalization pool, as provided pursuant to Chapter 3 (commencing with Section 62700), is in effect for the area in which the purchase of the market milk occurs.  

(Amended by Stats. 1991, Ch. 1101, Sec. 4.)

62192. The production of market milk in excess of amounts provided to be purchased under contracts executed pursuant to Section 62191 shall be voluntary on the part of the producer and shall not be a condition, oral or written, of execution or renewal of any of those contracts.  

(Added by Stats. 1987, Ch. 156, Sec. 41. Effective July 10, 1987.)

62193. Section 62191 does not apply to the purchase of market milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a handler if both of the following occur:  
(a) The quantity of market milk purchased from any one producer does not exceed 5,000 gallons in any one month. However, if the producer is a cooperative association acting as a producer, the total quantity purchased shall not exceed 30,000 gallons per month.  
(b) A complete record of all of these purchases is kept by the handler, and the price paid for the milk by the handler is not less than the price which is established in the applicable stabilization and marketing plan for the usage to which the milk is applied. For a single transaction between a producer and handler, payment shall be made for the amount of milk delivered during the first 15 days of any calendar month not later than the first day of the next following month and payment shall be made for the amount of milk delivered during the remainder of the month not later than the 15th day of the next following month, unless the milk is subject to a pooling plan as authorized in Chapter 3 (commencing with Section 62700) and the pooling plan provides for different dates and methods of payment, in which case the date and method of payment for the milk shall be as provided for in the pooling plan.  

(Amended by Stats. 1991, Ch. 1101, Sec. 5.)

62194. Section 62191 does not apply to market milk purchased under cash-on-delivery terms.  

(Added by Stats. 1987, Ch. 156, Sec. 43. Effective July 10, 1987.)

62195. The payment by a handler to any producer, including any nonprofit cooperative association acting as a producer, or the receipt from a handler by a producer, including any nonprofit cooperative association acting as a producer, of a lesser price for any market milk distributed to any person, including any agency of federal, state, or local government, for less than the minimum prices established by the director to be paid by handlers to producers for market milk for the marketing area is an unlawful trade practice.
62196. The failure of any handler to pay for market milk delivered to him or her at the time and in the manner specified in the contract with the producer is an unlawful trade practice, except as provided for in Section 62079.

62197. This article applies regardless of the form in which market milk is received by the handler and regardless of the area of origin of the market milk.

62198. Any contract between a producer and handler is voidable by the producer for a 45-day period following the occurrence of either of the following events:
   (a) The handler has failed to pay the producer the full price specified in the contract or has failed to comply with the terms specified in paragraph (4) of subdivision (b) of Section 62191, and the failure has not been corrected by the handler within one business day after notification by the producer or director. The 45-day period shall commence on the day after the payment was due.
   (b) The handler has failed on three separate occasions within a 12-month period to pay the producer the full price specified in the contract or has failed to comply with the terms specified in paragraph (4) of subdivision (b) of Section 62191. The 45-day period shall commence on the day after the third occurrence.

62199. If a notice has been issued by the director that the future deliveries to the handler will not be covered under the Milk Producers Security Trust Fund created pursuant to Chapter 2.5 (commencing with Section 62500), all contracts between producers and the handler are voidable by the producers. Producers shall have the option to void their contracts for a 45-day period from the date the notice is issued or until the date the director establishes for reinstatement of the handler’s eligibility under the trust fund, whichever is later.

62200. (a) Handlers shall pay producers either by check or cash. Handlers electing to pay producers by cash shall, in all cases, obtain a dated, signed receipt from each producer. The receipts shall be made a part of the permanent records of the handler. Handlers paying by check shall issue checks which are reducible to cash by the producer in no more than one business day.
   (b) The giving of a promissory note is not payment within the meaning of this chapter.

62201. (a) If a handler does not pay for market milk delivered to him or her at the time and in the manner specified in the contract, the handler shall pay the producer
interest on the unpaid amount from the time the payment was due until paid at the rate of 12 percent per annum. This interest is in addition to any other penalties provided in this chapter.

(b) If there is no contract for the delivery of milk to the handler or the delivery was made as a single transaction between the producer or handler, the handler shall pay the department interest on the unpaid amount from the time the payment was due until paid at the interest rate specified in subdivision (a). The interest is in addition to any other penalties provided in this chapter.

(Amended by Stats. 1991, Ch. 1101, Sec. 6.)

62202. If a handler fails to pay for market milk delivered to him or her at the time and in the manner specified in this chapter, the director may assess a penalty for each payment date that producers were not fully paid. Any penalty assessed shall be a minimum of one hundred dollars ($100) for each payment date. If the amount not properly paid is in excess of forty thousand dollars ($40,000), the penalty assessed will be five thousand dollars ($5,000) or one-fourth of 1 percent of the amount not properly paid for, whichever is less.

(Amended by Stats. 1987, Ch. 1074, Sec. 23. Effective September 24, 1987.)

ARTICLE 14. Administrative Fees [62211 - 62213]

(A Article 14 added by Stats. 1977, Ch. 1192. )

62211. (a) (1) Every handler subject to the provisions of any stabilization and marketing plan, including a producer-handler, shall deduct as an assessment from payments made to producers for market milk, including the handler’s own production, the sum of one and six-tenths cents ($0.016) per hundredweight of market milk.

(2) The amount of the assessments so deducted shall be paid to the secretary on or before the 45th day following the last day of the month during which such market milk was received.

(b) (1) Every handler subject to the provisions of any stabilization and marketing plan that purchases or handles market milk from producers, including the handler’s own production, if any, shall pay a fee of eight-tenths of one cent ($0.008) per hundredweight of market milk.

(2) The amount of such fee shall be paid to the secretary on or before the 45th day following the last day of the month in which that market milk was received.

(c) Moneys from the amounts paid to the secretary pursuant to subdivisions (a) and (b) may be used to administer and enforce this chapter.

(Amended by Stats. 2016, Ch. 260, Sec. 9. Effective January 1, 2017.)

62212. The director may fix the rates of assessments or fees required by Section 62211 at lesser amounts, and may adjust the rates of assessments or fees from time to time, whenever he or she finds that the cost of administering the provisions of this chapter, including any allocation of funds made pursuant to Section 38986, can be defrayed from revenues derived from the lower rates. However, the rate of assessments deducted from payments to producers for market milk, including the
handler's own production, and the rate of fees paid by handlers shall, at all times, be in the ratio of 2 to 1, except that this ratio need not be achieved during a six-month period following the transfer of any fund surplus pursuant to Section 62574. (Amended by Stats. 1990, Ch. 499, Sec. 1.)

62213. Any assessment or fee or either of them payable pursuant to any provision of this article is a debt of the person by whom such assessment or fee or either of them is payable and shall be due and payable to the director upon the date set forth in Section 62211. If such person does not pay such assessment or fee or either of them upon the required date, the director may file a complaint against such person in a state court of competent jurisdiction for the collection of such assessment or fee or either of them. If any such person does not pay to the director the assessments or fees or either of them provided for in this article, on or before the date specified in Section 62211, the director may add to such unpaid assessments or fees or either of them an amount not exceeding 10 percent of such unpaid assessment or fees or either of them to defray the cost of enforcing the collection of such unpaid assessments or fees or either of them. (Repealed and added by Stats. 1977, Ch. 1192.)

ARTICLE 15. Reports and Statistics [62241—62243]

(Repealed and added by Stats. 1977, Ch. 1192.)

62241. All handlers shall make and file with the director at least once each month such reports as the director may require to enable him to enforce the provisions of this chapter. (Repealed and added by Stats. 1977, Ch. 1192.)

62241.5. Within 60 days of the effective date of this section, each market milk handler shall provide the director with a list of the name, address, and date of every current contract between the handler and market milk producer. Monthly thereafter, the handler shall report to the director the same information on all terminated, new, and amended contracts which has not been previously reported. The director may assess a one hundred dollar ($100) penalty against any market milk handler who fails to file the required report for each report not filed. (Amended by Stats. 1987, Ch. 1074, Sec. 24. Effective September 24, 1987.)

62242. Every handler that purchases market milk shall make and keep for three years a correct record which shows in detail all of the following with reference to the handling, sale, or storage of the market milk:
(a) The name and address of the seller.
(b) The date the market milk was received.
(c) The amount of market milk received.
(d) The official tests of the market milk purchased.
(e) The usage of the market milk.
(f) Evidence of payment for the market milk purchased.
(g) Other records that the director may require.

(Amended by Stats. 1987, Ch. 156, Sec. 53. Effective July 10, 1987.)

62243. Any record or report made to the director pursuant to this article, or any contract required to be filed under this chapter, is confidential and shall not be divulged, except if necessary for the proper determination of any court proceedings or hearing before the director.

(Amended by Stats. 1987, Ch. 156, Sec. 54. Effective July 10, 1987.)

ARTICLE 17. Local and Regional Producer Advisory Boards [62301 - 62313]

(Article 17 added by Stats. 1977, Ch. 1192.)

62301. Except as otherwise provided in Section 62303, the director may, if he deems such board necessary or advisable, appoint:
(a) A local advisory board for any marketing area established as prescribed in this chapter to assist and advise him in matters which pertain to the production and marketing of market milk or to the operation of a stabilization and marketing plan.
(b) A regional advisory board, if he deems such board necessary or advisable to represent several marketing areas adjacent to each other and wherein production conditions and costs are reasonably uniform.

(Repealed and added by Stats. 1977, Ch. 1192.)

62302. Except as otherwise provided in Section 62303, the director shall appoint:
(a) A local advisory board, if a majority of the producers individually, or through any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition, request the establishment of such board.
(b) A regional advisory board, if in each marketing area which is involved a majority of producers that supply such marketing areas individually, or through any nonprofit agricultural cooperative marketing association which is authorized by its members to so petition, requests that such a board be established.

(Repealed and added by Stats. 1977, Ch. 1192.)

62303. The director shall not establish any local or regional advisory board pursuant to this article if he finds that the assessments or fees which are collected pursuant to Article 14 (commencing with Section 62211) of this chapter from the marketing area are insufficient to cover the costs of such local or regional advisory board. No regional advisory board shall be set up to include any marketing area which on September 7, 1955, was operating under a local advisory board, unless by petition as provided for in this article or through public hearing, producers of such marketing area request that they be represented by a regional advisory board.
62304. If the director receives a qualified petition for a local advisory board, he may investigate the possibility of establishing a regional advisory board covering the marketing area from which the petition was received and the adjacent marketing areas, by holding one or more public hearings for the purpose of establishing whether or not a majority of producers supplying the marketing areas proposed to be included in such region desire such regional advisory board.

62305. A local advisory board established pursuant to this article shall consist of seven members who shall be producers that supply market milk to the particular marketing area. A regional advisory board may consist of any number of members who are producers that supply market milk to any of the marketing areas in the region, but shall consist of not less than one member from each such marketing area in the region. The director may appoint one additional member on each such board who shall be a public member. Upon the director's request, each board shall submit to the director the names of three or more natural persons, each of whom shall be a citizen and resident of this state and not a producer, shipper, or processor nor financially interested in any producer, shipper, or processor, for appointment by the director as a public member of the board. The director may appoint one of the nominees as the public member on the board. If all nominees are unsatisfactory to the director, the board shall continue to submit lists of nominees until the director has made a selection. Any vacancy in the office of the public member of the board shall be filled by appointment by the director from the nominee or nominees similarly qualified submitted by the board. The public member of each board shall represent the interests of the general public in all matters coming before the board and shall have the same voting and other rights and immunities as other members of the board.

62306. The term of office of each member of a regional advisory board or a local advisory board shall be two years.

62307. The director may remove any member from a local or a regional advisory board if he finds, after a hearing, that such member is guilty of nonfeasance or malfeasance in office.

62308. The director may appoint a member to fill any vacancy on a local or a regional advisory board.
Each regional advisory board and each local advisory board may meet in regular session each month, and each member shall be allowed twenty dollars ($20) per diem and mileage at the rate of fifteen cents ($0.15) per mile for attending such regular meetings, and any other meeting or conference which is called or authorized by the director within or outside of the boundaries of this state. (Repealed and added by Stats. 1977, Ch. 1192.)

Any regional or local advisory board may, with the previous approval of the director, employ such personnel as may be necessary in the performance of its duties and shall adopt regulations for its conduct. Each such board shall submit a budget of its expenses to the director for his approval. The funds to be used for the maintenance of each such board shall be paid from the proceeds of assessments and licenses which are paid to the director under the plan of any area which is represented upon verified claims that are presented by the board to the director. A regional or local advisory board shall not incur any expenses except those for per diem and mileage, unless the expenses are approved by the director. (Repealed and added by Stats. 1977, Ch. 1192.)

Regional and local advisory boards shall review with the director the methods which are to be used in determining producer costs, and aid the director in the selection of the level of production which is necessary to meet the requirements of Section 62062 with respect to producer price minimums. (Repealed and added by Stats. 1977, Ch. 1192.)

For purposes of developing uniformity of administration as between marketing areas in which producer advisory boards have been appointed, the director shall call together representatives of regional and local advisory boards from time to time to advise him as to the relationships in producer costs among the marketing areas, and may designate such representatives as the statewide committee of producer advisory boards. (Repealed and added by Stats. 1977, Ch. 1192.)

It is hereby declared, as a matter of legislative determination, that producers of market milk appointed to the regional advisory boards pursuant to this article are intended to represent and further the interest of a particular agricultural industry concerned, and that such representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to such advisory boards, the particular industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code. (Repealed and added by Stats. 1977, Ch. 1192.)

ARTICLE 18. Actions and Penalties [62401 - 62403]
(Article 18 added by Stats. 1977, Ch. 1192.)
62401. The violation of any provision of this chapter, or of any provision of any stabilization and marketing plan, or of any regulation adopted under this chapter, is a misdemeanor which is punishable by a fine of not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment. The amount of penalty which is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of such violation upon effectuation of the purposes and provisions of this chapter.
(Added by Stats. 1977, Ch. 1192.)

62402. Any person who violates this chapter, any provision of any stabilization and marketing plan, or any regulation adopted under this chapter, is liable civilly in an amount not less than one hundred dollars ($100) and not to exceed one thousand dollars ($1,000) for each and every violation. That penalty is to be recovered by the director in any court of competent jurisdiction. The amount of penalty which is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter. The court may, in addition to the civil penalty, award reasonably incurred investigative and enforcement costs, and attorney’s fees, to the director. The court may also award attorney’s fees to any person successfully defending a civil action under this section. In any civil action initiated by the director under this section, the director shall join in the action, and assert civil penalties against, all parties participating in the commission of the unlawful practice. Any sum which is recovered under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.
(Amended by Stats. 1989, Ch. 522, Sec. 2.)

62403. The director may bring an action to enjoin the violation, or the threatened violation, of any provision of this chapter, any provision of any stabilization and marketing plan, or any regulation adopted under this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions, orders, or regulations, although their properties, interests, residences, or places of business may be in several counties and the violations separate and distinct. Any proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.
(Added by Stats. 1977, Ch. 1192.)
CHAPTER 2.5. Milk Producers Security Trust Fund [62500 - 62667]
(Chapter 2.5 added by Stats. 1987, Ch. 156, Sec. 55.)

ARTICLE 1. Legislative Declaration [62500 - 62508]
(Article 1 added by Stats. 1987, Ch. 156, Sec. 55.)

62500. The production and distribution of milk, and the components thereof, is hereby declared to be a business affected with a public interest. This chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health and welfare of the people of this state.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62501. It is hereby declared that the dairy industry is a paramount agricultural industry of the state, and the normal processes of producing and marketing milk are enterprises of vast economic importance to the state and of vital importance to the consuming public which should be safeguarded and protected in the public interest. The Legislature finds that the marketing of milk requires producers to receive prompt payment. It is the policy of this state to protect producers against loss of payment for bulk milk. The public interest requires the establishment of a system to provide payment security for producers.
(Amended by Stats. 1987, Ch. 1074, Sec. 25. Effective September 24, 1987.)

62502. It is recognized by the Legislature that the powers conferred upon the director by Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) are inadequate to enable the dairy industry to maintain satisfactory producer payment protection. Therefore, those powers must be supplemented by the powers conferred by this chapter upon the director to establish and administer a milk producers security trust fund.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62503. This chapter shall be liberally construed. If any article, section, subdivision, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional or invalid as applied to any person or as applied under certain circumstances, that decision shall not affect the validity of the remaining provisions of this chapter or the application of this chapter to any other person or under any other circumstances.
The Legislature hereby declares that it would have enacted each article, section, subdivision, sentence, clause, or phrase of this chapter regardless of the fact that one or more other articles, sections, subdivisions, sentences, clauses, or phrases are declared unconstitutional or invalid.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)
62504. Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of milk. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable. If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of any other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.
(Amended by Stats. 1987, Ch. 1074, Sec. 26. Effective September 24, 1987.)

62505. This chapter does not preclude any producer from bringing any action against any handler in any court of competent jurisdiction.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62506. In order to effectuate the purposes of this chapter, the Milk Producers Security Trust Fund is hereby created.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62507. It is hereby declared, as a matter of legislative determination, that producers and handlers appointed to the Milk Producers Security Trust Fund Board are intended to represent and further the interest of a particular agricultural industry concerned, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to the board, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62508. This chapter shall be known and may be cited as the Norman S. Waters-Ruben S. Ayala Milk Producers’ Security Act of 1987.
(Added by Stats. 1987, Ch. 1074, Sec. 27. Effective September 24, 1987.)

ARTICLE 2. Definitions [62520 - 62521]
(Article 2 added by Stats. 1987, Ch. 156, Sec. 55.)

62520. Unless otherwise defined in this chapter, or the context otherwise requires, the definitions contained in Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), or Chapter 3 (commencing with Section 62700) govern the construction of this chapter.
(Amended by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62521. For purposes of this chapter, the following terms mean:
(a) (1) “Acceptable security” means a surety bond from an admitted insurer, deposits of government securities, a letter of credit, or other form of performance guarantee acceptable to the secretary and meeting the requirements as acceptable security pursuant to law. Any instrument used as acceptable security shall contain provisions the secretary may prescribe, shall have an effective life of no less than two years, shall name the secretary as the beneficiary of the instrument, shall be clean and irrevocable if the security is a letter of credit, shall provide that the secretary may draw upon it up to the total amount in the event of the handler’s payment default, and, except as otherwise provided in paragraph (3), shall be verified to the secretary as being in effect and complying with the provisions of this chapter at the end of every six-month interval following the date on which a handler originally posts the instrument. Except as provided in paragraphs (2) and (3), acceptable securities provided to the secretary shall not be released by the secretary unless the handler’s average monthly purchases, as determined annually by the secretary, fall below thirty million dollars ($30,000,000), or the fund cash, whichever is higher. Any interest accrued by the instrument shall be the property, and for the benefit, of the handler posting the instrument.

(2) Subject to the provisions of this chapter, a handler who has posted an acceptable security shall have the right to replace that instrument with a new acceptable security meeting the requirements of this chapter at the end of every six-month interval following the date on which the handler originally posted the instrument. The secretary shall release the issuer of any acceptable security from all past, present, or future obligations secured by the acceptable security upon the secretary’s acceptance of replacement security meeting the requirements of this chapter and the secretary shall then provide written confirmation to the issuer of the original acceptable security that an acceptable replacement security had been provided.

(3) Upon receipt of an affidavit confirming that the amount paid under an acceptable security posted pursuant to this chapter was equal to the total amount of that instrument, the secretary shall release the issuer of that acceptable security from all past, present, and future liability. Upon receipt of an affidavit confirming any other amount paid by an issuer under an acceptable security posted pursuant to this chapter, the secretary shall release the issuer of that security to the extent of the issuer’s payment.

(b) “Board” means the Milk Producers Security Trust Fund Board.
(c) “Covered milk” means milk that would, in the event of a default in payment by the purchasing handler, qualify for coverage under Article 5 (commencing with Section 62580) of Chapter 2.5 of Part 3.
(d) “Fund” means the Milk Producers Security Trust Fund created pursuant to Section 62506.
(e) “Fund cash” means the combined value of the security charges collected pursuant to Section 62561 and any increments received pursuant to Section 62573.
(f) (1) Except as provided in paragraph (2), “fund surplus” means the portion of fund cash at any particular time that consists of increments received by the fund pursuant to Section 62573.
(2) If payment of producer claims pursuant to Article 7 (commencing with Section 62620) reduces the fund cash to thirty million dollars ($30,000,000), “fund surplus”
shall thereafter mean the amount by which the fund cash exceeds thirty million dollars ($30,000,000).
(g) “Handler” means any person who as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of milk in unprocessed or bulk form from a producer or a producer-handler for the purpose of manufacturing, processing, selling, or other handling. It includes cooperative associations that, either directly or indirectly, receive, purchase, or otherwise acquire ownership, possession, or control of milk from other handlers or producers who are nonmembers of the cooperative.
(h) “Milk” means bulk whole milk, bulk reduced-fat milk, bulk lowfat milk, bulk skim milk, bulk condensed skim, and bulk cream, and any other combination of these products which have not had nondairy ingredients added. It does not include milk which has been packaged in bottles, cartons, dispenser cans, or other consumer packages.
(i) “Producer” means any person that produces milk from five or more cows whose bulk milk is received, acquired, or handled by a handler. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of Chapter 2 in the sale of milk of its member producers to other handlers.
(Amended by Stats. 2008, Ch. 236, Sec. 7. Effective August 1, 2008.)

ARTICLE 3. Milk Producers Security Trust Fund Board [62540 - 62543]
(Article 3 added by Stats. 1987, Ch. 156, Sec. 55.)

62540. The director shall appoint a Milk Producers Security Trust Fund Board consisting of seven members. The director shall appoint two members of the first board for a term of one year, two members for a term of two years, and three members for a term of three years. Thereafter, all appointments shall be for a term of three years, and no member shall be appointed to more than three consecutive three-year terms. Members of the board shall include three milk producers, two representatives of handlers licensed under Chapter 2 (commencing with Section 61801), and two nonproducer members representing cooperative associations of milk producers. (Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62541. Each member of the board shall be paid one hundred dollars ($100) per day plus travel expenses, including expenses for lodging and meals, which are incurred in the attendance at board meetings or in conducting the business of the board. All per diem and expense claims are subject to approval by the director. (Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62542. The board shall advise the director on the administration of the fund, including, but not limited to, the amount of the fund defaults under this chapter and the implementation of the security charge necessary to accomplish its functions. (Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)
62543. The board may, by contract, with the approval of the director, engage the services of an accounting firm or other consultants or agencies which the board determines to be necessary.  
(Added by Stats. 1989, Ch. 460, Sec. 1.)

4. Financing Plan [62560 - 62574]  
(Article 4 added by Stats. 1987, Ch. 156, Sec. 55.)

62560. (a) The security charges provided for in Section 62561 shall be collected until January 1, 2007. Unless otherwise permitted by this section, the secretary shall thereafter discontinue collection of the security charges. The fund shall consist of the security charges collected, the value of any alternative financial instrument, and acceptable securities provided by handlers pursuant to subdivision (c).  
(b) If, after January 1, 2007, payment of producer claims reduces the fund cash below thirty million dollars ($30,000,000), the secretary may resume collecting security charges in order that the fund cash is thereafter maintained at thirty million dollars ($30,000,000). Security charges necessary to return the fund cash to thirty million dollars ($30,000,000) shall, subject to subdivision (c), be collected from all handlers making purchases of milk, including handlers who have posted acceptable securities pursuant to subdivision (c).  
(c) If, in any month, 110 percent of any handler’s average monthly milk purchases, computed over the preceding 12 months, unless the increase in value of milk purchases is the result of substantial business expansion or the result of a merger or acquisition, in which case the 12-month computation requirement does not apply, exceeds the fund cash as of the end of that month, or thirty million dollars ($30,000,000) whichever is higher, the secretary shall require that handler to provide acceptable securities within 10 working days in an amount equal to the difference between the fund cash or thirty million dollars ($30,000,000) whichever is higher, and 110 percent of that handler’s average monthly milk purchases. When handlers have provided acceptable securities covering the difference, the secretary shall not collect security charges from those handlers for the portion of their average monthly milk purchases covered by acceptable securities. Shipments to handlers failing to provide acceptable securities within 10 working days of notice by the secretary of the obligation to post acceptable securities, as required by this subdivision, shall be listed by the secretary as ineligible for coverage under the fund pursuant to Section 62586.  
(d) The secretary shall calculate the value of milk handlers’ average monthly milk purchases at least once each year for those handlers whose previous average monthly milk purchases exceed twenty million dollars ($20,000,000). If, as a result of any such calculation, the secretary determines that a handler must provide additional acceptable securities to satisfy the requirements of subdivision (c), that handler shall provide additional acceptable securities within 10 working days of notice by the secretary.  
(e) In the event a handler fails to comply with subdivision (d):  
(1) In addition to paying all other amounts required by this chapter, including any security charges then in effect under subdivision (a) of Section 62561, that handler
shall pay an enhanced security charge on all purchased milk to be computed as follows:
(A) (i) One and seven-tenths mills per pound ($0.0017) for class 1 fat.
(ii) Nine-tenths mills per pound ($0.0009) for class 1 solids-not-fat.
(iii) One-tenth mill per pound ($0.0001) for class 1 fluid.
(B) (i) Three and two-tenths mills per pound ($0.0032) for classes 2, 3, 4a, and 4b fat.
(ii) One and three-tenths mills per pound ($0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.
(2) A handler shall be liable for the enhanced security charges required by this section until the handler provides the required additional acceptable securities to the secretary. Notwithstanding Section 62521 and subdivision (b) of this section, enhanced security charges paid pursuant to this paragraph shall be deposited into the trust fund and become part of the fund cash.
(f) If a handler fails to timely provide acceptable securities, or additional acceptable securities, as required by this section, the secretary shall promptly give notice of that fact to all producers who have a contract on file with the secretary, all cooperative associations, and other interested parties. A handler failing to post acceptable securities may also be subject to revocation, suspension, or nonrenewal or placement of conditions upon the milk handler’s license pursuant to Sections 62146, 62149, and 62151.
(g) In consultation with the Milk Producers Security Trust Fund Advisory Board, the secretary may consider and use alternative financial instruments, in addition to, or in lieu of, using security charges to meet the financial security requirements of this section.
(Amended by Stats. 2006, Ch. 505, Sec. 4. Effective January 1, 2007.)

62561. (a) The following security charges shall be in effect for any period for which the secretary has implemented collections under this chapter:
(1) (A) One and seven-tenths mills per pound ($0.0017) for class 1 fat.
(B) Nine-tenths mills per pound ($0.0009) for class 1 solids-not-fat.
(C) One-tenth mill per pound ($0.0001) for class 1 fluid.
(2) (A) Three and two-tenths mills per pound ($0.0032) for classes 2, 3, 4a, and 4b fat.
(B) One and three-tenths mills per pound ($0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.
(b) The secretary shall add the security charges to the prices established for all classes of milk in accordance with Chapter 2 (commencing with Section 61801). The secretary is only authorized by this article to collect security charges on covered milk.
(Amended by Stats. 2006, Ch. 505, Sec. 5. Effective January 1, 2007.)

62562. Any increase in classified prices due to Section 62561 shall be considered as part of the minimum prices required to be paid to producers under other provisions of this code. No other provisions of this chapter modify the minimum payment requirements contained in Chapter 1 (commencing with Section 61301) and Chapter 2 (commencing with Section 61801).
62563. Any handler subject to any pooling plan in effect under Chapter 3 (commencing with Section 62700) shall continue to be obligated for the minimum prices provided for in the stabilization and marketing plans on the pooled usage of the handler. However, any part of the minimum prices that is attributable to the security charges established pursuant to Section 62561 shall be deducted before producer prices are determined under the pooling plan.

Any handler subject to the pooling plan that receives milk that is not included in the calculation of producer prices determined under the pooling plan shall be obligated to pay the security charges established pursuant to Section 62561 for any portion of that milk that is assigned to class 1, class 2, class 3, class 4a, and class 4b usage.

The amount of any handler’s obligation attributable to the security charges established pursuant to Section 62561 shall be remitted by the secretary to the fund by the end of the month following the month the pool calculations were completed.

(Amended by Stats. 2006, Ch. 505, Sec. 6. Effective January 1, 2007.)

62564. Any handler receiving milk not subject to any pooling plan in effect pursuant to Chapter 3 (commencing with Section 62700) shall be obligated to remit to the secretary any security charges in effect pursuant to Section 62561 for class 1, class 2, class 3, class 4a, and class 4b products produced from the milk and may deduct the security charges from the minimum prices required to be paid to producers.

(Amended by Stats. 2006, Ch. 505, Sec. 7. Effective January 1, 2007.)

62564.5. Any producer-handler who has milk production that is exempt pursuant to Section 62708, 62708.1, 62708.5, or 62722 from the pooling plan in effect pursuant to Chapter 3 (commencing with Section 62700) shall be exempt from any security charges established pursuant to this article for that exempt production.

(Amended by Stats. 1987, Ch. 1074, Sec. 32. Effective September 24, 1987.)

62565. Security charges may be collected by the director through direct payment or through pool accounting procedures established by the director pursuant to Chapter 3 (commencing with Section 62700).

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62566. The director may add a penalty of 10 percent to amounts which are not paid when due.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62567. If any handler or producer-handler does not provide the information necessary to determine the amount due, when required, the director shall estimate
the amount due from the records of the department or from any other source of
information which is available.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62568. The director may take all appropriate action against any person to recover
any unpaid amounts. In any action, a declaration by the director which states the
amount required to be paid, including penalty, is prima facie evidence of the
delinquency. The presumption established by this section is a presumption affecting
the burden of proof.
(Amended by Stats. 1987, Ch. 1074, Sec. 33. Effective September 24, 1987.)

62569. Any money which is collected by the director pursuant to this chapter shall
be deposited in a bank or other depository which is approved by the director. Funds
which are so collected are exempt from Sections 11270 and 11272 of the
Government Code and shall be deposited and disbursed only to pay for milk
produced and delivered within this state, which has not been otherwise paid for,
including pool equalization fund obligations, attorney’s fees and other costs incurred
in litigation involving the fund, expenses generated by the auditing requirement
imposed by Section 62570, expenses generated by the use of alternative financial
instruments pursuant to Section 62560, and for the costs set forth in Section
62573. The expenditure of those funds is exempt from Section 925.6 of the
Government Code.
Nothing in this section prevents the director from using the increment received
from investment, reinvestment, or deposit of money specified in Section 62573, in
the manner provided by Section 62574.
(Amended by Stats. 2002, Ch. 524, Sec. 2. Effective January 1, 2003.)

62570. All fund activities shall be subject to an audit at least once every two years
by an auditing firm recommended by the board and selected by the director. A copy
of the audit shall be delivered to the director within 30 days after completion.
(Amended by Stats. 1987, Ch. 1074, Sec. 34. Effective September 24, 1987.)

62571. Notwithstanding Section 13340 of the Government Code, any money which is
collected by the director pursuant to this chapter is hereby continuously
appropriated to the director to carry out only those purposes provided for in Section
62569. The appropriation which is made in this section is exempt from Section
(Repealed and added by Stats. 1987, Ch. 1074, Sec. 36. Effective September 24, 1987.)

62572. Any money which is deposited pursuant to Section 62569, which the director
determines is available for investment, may be invested or reinvested by the
Treasurer in any of the securities described in Article 1 (commencing with Section
16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, or
placed in a depository as provided in Chapter 4 (commencing with Section 16500)
of that part, and handled in the same manner as money in the State Treasury. For these purposes, the money may also be combined with funds determined by the director to be available for investment pursuant to Section 58939.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62573. Any increment which is received from investment, reinvestment, or deposit of money pursuant to Section 62572 shall be deposited to the credit of the fund. The Treasurer may deduct from this remittance an amount equal to the reasonable costs incurred in carrying out Section 62572 and this section or may bill the director for the costs, and the director shall pay the costs from money collected pursuant to this chapter.

Nothing in this section prevents the director from using the increment in a manner provided by Section 62574.

(Amended by Stats. 1990, Ch. 499, Sec. 4.)

62574. Immediately following the payment to the fund of the increment provided in Section 62573, if the secretary determines that there is a fund surplus, the secretary may, after consultation with the Trust Fund Board, transfer an amount equal to the increment referenced in the section to an account administered by the Dairy Marketing Branch of the department to be used to reduce the producer and handler assessments that would otherwise be imposed pursuant to Article 14 (commencing with Section 62211) of Chapter 2. One-half of the increment so transferred shall be used to reduce the obligation of producers and one-half shall be used to reduce the obligation of handlers pursuant to that article.

(Amended by Stats. 2006, Ch. 505, Sec. 8. Effective January 1, 2007.)

ARTICLE 5. Milk Producers Security Trust Fund Coverage [62580 - 62587]

(Article 5 added by Stats. 1987, Ch. 156, Sec. 55.)

62580. Except as otherwise provided in this chapter, milk shipped by a producer to a handler which meets the following criteria shall be considered for coverage pursuant to this chapter:

(a) Milk shipment was made after December 31, 1986.

(b) A valid contract between the producer and handler pursuant to Chapter 1 (commencing with Section 61310) or Chapter 2 (commencing with Section 61801) has been filed with the director prior to the date the milk was shipped, unless the shipment was made in the first five days after the contract was executed. This requirement shall not apply to all shipments made prior to the effective date of this chapter.

(c) The handler was licensed and bonded as required by Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801) when the contract was filed with the director.

(d) The milk was produced within the state and delivered to a plant within the state.

(e) The director has not issued a prior notice that the shipments would not be covered by the fund.
The shipment was not made under a custom processing arrangement with the producer retaining title.

The producer or cooperative shipping the milk had a direct contract with the handler. In the case of a cooperative, only the milk of its members shipped under the contract is covered. Milk shipped to a handler under a contract held by intermediaries, brokers, or agents is not covered.

The producer does not have a beneficial ownership interest in the handler to whom shipments were made.

The producer is in compliance with this chapter, Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700).

Any producer entity, including a nonprofit cooperative that severs a disqualifying beneficial-ownership interest in a handler to which it supplies bulk milk, shall not have trust fund coverage for future milk shipments to that handler for a period of 12 months after notice is given to the secretary of termination of the beneficial ownership interest unless a waiver is granted subject to Section 62587.

Only shipments which occur during the first 35 days from the date of the earliest shipment for which a producer has not been paid are eligible.

If future shipments to a handler are not eligible for coverage under this chapter in the event of a default, the secretary shall notify all producers who have a contract on file with the secretary, all cooperative associations, and other interested parties. Future shipments will not be eligible when any of the following events occur:

(a) The handler fails to maintain a valid license or bond as required under Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801).

(b) The handler has failed to pay producers as required under Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801).

(c) The handler has failed to pay the amount due the pool equalization fund provided for in Chapter 3 (commencing with Section 62700).

(d) The handler fails to submit, when requested by the secretary, executed contracts that establish the relationship between affected parties.

If, on the date of the notice issued pursuant to Section 62582, a producer has a contract with the handler which is on file with the secretary, and that producer has received payment from a handler whose milk purchases have been declared ineligible, shipments by that producer which occur more than five days from the date of the notice of ineligibility issued by the secretary will not be
considered in determining any claim the producer may make against the fund, unless the secretary reestablishes eligibility for future shipments to be covered by the fund.

(Amended by Stats. 2008, Ch. 236, Sec. 8. Effective August 1, 2008.)

**62584.** If, on the date of the notice issued pursuant to Section 62582, a producer does not have a contract with the handler which is on file with the secretary, shipments by that producer which occur more than five days from the date of the notice of ineligibility issued by the secretary will not be considered in determining any claim the producer may make against the fund, unless the secretary reestablishes eligibility for future shipments to be covered by the fund.

(Amended by Stats. 2008, Ch. 236, Sec. 9. Effective August 1, 2008.)

**62585.** If the director issues a notice pursuant to Section 62582, the director may again qualify shipments to the handler if any of the following occur:

(a) The handler has corrected the deficiency upon which the notice was originally issued and has done all of the following:

1. Paid all amounts owed to producers, including interest, provided for in Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801). Producers are not entitled to receive interest on amounts for which they have been paid by the fund after the date of payment by the fund.

2. Reimbursed the fund for any payments made by the fund due to a default by the handler plus interest at the rate of 12 percent per annum from the date of payment by the fund.

3. Paid any amount owed to the pool equalization fund.

4. Paid any assessments, penalties, or other amounts owed under federal, state, or local laws.

(b) Four years have elapsed since the date of the default in payment.

(Amended by Stats. 1987, Ch. 1074, Sec. 39. Effective September 24, 1987.)

**62586.** The director shall periodically publish a list of all handlers to whom shipments are not eligible for coverage under the fund.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

**62587.** The director may waive any of the provisions of this article if, after consultation with the board, the director finds that a hardship would be imposed on persons subject to this chapter which is not consistent with the intent of this chapter.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

**ARTICLE 6. Discovery and Notification of Default in Payments [62600 - 62604]**

(Article 6 added by Stats. 1987, Ch. 156, Sec. 55.)
62600. Any producer who does not receive payment for milk sold or delivered to a handler in the manner required by Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801) shall promptly notify the director.  
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62601. The director shall, upon his or her own motion or upon information from a producer, producer representative, or any other person, promptly take whatever action is necessary to determine whether a payment default has occurred.  
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62602. The director may, but is not required to, investigate a payment default which occurred more than one year prior to the date the director received the information.  
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62603. If the director determines that a payment default has occurred, the director shall notify the handler that it has one business day from receipt of the notification to correct the payment deficiency. If the director determines that a payment default has not occurred, the director shall so notify the handler and complaining party.  
(Amended by Stats. 1987, Ch. 1074, Sec. 40. Effective September 24, 1987.)

62604. When a payment default has occurred, which was not corrected within one business day after notification, the director shall issue a notice pursuant to Section 62582 which identifies the defaulting handler and informs producers of the provisions of Sections 62583 and 62584. The notice shall also inform producers of their rights to file claims pursuant to Article 7 (commencing with Section 62620).  
(Amended by Stats. 1987, Ch. 1074, Sec. 41. Effective September 24, 1987.)

ARTICLE 7. Producer Claims [62620 - 62625]  
(Article 7 added by Stats. 1987, Ch. 156, Sec. 55.)

62620. If the director determines that the fund is liable for any nonpayments to producers, the director shall provide to the producers, who have a contract with the defaulting handler on file with the director, a claim form. The claim form, which shall be verified, shall be returned to the director within 60 days from the date the claim forms are mailed by the director. The producer need only verify that a nonpayment has occurred. The amount of the nonpayment shall be determined by the director.  
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62621. If a verified claim form is not filed as required by Section 62620, the director and the fund are relieved of any further duty or liability pursuant to this chapter.  
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)
62622. Upon receipt of all verified claim forms from producers or the expiration of the time allowed to file claims, whichever occurs first, the director shall calculate the amount due each producer and shall notify each producer of their calculated amount and the relationship that amount bears to the total of all claims. Any producer not satisfied with the determination of the director may, within 30 days of receiving the notice pursuant to this section, request the director to review his or her calculated amount.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62623. For purposes of this chapter, the amounts owed to the producers shall be calculated as follows:
(a) Only shipments which occur during the first 35 days from the date of the earliest shipment for which a producer has not been paid shall be used.
(b) The minimum prices established in the stabilization and marketing plans applied to the usage assigned under the pooling plan shall be used for cooperative marketing associations.
(c) The price specified in the contract with the handler shall be used for manufacturing milk producers unless a lower price is contained in the stabilization and marketing plans, in which case the lower price shall be used.
(d) The minimum prices established in the stabilization and marketing plans shall be used for direct market milk producers who are not shipping their milk under the pooling plan.
(e) The quota, base, and overbase prices, as provided for in the pooling plan, shall be used for producers, other than cooperative marketing associations, who ship their milk directly to a handler.
(f) Deductions shall be made for those items which the handler customarily deducts from the payments, unless the deductions are in violation of Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), or Chapter 3 (commencing with Section 62700), or the deductions are for voluntary assignments made by the producer.
(g) The producer's share of any bond recovery under Chapter 1 (commencing with Section 61301) or Chapter 2 (commencing with Section 61801) shall be deducted.

(Amended by Stats. 1992, Ch. 190, Sec. 1. Effective January 1, 1993.)

62624. Two hundred thousand dollars ($200,000) shall be deducted from the total of the amount owed to all producers, as calculated in Section 62623, and the balance shall be paid from the fund on a pro rata basis. The amount calculated pursuant to Section 62623 shall be the basis for prorating.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62625. A prorated payment shall be made to all affected producers based on the amount payable pursuant to Section 62624 when there is not sufficient money in the fund. Additional payments shall be made on a quarterly basis until the total amount due is paid. Each payment shall take into consideration all claims that have been partially satisfied and new claims approved since the previous payment.

(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)
ARTICLE 9. Trust Fund Coverage of the Pool Equalization Fund [62640 - 62641]
(Article 9 added by Stats. 1987, Ch. 156, Sec. 55.)

62640. If a handler defaults in payments to the pool equalization fund provided for in Chapter 3 (commencing with Section 62700) and the secretary determines that additional efforts will not result in collection of the amount due, the secretary, after consultation with the board, may pay money from the Milk Producers Security Trust Fund to the pool equalization fund to cover the amount of the default. However, the secretary shall first exhaust all administrative and legal remedies within his or her authority against the defaulting handler, and execute all judgments resulting from those remedies, prior to recommending to the board this payment from the Milk Producers Security Trust Fund.
(Amended by Stats. 2010, Ch. 202, Sec. 3. Effective January 1, 2011.)

62641. No payment shall be made from the Milk Producers Security Trust Fund to the pool equalization fund for unpaid amounts which were owed for milk handled prior to January 1, 1987.
(Added by Stats. 1987, Ch. 1074, Sec. 44. Effective September 24, 1987.)

ARTICLE 10. Administration [62660 - 62667]
(Article 10 added by Stats. 1987, Ch. 156, Sec. 55.)

62660. The director may use money in the Department of Food and Agriculture Fund derived from assessments and fees collected pursuant to Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) to the extent necessary to defray the costs of administering this chapter, except costs for which the fund is liable, as provided for in Section 62569.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62661. The director is the instrumentality of this state for the purpose of administering and enforcing this chapter and to execute the legislative intent expressed in this chapter, and is hereby vested with the administrative authority specified in this chapter.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62662. The director may exercise any or all of the powers conferred by Chapter 2 (commencing with Section 11150) of Division 3 of Title 2 of the Government Code upon the head of a department with respect to hearings and investigations under this chapter.
(Amended by Stats. 1987, Ch. 1074, Sec. 45. Effective September 24, 1987.)

62663. For purposes of enforcing this chapter, the director may investigate any and all transactions between producers and handlers, between nonprofit cooperative associations and producers, and among handlers. For that purpose, the director
shall have access to, and may enter at all reasonable hours, any place where milk is
being stored, bottled, or manufactured and where milk is being bought, sold, or
handled, or where the books, papers, records, or documents which relate to those
transactions are kept. The director may inspect and copy those books, papers,
records, or documents at any place within the state.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62665. Any order of the director made pursuant to this chapter which substantially
affects the rights of any directly affected party shall be subject to judicial review
upon petition to the appropriate court. The petition shall be filed within 30 days
after the effective date of the order.
(Amended by Stats. 1987, Ch. 1074, Sec. 47. Effective September 24, 1987.)

62666. Any producer who recovers from the fund shall subrogate to the director all
rights of recovery against any person or organization, and the producer shall
execute and deliver to the director instruments and papers and perform any other
acts necessary to carry out this section.
(Added by Stats. 1987, Ch. 156, Sec. 55. Effective July 10, 1987.)

62667. Any payments made to producers from the fund due to a handler’s default
shall accrue interest at the rate of 12 percent per annum from the date of payment.
The payments and accrued interest is a judgment against the defaulting handler.
The judgment shall be considered a lien on all real and personal property of the
defaulting handler. The director may file the lien for record with any county
recorder where a defaulting handler’s property is located and shall specify the
amount owed, the name of the handler, the federal social security number or the
federal employer tax number if known, and the last known address of the handler.
The lien shall remain in full force and effect until the handler has repaid to the fund
an amount equal to the default.
(Amended by Stats. 1987, Ch. 1074, Sec. 48. Effective September 24, 1987.)

CHAPTER 3. Equalization Pools [62700 - 62731]
(Chapter 3 added by Stats. 1967, Ch. 927.)

62700. The production and distribution of fluid milk and fluid cream is hereby
declared to be a business affected with a public interest. The provisions of this
chapter are enacted in the exercise of the police powers of this state for the
purpose of protecting the health and welfare of the people of this state.
(Added by Stats. 1967, Ch. 927.)

62701. It is hereby declared that fluid milk and fluid cream are necessary articles of
food for human consumption; that the production and maintenance of an adequate
supply of healthful milk of proper chemical and physical content, free from
contamination, is vital to public health and welfare, and that the production,
transportation, processing, storage, distribution and sale of fluid milk and fluid
cream in the State of California is an industry, in whole and in part, affecting public
health and welfare; that unfair, unjust, destructive and demoralizing trade practices
have appeared within this industry and these practices constitute a menace to the
health and welfare of the inhabitants of this state by threatening the stability of this
industry and by thereby endangering the assurance to the people of the State of
California of the maintenance of an adequate supply of this necessary commodity;
that it is a policy of this state to promote, foster and encourage the intelligent
production and orderly marketing of commodities necessary to its citizens, including
fluid milk and fluid cream, and to eliminate speculation, waste, improper marketing,
unfair and destructive trade practices, and improper accounting for milk purchased
from producers.
(Added by Stats. 1967, Ch. 927.)

62702. It is recognized by the Legislature that currently the powers conferred upon
the director by Chapter 2 (commencing with Section 61801) are inadequate to
enable the dairy industry to develop and maintain satisfactory marketing conditions
and bring about and maintain a reasonable amount of stability and prosperity in the
production of fluid milk and fluid cream; and that to accomplish these purposes,
and particularly to insure to consumers within California an adequate and
continuous supply of pure, fresh, and wholesome milk at fair and reasonable prices;
including a reasonable estimate of the additional supply which is needed to provide
for normal fluctuations in production and in consumer demand for those products,
those powers must be supplemented by the powers conferred in this chapter upon
the director to equalize gradually the distribution of class 1 usage among the
producers of this state.
(Amended by Stats. 1982, Ch. 751, Sec. 33.)

62702.1. It is recognized by the Legislature that the provisions for equalization of
usages among producers and entry of new producers contained in the Gonsalves
Milk Pooling Act, as originally enacted, and the pooling plan adopted thereunder,
tended to achieve the purposes of that act; however, the provisions for more rapid
equalization and additional new entry would more rapidly and effectively achieve
the purposes of this chapter.
It is also recognized that some holders of pool quota and production base initially
issued under the Gonsalves Milk Pooling Act have waited for several years for
equalization, and that equalized producers have for a number of years not shared in
any of the benefits of new quota created by new usage.
It is further recognized that it is necessary to promote and to attempt to assure
more rapid equalization of the holders of pool quota issued subsequent to the initial
allocation of production bases and pool quota pursuant to this chapter, and to
provide for a program for entry and for equalization of new producers.
It is the purpose of the amendments to this chapter to provide a reasonable and
equitable mechanism to permit more accelerated equalization, to equalize the
holders of pool quota and production base initially issued under the Gonsalves Milk
Pooling Act and who are not yet equalized, and to legislatively allocate in a fair and
reasonable manner a share of new pool quota created by new usage to existing
pool quota holders who are not equalized, to new producers, and to equalized pool
quota holders who have not shared in the benefits of the growth of new usage since
the original enactment of the Gonsalves Milk Pooling Act and the pooling plan
thereunder.
(Added by Stats. 1977, Ch. 1192.)

62703. In effectuating the purposes of this chapter, a production base and a pool
quota shall be established for each producer pursuant to Section 62707. The
establishing of these bases and their functions shall be as provided in the pooling
plan formulated by the director pursuant to the provisions of this chapter.
(Added by Stats. 1967, Ch. 927.)

62704. The director is authorized to develop a proposed pooling plan and to
designate the proposed areas in which the plan will be made effective. He shall
appoint fluid milk producers, and representatives of producers, to be the members
and alternate members of a formulation committee, reasonably representative of all
producers and areas to be included in the proposed pooling plan, which committee
shall advise and assist the director in the establishment of the proposed pooling
plan area and in the formulation of the proposed pooling plan. The pooling plan
shall include all areas covered by stabilization and marketing plans under Chapter 2
(commencing with Section 61801), except any relatively isolated region of the state
may be excluded therefrom, if the director, after a public hearing, finds that the
inclusion of the region is not practical or in conformity with the purposes of the
pooling plan, or if he finds that the producers in the relatively isolated region do not
desire to be a part of either their own or one of the pools.
(Amended by Stats. 1982, Ch. 751, Sec. 34.)

62705. After the director, with the advice and assistance of the formulation
committee, has formulated the proposed plan, he shall hold one or more public
hearings in each proposed pooling area to be affected by the proposed plan for the
purposes of considering modification of the proposed boundaries and formulating
the pooling plan which will best accomplish the purposes of this chapter. Notice of
the public hearings shall be given to each producer, including each member of
coopeative marketing associations, who ships fluid milk to a distributor and to each
distributor who receives fluid milk from producers. The procedures for the giving of
notice and the conducting of the hearings shall be the same as those provided in
Chapter 2 (commencing with Section 61801) for public hearings on stabilization and
marketing plans.
(Amended by Stats. 1982, Ch. 751, Sec. 35.)

62706. The pooling plan shall prescribe the pooling area to be covered by each pool.
Any such pooling area shall mean and include a large sales and consuming center
together with all intermediate and secondary cities, towns and rural areas, which
depend upon and receive their fluid milk supplies from a common producing and
supply area, and including the fluid milk processors who produce fluid milk for such
sales and consuming area, and including the fluid milk processing plants which
receive, process or distribute the fluid milk supplies for such an area.
In establishing pool areas the director shall take into consideration the fact that some producers and processors may produce, or process and distribute, respectively, fluid milk for more than one pool area and therefore may qualify for inclusion and participation in more than one pool. Producers who so qualify for participation in more than one pool shall be permitted to do so on the basis of the proportions of their shipments of fluid milk to each pool area.

(Added by Stats. 1967, Ch. 927.)

62707. The formulation committee shall make recommendations to the secretary for inclusion in the pooling plan, and the secretary shall include in the pooling plan, all of the following:

(a) The establishment of one or more pools throughout the state.

(b) (1) The base period to be used in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. The base period shall, at the producer’s option, be his or her fluid milk production and usage in the pool area during the calendar year 1967 on an average daily basis or his or her production and usage in the pool area during the last six months of 1966 on an average daily basis.

(2) As to a producer south and east of San Gorgonio Pass, his or her production base may, at his or her option, be four times his or her production in the months of December 1966, and January and February 1967.

(3) If a producer, during any base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, that provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from the producer than the producer actually produced during the period, on proof satisfactory to the secretary of the contract or allocation, the producer may, at his or her option, have the amount specified in the contract or allocation established as his or her production base.

(c) The establishment of a class 1 usage for each producer, which shall be the amount of his or her production of fluid milk accounted for as class 1, and any fluid milk sold for use as class 1 to a United States military installation but that was not accounted for as class 1.

(d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer’s class 1 usage, as determined in subdivision (c).

(e) (1) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

(2) All producers who have not reached the equalization point shall share in the allocation of pool quota on the basis of a formula that gives substantial weight to each producer’s production base, but that, at the same time, allocates a larger percentage to hardship cases and low class 1 usage producers.

(3) The allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to Section 62710.
(4) Annually, within no more than four months after August 31 of each year, the pool quota shall be adjusted by each component to reflect any additional pool quota. Any increase in pool quota shall be determined from the amount of new class 1 and class 2 solids not fat usage that developed during the preceding annual period which exceeded the previous highest identical annual period since the 1988–89 fiscal year. There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

(f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both the new producers and to participating producers and consistent with effectuating the purposes of this chapter.

(g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in the transfers and to avoid the development of excessive values for the bases and quotas.

(h) Notwithstanding Section 62711, any provision which may be necessary to encourage the availability of market milk for those usages for that class 1 and class 2 milk is mandatory.

(i) Any governmental agency that produces, processes, and consumes in its own facilities only its own production shall not be a pool plant. The plant shall operate outside the pool for accounting and settlement purposes unless the plant notifies the secretary of its election to participate in the pool. Any production of such a governmental agency that is transferred or diverted to a pool plant shall be classified for the purpose of settlement at the class 4a or class 4b price, whichever is lower.

(j) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan’s general application for individual cases of hardship.

(Amended by Stats. 2006, Ch. 505, Sec. 10. Effective January 1, 2007.)

62707.1. (a) The director, on July 1, 1978, shall issue new pool quota sufficient to bring all holders of production base and pool quota as of that date (excluding any production base and pool quota issued pursuant to subdivision (f) of Section 62707), to the equalization point both on the fat and the solids-not-fat components. (b) Subsequent to July 1, 1978, all allocations of new class 1 usage determined under subdivision (e) of Section 62707, shall be made as follows:

(1) Forty percent to producers whose total production base and pool quota are below the equalization point, to be allocated according to provisions adopted by the director in the applicable pooling plan.

(2) Forty percent to producers whose total production base and pool quota are equal to or above the equalization point, this allocation to each such producer to be in the same ratio to the total allocation under this subdivision as that producer’s total holdings of quota bears to the total quota holdings of all equalized producers.
(3) The remaining 20 percent shall be utilized for new producer allocations under subdivision (f) of Section 62707, according to the provisions in the then applicable pooling plan.

The terms “total production and pool quota” and “total quota” shall for the purposes of this subdivision, include allocations of production base and pool quota issued pursuant to subdivision (f) of Section 62707.

(Amended by Stats. 1982, Ch. 135, Sec. 1. Effective March 25, 1982.)

62707.2. A person eligible for, but not yet assigned, a production base or pool quota, or both, pursuant to Section 62707 shall not be eligible for such a production base or pool quota, or both, unless he applies for such a production base or pool quota, or both, prior to January 1, 1971.

(Added by Stats. 1970, Ch. 1253.)

62707.5. If a portion of the pool quota of any producer is transferred, it shall carry with it the same quantity of production base, except that if the pool quota exceeds the production base, the pool quota shall carry with it a percentage of production base equal to the percentage of pool quota which is so transferred. In either case, the producer making a partial transfer of his pool quota shall lose a percentage of his production base equal to the percentage of his pool quota which is so transferred. If a producer transfers his entire production base to one person, his entire pool quota shall also be transferred to the recipient of the production base. If a producer transfers his entire pool quota, his entire production base shall also be transferred to the recipients of the pool quota in a percentage equal to the percentage of pool quota received by each.

All transfers of production base and pool quota shall be recorded by the director in a manner consistent with the purposes of this chapter. Permanent records shall be maintained by the director of all transactions in either production base or pool quota.

Any person who purchases or otherwise acquires a producer’s business or a portion of a producer’s business prior to the operative date of the pooling plan shall succeed to that same proportion of the producer’s production base and pool quota.

(Amended by Stats. 1972, Ch. 1271.)

62707.6. In addition to the quota provided for under paragraph (3) of subdivision (b) of Section 62707.1, any quota returned to the director after April 30, 1981, shall be utilized for new producer allocations under subdivision (f) of Section 62707, according to the provisions in the then applicable pooling plan.

(Added by Stats. 1981, Ch. 508, Sec. 1.)

62708. “Producer-handler” for purposes of this chapter is any person that is both a producer and a handler of fluid milk or fluid cream. For the purposes of this chapter, a producer-handler is a producer in any transaction which involves the delivery of bulk fluid milk or bulk fluid cream which was produced by him to a handler, or any nonprofit cooperative association of producers and is a handler in
any transaction which involves the purchase by him of fluid milk or fluid cream, the pasteurization or packaging of fluid milk or fluid cream, or the sale or delivery of packaged fluid milk or packaged fluid cream to any person.

A producer-handler, including partnerships or corporations with common ownership, where the ownership of the producing entity is substantially proportionate to the ownership of the handling entity, shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to have a production base and pool quota established as a part of the pooling plan provided for in this chapter, or to elect to operate entirely outside of the pool for producer payment purposes. This option is available only in such cases where the producer-handler on January 1, 1968, exercised complete and exclusive control over the operation and management of a plant at which he processes milk received from his own milk production facilities, except for purchases in bulk or packaged fluid milk, fluid skim milk or fluid cream which do not exceed an annual average of 50 gallons per day or 5 percent of his total fluid milk sales, whichever is greater, and only in such case as the producer-handler had retail sales for its own account of not less than 66\(\frac{2}{3}\)% percent of its total class 1 sales.

Any producer-handler electing to be excluded from the pool may at any later time be admitted to the pool, but with only the production base and pool quota to which he would have originally been entitled or his average daily production and class 1 usage during the 12 months preceding his entry into the pool, whichever is less. (Repealed and added by Stats. 1977, Ch. 1192.)

62708.1. Any producer-handler who qualified and elected an exemption under Section 62708 and continued eligibility for such exemption by complying with the requirements of that section shall be entitled after January 1, 1978, to continue such exemption provided that such producer-handler maintains retail sales for his own account of not less than 50 percent of his total class 1 sales and his purchases do not exceed 25 percent of his total fluid milk sales, except that any purchases exceeding 5 percent of such sales shall be from pool sources.

Any producer-handler qualifying for and electing an exemption under Section 62708, and maintaining such exemption under Section 62708 and this section, may, after January 1, 1978, elect during the 61-day period of August 1 through September 30 of any year to obtain a production base and pool quota under Section 62708 and enter the pool subject to the option provision of Section 62708.5.

(Added by Stats. 1977, Ch. 1192.)

62708.5. (a) A producer-handler, for purposes of this chapter, shall also include, as a separate and distinct category of producer-handlers, any producer and any handler who purchases or handles fluid milk or fluid cream produced by this producer if all of the ownership of the handler and all of the ownership of the producer is owned by the same person or persons and their ownership in the producer or handler is at least 95 percent identical for each person with their ownership in the handler or producer. This ownership shall not exceed 10 individual persons or owners of equitable interest in a partnership, corporation, or other legally constituted business association.
(b) The ownership required by this section may be through a partnership, corporation, or other legally constituted business association if the entities are owned by the same person or persons, and there is at least 95 percent identity of ownership for each person with their ownership in the handler or producer. For purposes of this section, a “person” or “persons” includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For purposes of this section, property pledged or hypothecated in any manner to others shall be considered “owned” if equitable ownership with management and control remain with the producer-handler.

(c) Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

(d) Any such producer-distributor may, until August 6, 1969, do either of the following:

(1) Join and operate wholly within the pool.
(2) Have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of the pooling plan, and, nevertheless elect to operate entirely outside of the pool to the extent authorized by this section.

(e) Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, shall have the right to make deductions, as follows, from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, before being required to account to the pool:

(1) If it has not sold production base and pool quota subsequent to February 9, 1977, it may deduct its original quota, and quota purchased prior to March 1, 1995, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat.
(2) If it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to March 1, 1995.

(f) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class 1 usage exempted hereunder, otherwise the production in excess of the exempt producer-handler’s own class 1 sales, as defined in this section, shall be accounted for as overbase milk.

(h) The fact that a producer-handler qualifies as to one of its milk production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and, therefore, subject to pooling) at other milk production facilities, and with other nonqualifying persons at these other milk

production facilities. A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this section, but this shall not prevent him or her from purchasing or selling pool quota or production base as otherwise provided in this chapter.
(i) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.
(Repealed and added by Stats. 1995, Ch. 174, Sec. 2. Effective January 1, 1996.)

62710. The production base and the pool quota for milk shipped through a cooperative association shall belong to the individual producer but shall be assigned to the custody and control of the cooperative association and the production base and pool quota may be transferred only in accordance with the articles of incorporation, bylaws, or marketing agreements of such association. The cooperative association shall continue to be treated as a single producer, both for producer payment purposes and for pool settlement purposes. (Added by Stats. 1967, Ch. 927.)

62711. (a) Except as provided in subdivision (h) of Section 62707, each producer shall be paid the highest usage for that amount of his or her fluid milk production that is equal to his or her pool quota and shall be paid the next highest usage for the difference between his or her pool quota and his or her production base under the production pool designated pursuant to this chapter and the lowest usage for all milk produced in excess of his or her production base under the overproduction pool designated pursuant to this chapter.
(b) In calculating the pool value, the volume of milk that has been classified as restricted use market milk shall be credited to the handler at the class 4a or class 4b price, whichever is lower.
(Amended by Stats. 1996, Ch. 759, Sec. 26. Effective January 1, 1997.)
every producer and handler. The secretary shall have at all times, free and unimpeded access to any building, yard, warehouse, store, manufacturing facility, or transportation facility in which any market milk or market milk product is produced, bought, sold, stored, bottled, handled, or manufactured. Any books, papers, records, documents, or reports made to, acquired by, prepared by, or maintained by the secretary pursuant to this chapter, which would disclose any information about finances, financial status, or worth, composition, market share, or business operations of any producer or handler, excluding information that solely reflects transfers of production base and pool quota among producers, is confidential and shall not be disclosed to any person other than the person from whom the information was received, except pursuant to the final order of a court with jurisdiction, or as necessary for the proper determination of any proceeding before the secretary.

(c) In conjunction with the pools authorized by this chapter, the secretary may require handlers to make payments into a settlement fund for fluid milk received and the secretary may provide for the disbursement of moneys from the settlement fund in the course of administering the pools. Handlers who have a financial obligation to the pool resulting from the operation of the pooling plan shall pay the obligations to the pool manager each month as requested. All of these moneys shall be deposited in a bank or banks approved by the secretary, and shall be paid out by the pool manager to handlers who have pool credits resulting from the operation of the pooling plan. All financial operations of each pool shall be audited by the department at least once annually. The secretary may require handlers to make such deductions from amounts due to producers as he or she finds are necessary to establish a reserve fund to insure prompt payment to producers.

(d) The secretary may employ a pool manager to operate each pool and may permit the pool manager to employ such other necessary personnel and incur such expenses incidental to the operation of the pool as the secretary finds are necessary. The pool manager shall effectuate the purposes of Section 62711 by designating the percentage of each price class (i.e., classes 1, 2, 3, 4a, and 4b) to be paid within each pool settlement classification (i.e., quota pool, production pool, and overproduction pool), and in so doing he or she shall allocate the highest usage available, first to the quota pool, next to the production pool, and last to the overproduction pool.

(e) All pool quotas initially determined pursuant to Section 62707 shall be recognized and shall not in any way be diminished.  

(Amended by Stats. 1994, Ch. 95, Sec. 48. Effective June 6, 1994.)

62714. After the director has established pools, each distributor shall report to the director the total receipts from the producers that are shipping to the distributor and the class 1, class 2, class 3, class 4a, and class 4b usage of the distributor and any other information determined by the director as necessary to carry out the operation of the pool.

The director shall have access to, and may enter during business hours, the premises of any distributor, handler, or producer, or any place where the books,
papers, records, or documents pertaining to any transaction which relates to the acquisition or disposition of milk are kept. The director may inspect and copy these books, papers, records, or documents in any place within the state. (Amended by Stats. 1982, Ch. 135, Sec. 4. Effective March 25, 1982.)

62715. Any individual distributor purchasing milk from a producer shall continue to have the right to specify quality requirements that are more stringent than standards set by public regulatory or health authorities, and to specify these standards in a contract with the producer, provided that all contract quality requirements by the distributor are identical as to all producers under contract with that distributor. The distributor may reject milk for class 1 purposes if it fails to meet these specified standards, and may continue to reject such milk continuously until it again meets these standards. Any such rejected milk must be picked up separately from all other milk, and the contract shall give the producers the unqualified right to sell this rejected milk to others. In the event the rejected milk is not sold or used for class 1 purposes, the producer’s pool quota shall be reduced by an amount equal to the amount of pool quota milk rejected during the period in which it is rejected. The producer’s pool quota shall be restored to its full amount when all his production meets the specified standards.

The quality standards specified shall be subject to review by the director, and the purported failure of a producer to meet these standards shall be subject to impartial laboratory tests or such other procedures as the director may find necessary to prevent abuse. (Added by Stats. 1967, Ch. 927.)

62716. Following the required hearing, the director shall submit the pooling plan to producers concerned for their approval or disapproval in a statewide referendum. The approval or disapproval of individual producers voting in this referendum shall be kept confidential. Each producer shall have one vote and such vote shall be individually cast so that there will be no block voting. The director shall prepare a ballot. The ballot form shall be substantially as follows:

Shall the proposed pooling plan be made effective?  
Yes _____ No _____

In addition, the ballot shall include a statement of the voter’s total production during the calendar month next preceding the month of the commencement of the referendum period, where and to whom such production was sold or otherwise disposed, and the producer’s name and address. The director may reveal the names of producers whose votes have been received to both proponents and opponents of the plan.
The referendum shall be set for a period of 60 days. The director may at his own discretion or upon a proper showing, extend the referendum for a period not to exceed 30 days.

(Amended by Stats. 1968, Ch. 606.)

62717. If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the proposed pooling plan into effect. The director shall find that producers have assented to the plan if he finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state shall have voted in the referendum and finds one of the following:
(a) Sixty-five percent or more of the total number of eligible producers who voted in the referendum who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum approve the plan.
(b) Fifty-one percent or more of the total number of eligible producers who voted in the referendum who produced 65 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the plan.

If the plan is not approved, the director may resubmit the plan, or submit a new plan, at any time after six months from the date the director announces the plan was not approved.

The director may amend the plan, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the amendment is necessary to effectuate the purposes of this chapter. After the hearing, the director, upon his own motion, may make nonsubstantive amendments to the plan. The director may make substantive amendments to the plan only if producers assent to the proposed amendments at a referendum conducted in the same manner and in the same number as provided for the referendum approving the pooling plan.

The director may terminate the plan on a statewide basis after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the plan is no longer in conformity with the standards described in, or will not tend to effectuate the purposes of, this chapter. The hearing may be held upon the motion of the director, and shall be held upon receipt of a petition signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

The director shall submit the termination of the plan on a statewide basis in a referendum conducted in the same manner as provided for initial approval of the plan if, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, he finds that a substantial question exists as to whether or not producers desire the plan to continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing
not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers. The plan shall be terminated if termination is favored by the same percentage of producers producing the same amount of fluid milk as required to initiate the plan.

(Amended by Stats. 1982, Ch. 751, Sec. 36.)

62718. The pools established shall be administered by the director. Each distributor shall deduct from moneys owed producers and pay to the director the amount necessary to cover the cost of administering the pool plan, but not to exceed two cents ($0.02) per hundredweight of fluid milk. The amount of such fee shall be paid to the director on or before the 30th day following the last day of the month in which such fluid milk or fluid cream was received. The director may fix such fee at a lesser amount and may adjust such fee from time to time. In the event any distributor fails to pay to the director the fee provided for in this section on or before the date specified in this section, the director may add to such unpaid fee an amount not exceeding 10 percent of such unpaid fee to defray the cost of enforcing the collection of such unpaid fee. The distributor shall not be entitled to pass this penalty on to the producer. All moneys received under the provisions of this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

(Added by Stats. 1967, Ch. 927.)

62719. The director shall, from nominations submitted by producers, appoint a review board composed of no less than 12 members to advise him in the administration of the pool plan. The director shall appoint three members of the first board for a one-year term, three members for two-year terms, three members for three-year terms, and three members for four-year terms. Thereafter all appointments shall be for a term of four years and no member may be appointed to more than two four-year terms. The board members shall be producers and not more than three may be producer-managers of associations and not more than two shall be producer-handlers. The board members shall give proportionate representation to all areas of the state, with due regard to the relative production and usage of fluid milk in the various areas of the state. The director may appoint one additional member on the board, who shall be a public member. Each member of the review board shall be paid not less than twenty-five dollars ($25) or more than thirty-five dollars ($35) per day plus travel expenses, including expenses for lodging and meals, which are incurred in the attendance at board meetings or in conducting the business of the board; all per diem and expenses being subject to approval by the director. Upon the director's request, the board shall submit to the director the names of three or more natural persons, each of whom shall be a citizen and resident of this state and not a producer, shipper, or processor nor financially interested in any producer, shipper, or processor, for appointment by the director as a public member of the board. The director may appoint one of the nominees as the public member on the board. If all nominees are unsatisfactory to the director, the board
shall continue to submit lists of nominees until the director has made a selection. Any vacancy in the office of the public member of the board shall be filled by appointment by the director from the nominee or nominees similarly qualified submitted by the board. The public member of the board shall represent the interests of the general public in all matters coming before the board and shall have the same voting and other rights and immunities as other members of the board. (Amended by Stats. 1978, Ch. 188.)

62719.1. It is hereby declared, as a matter of legislative determination, that producers appointed to the review board pursuant to Section 62719 are intended to represent and further the interest of a particular agricultural industry concerned, and that such representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to such board, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code. (Added by Stats. 1976, Ch. 1429.)

62720. No pooling plan formulated pursuant to this chapter shall restrict the free movement of fluid milk and no pooling plan shall result in an unequal raw product cost between distributors in the same marketing areas. (Added by Stats. 1967, Ch. 927.)

62721. No pooling plan shall control the production of fluid milk except insofar as may otherwise be specifically authorized in this chapter. (Added by Stats. 1967, Ch. 927.)

62722. Pooling plans shall not apply to the production of goats milk or producer-handlers who produce and sell less than 500 gallons of fluid milk used for class 1 purposes per day unless they specifically request entry into the pool at the time of the adoption of the initial pooling plan for that area. Producers of certified milk or guaranteed raw milk shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to be subject to the plan, and accordingly to have a production base and pool quota established for the producer, or to be excluded from the plan:

(a) Any such producer of less than 500 gallons of fluid milk per day, or any such producer of certified milk, or any such producer of guaranteed raw milk, electing to be excluded from the plan, may at any later time be admitted to the pool, but with only the production base and pool quota to which he or she would have originally been entitled or his or her existing production and average daily class 1 usage during the 12 months preceding his or her entry into the pool, whichever is less.

(b) Any producer claiming exemptions from the provision of any pooling plan by reason of the provisions of Section 62708, 62708.1, or this section, who loses his or her exemption by failure to meet the requirements for exemptions set forth in those sections shall automatically be deemed to have applied for and become a part of a
producer pool on September 1st following any year ended August 31st during which the director determines he or she is no longer entitled to exemption, and his or her admittance into such a pool shall be on the basis of the production base and pool quota calculations as set forth in those sections.

(Amended by Stats. 1982, Ch. 135, Sec. 5. Effective March 25, 1982.)

62723. Unless otherwise defined in this chapter, the definitions contained in Chapter 2 (commencing with Section 61801) govern the construction of this chapter. For the purposes of this chapter, the following definitions shall apply:
(a) The terms “distributor” and “processor” shall have the same definition as the term “handler” contained in Section 61826.
(b) “Equalization point” shall mean that point at which pool quota held is equal to 95 percent of production base held.
(c) “Fluid cream” shall have the same definition as the term “market cream” contained in Section 61827.
(d) “Fluid milk” shall have the same definition as the term “market milk” contained in Section 61828.
(e) “Fluid skim milk” shall have the same definition as the term “market skim milk” contained in Section 61829.

(Amended by Stats. 1982, Ch. 751, Sec. 37.)

62724. This chapter does not modify the provisions of Chapter 1 (commencing with Section 61301) nor Chapter 2 (commencing with Section 61801) of this part, except as may be necessary to effect the purposes of this chapter. If necessary to effect the purposes of this chapter, the director, in establishing the minimum prices which shall be paid for fluid milk to producers, may establish minimum producer prices applicable at the producer’s place of production.

(Added by Stats. 1967, Ch. 927.)

62725. The director is authorized to use money in the Department of Food and Agriculture Fund derived from assessments and fees collected pursuant to Chapter 2 (commencing with Section 61801), to the extent necessary to defray the expenses incident to the formulation and making effective the pooling plan pursuant to this chapter, if, as soon as sufficient money is available from fees collected pursuant to this chapter, the amount shall be repaid.

(Amended by Stats. 1982, Ch. 751, Sec. 38.)

62726. The director is the instrumentality of this state for the purpose of administering and enforcing the provisions of this chapter and to execute the legislative intent which is expressed in this chapter, and is hereby vested with the administrative authority which is described in this chapter. Notwithstanding other laws to the contrary, in the event a milk marketing order under the jurisdiction of the United States Department of Agriculture or other appropriate federal agency, is created by referendum or under the applicable laws and procedures relating thereto, in this state or in any geographical area within this state, the provisions of
this chapter or any part thereof which is in conflict with such federal order, or which is unnecessary or is a duplication thereof, shall be suspended in the geographical area covered by and during the existence of such federal order. The director shall take such steps and procedures as are necessary to wind up and conclude the administration and enforcement of the provisions of this chapter, or any part thereof, prior to the suspension date.

(Added by Stats. 1967, Ch. 927.)

62727. It is the intent of the Legislature that the power conferred in this chapter shall be liberally construed. The provisions of this chapter or subsequent amendment are severable. If any section, subdivision, paragraph, sentence, clause, or phrase of this chapter should be declared or held unconstitutional or invalid for any reason, such unconstitutionality or invalidity shall not affect the validity of any other provision of this chapter. The Legislature hereby declares that it would have enacted each other such section, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of the fact that one or more sections, subdivisions, paragraphs, sentences, clauses, or phrases has been declared unconstitutional or invalid. Provided further that any such finding of invalidity or unconstitutionality shall not invalidate, affect or impair pool quotas and production bases heretofore issued under the Gonsalves Milk Pooling Act or pooling plan promulgated thereunder.

(Added by Stats. 1977, Ch. 1192.)

62728. The director shall terminate any pooling plan in effect in any marketing area without notice or hearing at any time that there ceases to be a stabilization and marketing plan in force and effect in such marketing area, establishing minimum prices to be paid to producers, unless minimum prices payable by distributors to producers for fluid milk in such marketing area are subject to a federal milk marketing agreement or order which is not in conflict with, or in duplication of, the pooling plan.

(Added by Stats. 1967, Ch. 927.)

62729. The director or his assistants, deputies, agents, or other employees, are authorized to travel out-of-state in order to carry out the purposes of this chapter.

(Added by Stats. 1967, Ch. 927.)

62730. Any violation of any provision of this chapter, or any regulations adopted pursuant to this chapter, shall be punishable, and shall have the same effect, as a violation of Chapter 2 (commencing with Section 61801).

(Amended by Stats. 1982, Ch. 751, Sec. 39.)

62731. This chapter shall be known as the Gonsalves Milk Pooling Act.

(Added by Stats. 1967, Ch. 927.)
CHAPTER 3.5. Milk Pooling [62750 - 62756]
(Chapter 3.5 added by Stats. 1993, Ch. 1112, Sec. 4.)

62750. Notwithstanding any provision of Chapter 3 (commencing with Section 62700) in conflict with this section or any pooling plan for market milk in effect under that chapter, effective January 1, 1994, each producer shall be paid the amounts determined in accordance with this section for his or her pool quota production and for all production in excess of his or her pool quota.
(a) For all milk fat, whether or not equal to his or her pool quota, an amount determined by dividing the value of all milk fat in the pool by the amount of milk fat produced.
(b) Transportation allowances that are provided for in the pooling plan shall not be deducted from the quota milk of any region, but shall be deducted from the total solids not fat pool revenue before any price is determined for quota and nonquota solids not fat.
(c) Regional quota adjusters shall continue to be subtracted from the quota price in the established areas as specified in the pooling plan for market milk. However, the hundredweight price specified shall be converted to a solids not fat equivalent value, and the adjustments for the effect of those regional quota adjusters shall be applied to the solids not fat revenue.
(d) After taking into consideration the effect of the regional quota adjusters, the solids not fat announced quota price for those areas in which there is no regional quota adjuster shall be nineteen and one-half cents ($0.195) per pound greater than the announced solids not fat price for all milk produced in excess of pool quota.
(Amended by Stats. 1994, Ch. 601, Sec. 1.5. Effective January 1, 1995.)

62750.1. In calculating the pool value, the volume of milk that has been classified as restricted use market milk shall be credited to the handler at the class 4a or class 4b price, whichever is lower.
(Added by Stats. 1996, Ch. 759, Sec. 27. Effective January 1, 1997.)

62751. Except as provided in Section 62756, this chapter shall remain operative until the secretary certifies to the Secretary of State that producers have voted in a referendum to suspend the operation of this chapter. (Repealed and added by Stats. 1994, Ch. 601, Sec. 3. Effective January 1, 1995.)

62752. The secretary may hold a public hearing at any time to consider whether this chapter shall be suspended, and shall hold a public hearing to review a petition requesting the suspension of this chapter signed by not less than 25 percent of the producers who produced not less than 25 percent of the total amount of fluid milk produced in this state during the preceding calendar month.
(Added by Stats. 1994, Ch. 601, Sec. 4. Effective January 1, 1995.)
62753. The secretary shall establish a period of 60 days in which to conduct the referendum. The secretary may extend the referendum period an additional 30 days if he or she determines that the additional time is needed to adequately conduct the referendum, and may prescribe additional procedures necessary to conduct the referendum.
(Added by Stats. 1994, Ch. 601, Sec. 5. Effective January 1, 1995.)

62754. (a) Each producer shall have one vote and the vote shall be individually cast in order to prevent block voting. The secretary shall prepare a ballot. The ballot form shall be substantially as follows:

Ballot

Shall Chapter 3.5 (commencing with Section 62750) of Part 3 of Division 21 of the Food and Agricultural Code be continued in effect?
Yes No

(b) In addition, the ballot shall include a statement of the voter’s total production during the calendar month next preceding the month of the commencement of the referendum period, where and to whom that production was sold or otherwise disposed, and the producer’s name and address and pooling numbers.
(Added by Stats. 1994, Ch. 601, Sec. 6. Effective January 1, 1995.)

62755. (a) The secretary shall find that producers have assented to the continued operation of this chapter if the secretary finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state have voted in the referendum and that 51 percent or more of the total number of eligible producers who voted in the referendum and who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the continued operation of this chapter.
(b) If the secretary finds that a vote favorable to the continued operation of this chapter has not been given, the secretary shall so certify to the Secretary of State and shall declare this chapter inoperative.
(c) The secretary may reveal the names of producers whose votes have been received to both proponents and opponents of the continued operation of this chapter. However, whether individual producers voted for or against the continued operation of this chapter shall be kept confidential.
(Added by Stats. 1994, Ch. 601, Sec. 7. Effective January 1, 1995.)

62756. (a) If the continued operation of this chapter is not approved, the secretary shall continue in operation the pooling plan in effect on December 31, 1993.
(b) Notwithstanding Section 62751, this section shall remain operative notwithstanding a vote by producers to suspend the operation of this chapter.
(Added by Stats. 1994, Ch. 601, Sec. 8. Effective January 1, 1995.)
(a) If a federal milk marketing order is established in California, the secretary is authorized to establish a stand-alone quota program, the details of which shall be included in the pooling plan. The stand-alone quota program may be funded by an assessment on milk produced in the state.
(b) The secretary may require handlers, including cooperative associations acting as handlers, to make reports necessary for the operation of the stand-alone quota program.
(c) The stand-alone quota program shall be pursuant to a recommendation by the review board established pursuant to Section 62719 and approved by a statewide referendum of producers conducted pursuant to Sections 62716 and 62717.

(Added by Stats. 2017, Ch. 26, Sec. 38. (SB 92) Effective June 27, 2017.)