



# California Milk and Dairy Product Marketing Provisions



California Department of Food and Agriculture  
 1220 N Street • Sacramento, CA 95814  
 Phone 916-900-5014, Fax (916) 900-5341  
 Website: [www.cdfa.ca.gov/dairy](http://www.cdfa.ca.gov/dairy)

## Table of Contents

Determining Cost.....	2
Promotions .....	4
Meeting Competition .....	5
Public Agency Prices.....	6
Food and Agricultural Code .....	8
California Code of Regulations .....	11

## Introduction

The California Department of Food and Agriculture (Department) promotes the intelligent production and orderly marketing and distribution of all milk and dairy products to ensure availability to consumers of an adequate and continuous supply of pure, fresh, wholesome market milk. The Department’s Dairy Marketing Branch (Branch) is responsible for enforcing the provisions of the California Food and Agricultural Code (FAC) and related regulations concerning the marketing of milk and dairy products.

The FAC, administrative regulations, Pooling Plan, and Stabilization and Marketing Plan provisions apply equally to all manufacturers, distributors, producers, wholesale customers, brokers, or any representative of them. These provisions were adopted to maintain an orderly and stable market for milk and dairy products by discouraging marketing tactics that may cause sudden market price fluctuations.

The basis of the milk and dairy products marketing provisions discussed in this booklet is found in the FAC, Division 21, Part 3, Chapter 1, Sections 61381 through 61391 (website: [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)). The regulations related to these provisions of the FAC are contained in Title 3, Chapter 3, Subchapter 1 of the California Code of Regulations (CCR) ([website: www.calregs.com](http://www.calregs.com)).

Any distributor, manufacturer or person who sells dairy products at wholesale is required to maintain and keep certain records for three years. In addition to price schedules and terms and conditions, records must be kept of all milk received, processed and sold, the quantity sold, the price received and all costs of handling, processing, sale and delivery, FAC Section 61441-61443. The Department is allowed to request and review all records and cost information, which is all kept confidential, under this authority.

## Determining Cost

FAC Section 61384 states that the sale below cost 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 section also defines the meaning of cost as applied to each of the types of dairy entities. Cost is further defined in CCR Sections 1811 (cost components of dairy processing for manufacturers, distributors, and handlers), 1812 (cost components of retailers and wholesale customers), and 1850 (cost components for promotions).

Those who process dairy products, (manufacturers) as well as those who buy finished products for resale (wholesale customers, non-processor distributors, and retailers) are prohibited from selling dairy products below cost, per FAC Section 61384. When determining compliance with sales below cost provisions, the costs associated with processing differ from those associated with wholesaling.

### Processors/Manufacturers

Manufacturer costs include raw product, manufacturing, processing, handling, sale, and delivery. CCR Section 1811 details specific cost components which must be included in cost calculations for manufacturing. Promotional discounts, advertising allowances, redemption devices, rebates, etc., are types of costs that must be factored in, if applicable.

### Wholesale Customers (Retailers and Non-Processing Distributors)

Cost, as applied to wholesale customers, means the invoice or replacement cost, whichever is lower, plus the cost of doing business of the wholesale customer. The Branch calculates the cost of doing business by determining total sales income and all operating expenses. Total operating expense is divided by the total sales income, generating a percentage that represents the wholesale customer's cost of doing business. For example, HEY Market's profit and loss statement for the year indicates total sales income of \$1,000,000 and total operating expenses of \$150,000. The total operating expenses of \$150,000 divided by the total sales income of \$1,000,000 equals the cost of doing business, which equates to 15 percent.

HEY Market's invoice cost for a gallon of homogenized milk is \$2.00. To arrive at this market's minimum lawful retail price, the grand markup method is used, applying the cost of doing business on the invoice price. The following calculation illustrates this method:

$$\frac{\text{Invoice Price}}{100\% - \text{Cost of Doing Business \%}} = \text{Lowest Lawful Retail Price}$$
$$\frac{\$2.00}{(100.0-0.15)} = \frac{\$2.00}{.85} = \$2.35 \text{ Lowest Lawful Retail Price}$$

### Scan-Based Trading (SBT) and Direct Store Delivery (DSD)

Scan-Based Trading (SBT) and Direct Service or Store Delivery (DSD) are offered by some dairy vendors to their retail customers. With SBT, the vendor maintains title to the dairy product until it is scanned through checkout at a retail establishment. At that time, it becomes the property of the retailer. With DSD, the vendor's staff stocks and rotates product at the retail establishment. Both of these methods of distribution reduce operating expenses of the retailer. Retailers buying dairy products from such vendors have the option of taking a 5 percent deduction off their normal cost of doing business percentage. Generally the use of the DSD method reduces the cost of doing business by 5 percent. Use of the SBT method reduces the cost of doing business by 4 percent. Use of both methods by a

retailer reduces the cost of doing business by a total of 9 percent. Retail stores using one or both of these methods have the option of reducing their cost of doing business by 5, 4, or 9 percent, maximum.

For ice cream and frozen snacks only, a retailer may reduce his cost of doing business markup to 6.4 percent for DSD, and an additional 0.2 percent is allowed if also using SBT, for a total cost of doing business markup of 6.2 percent when both methods are used by a dairy vendor. These percentages are the lowest margins allowed, for these specific dairy products only.

## **Allowances and Special Accounts**

Allowances and prepaid accounts for advertising and promotions are lawful, as long as they do not cause a dairy product to be sold below cost, at either the manufacturing level or retail level. When allowances or discounts reduce the initial invoice cost to a net invoice which is below the manufacturing cost for the dairy product, this is a sale below cost violation.

Manufacturers providing allowances or discounts to their wholesale customers (retailers) are responsible for ensuring the net invoice (after allowances are deducted) is not less than their total manufacturing costs for the dairy product. A transfer of anything of value in connection with the sale of any dairy product, including accounts or funds used to reduce the invoice cost of a dairy product for promotional purposes, or incentives to obtain new customers, must be included in the cost calculations by the giver of the item of value. For example, a manufacturer gives a wholesale customer a scan allowance on ice cream. The value of this allowance is a cost to the manufacturer and must be accounted for and included in the total manufacturing costs for the ice cream, per CCR Section 1811(c)(8).

An example of a violation caused by the application of discounts or allowances is as follows: A butter manufacturer gives a \$.50 scan allowance on each pound of butter to its retail customers. The manufacturing cost for the butter is \$1.35. The initial invoice from the butter manufacturer to its wholesale customers (retailers) is \$1.75. Retailers apply the scan allowance of \$.50 to arrive at a net invoice of \$1.25. The retailer adds his cost of doing business of 20% and the lowest lawful retail price of the butter is \$1.56 per pound. This is a sale below cost violation because the scan allowance reduced the invoice price for the butter to \$1.25, \$.10 below the manufacturing cost for the butter.

## **Advertising**

A manufacturer or distributor may give to wholesale customers an advertising allowance on any dairy product. A key distinction between advertising allowance and promotional allowance is that the advertising allowance may not be used to reduce the sales price of the dairy product. The advertising allowance is strictly to reduce or offset advertising costs.

Advertising allowances are subject to certain provisions as follows:

1. Records must be maintained that identify the manner in which the allowance is offered, the particular period during which the allowance is available, the terms and conditions under which a wholesale customer may qualify for the allowance and the method used to determine the appropriate allowance paid.
2. The advertising allowance shall be offered to all wholesale customers without limitation.
3. The advertising allowance shall not be directly or indirectly conditioned on a wholesale customer's purchase, handling or sales promotion of any other dairy product.
4. To ensure compliance with below cost standards, an advertising allowance shall be considered a direct cost to the dairy product in which the allowance applies.
5. The costs associated with advertising allowances shall be borne by the issuer.

## Giving Anything of Value without Receiving Adequate Compensation

The giving of any article in any transaction which involves the sale or disposal of milk, cream, or any dairy product to secure or retain the business of any customer or consumer violates FAC Section 61383. These transactions sometimes take the form of free or price-discounted delivery of product. Such transactions are a violation of FAC Sections 61382, discrimination in price; 61383 and 61384, sale or offer or giving of something for less than cost.

## Promotions

Advertising and promotions are an integral part of marketing most products, and are used by both dairy manufacturers and wholesale customers (retailers). All dairy products may be promoted through the use of redemption devices (coupons, store cards, premiums, certificates, etc.), sweepstakes, drawings, sampling, etc. All costs of promotions and use of promotional accounts and advertising allowances must be captured and included in cost calculations. Promotions must comply with all of the requirements FAC Sections 61381 – 61391, and related CCR Section 1850. In the case of coupons and other redemption devices, **all** associated costs must be included in the cost calculations and not result in the dairy product being sold below cost.

## Departmental Review of Promotions Prior to Implementation

Upon request, the Dairy Marketing Branch will review proposed promotions to assure compliance with the dairy marketing laws and regulations. If the proposed promotion does not appear to be compliant, adjustments may be recommended.

The following types of promotions require no prior approval for implementation, as they are considered likely to be compliant:

1. A dairy product and a non-dairy product promoted together, when the non-dairy company or non-dairy division of a multi-product manufacturer is paying all the costs of the promotion.
2. Promotions with an expected 25% or lower redemption rate. This applies to promotions requiring coupons or specific conditions to get the deal.
3. Promotions with a large number of products, both dairy and non-dairy, when the dairy products represent less than half of the products being promoted.
4. When a dairy trade organization or other non-dairy organization is sponsoring a promotion.
5. Products containing dairy when it is not a primary ingredient.
6. Flavored powdered dairy beverage mixes.
7. Sampling events that meet the following criteria: samples provided are in single or small size containers; events are not held near a competitor's business; and the duration of the event is of reasonable length.
8. Sweepstakes that do not require any type of purchase of a dairy product to enter and the prize/award given does not include dairy products. Even though a dairy product manufacturer is sponsoring the sweepstakes, without the sale or gift of dairy products, there would be no sales below cost issue.

## What to Include in a Request for Promotion Review and Approval

Please submit proposed promotions needing Departmental review via email to: [dairy@cdfa.ca.gov](mailto:dairy@cdfa.ca.gov).  
For coupon promotions:

- Details of dairy product(s) included in promotion;
- Sponsor(s) of the promotion;
- Copy of the Advertisement (if applicable);
- Distribution method and anticipated redemption rate;
- Dates of the benefit period of the promotion; and

- A statement that you have included all the cost elements in your calculations, per the CCR Sections stated above, and that the costs are not anticipated to exceed the sales income of the product(s) being promoted.

For manufacturer-sponsored promotions, you may be asked to provide:

- Current manufacturing cost;
- Invoice cost to retailer; and
- Anticipated redemption rate.

For retailer-sponsored promotions, you may be asked to provide:

- Invoice cost;
- Cost of doing business percentage;
- Retail price; and
- Anticipated redemption rate.

## Coupons

A coupon is defined as a certificate offering a discount for an item, or a free item that most often must be presented at the time of purchase. Coupons may be issued by manufacturers and retailers on fluid milk and all other dairy products, but if its use results in a below cost sale of the dairy product, at either the manufacturer level or the retail level, it is a violation of FAC Section 61384. Cost compliance will be determined by CCR Section 1850. Issuers of coupons must keep records which document all cost factors as stated in CCR Section 1850. Such records must include, but are not limited to the following:

- Redemption rate of the coupon (actual if after, or estimated, if prior to promotion);
- Distribution method used;
- Total revenue resulting from the promotion;
- Total cost of the products sold, plus the cost of doing business for retail stores;
- Total cost of the promotion, including coupon cost, redemption, advertising;
- Promotional allowances or discounts.

Some promotions offer certificates for cash discounts off future shopping trips if certain dairy products in specified quantities are purchased. These promotion requests should quantify the amount of certificates expected to be distributed, and the amount expected to be redeemed, either in numbers or percentages. The future shopping trip certificates should also include the wording, “Excludes Dairy.”

## Sweepstakes and Sampling of Milk or Dairy Products

Sweepstakes and drawings are permitted as a promotional tool for marketing dairy products and shall comply with the requirements of Chapter 1 of the FAC. Entities conducting sweepstakes must keep records that include the total cost of prizes awarded in the sweepstakes, and the advertising, promotional and administrative costs involved. Providing samples of dairy products to consumers is allowed under the law, however it is recommended that the samples provided are in single serving or small size containers, the length of the give-away is limited, and not done near a competitor’s business. The entity providing the samples must keep records containing the following information: identity of samples distributed, number of samples distributed, time period samples were distributed, the cost or value of the samples distributed, and physical location where samples were distributed.

## Meeting Competition

California's milk marketing laws and regulations allow a dairy retailer, wholesale customer, manufacturer or distributor to meet a lawful competitive price or a lawful competitive condition for dairy products of similar defined composition or standard within the same geographic area, as outlined in FAC Section 61384(d)(1) and CCR Sections 1931-1932, 1943-1945. A lawful multi-unit price may be met by the wholesale customer by dividing the number of units sold together to arrive at an individual unit price. It is not lawful to divide the weight or volume of a dairy product in a single container to arrive at a per-unit

price for the purpose of meeting competition. If there is any uncertainty as to whether a competitive price is lawful, the retailer or wholesaler should contact the Department to determine if the lower price is lawful. A lawful lower price may be met for as long as it is valid.

## Meeting Competition with Coupons

- A coupon price in a store may **not** be met by a competitor store without a coupon. The only way the price may be met is if the competitor store honors the first store's coupon.
- If a store wishes to conduct a coupon promotion similar to a competitor's coupon promotion, this is **not** considered "meeting competition" because it could not be conducted at the same time, due to the time needed to prepare a coupon promotion. The second store's coupon promotion will be evaluated based on its own cost factors.

## Distributors (including Manufacturers)

If a distributor is faced with the possibility of losing a customer because of a lower priced offer by a competitor, the distributor may meet that price to retain the customer. However, if a distributor decides to meet a competitor's offer, the price variation must be recorded. The distributor must document why sales are being made to that customer at prices that differ from the distributor's regular prices. If a distributor loses a customer, the distributor can no longer meet the prices of the competitor for that customer. At that point, only the distributor's appropriate written price schedule can be offered.

## Public Agency Prices

Specific guidelines are set forth for public agency and private school price schedules in CCR Section 1942(b). A public agency price schedule is a wholesale price schedule and it must be on file at the dairy product distributor's office. The prices on this schedule must reflect those being offered to public agency accounts. Public agency prices may vary from the distributor's regular written wholesale price schedules. However, public agency prices are still subject to the following provisions of the CCR: sales below cost; giving something of value; and discrimination. A distributor may, at a particular public agency location, meet the offer of a competitor's lawful price schedule. If a competitor's price schedule is met, it must be met in its *entirety*, which includes all prices and terms and conditions.

## Private Schools

Private schools also qualify within the scope of public agency pricing, CCR Sections 1942(a)(3) and 1942(b)(4), and are subject to the same unlawful practices provisions of the Code. If a distributor maintains public agency prices, he may elect to offer such prices to private schools subject to the same quantity and service conditions as are applicable to the distributor's public agency prices. If the distributor offers public agency prices to private schools, these prices shall be applicable to all private schools serviced by the distributor.

## Public Agency Bid Request – Need for Escalator

A public agency bid request for prices of distributed dairy products and terms and conditions must be adequately defined to enable a distributor to offer a lawful response. An "escalator clause" should be included in the bidding process and the contract. This would allow for price variations beyond the manufacturer's or distributor's control. The public agency should not specify that a bid response contain "fixed" prices during the contract period. If fixed prices have been requested and given, and the raw product cost increases, or some other uncontrollable cost increases, then the result could be a sale at less than cost. If this happened, the dairy supplier would be in violation of FAC Section 61384 (sales below cost) and the public agency who insisted upon fixed prices would be a joint participant in the same violation of the FAC, Section 61391.

The contract between a public agency and dairy supplier may be for a fixed period of time not to exceed one year. A bid response from the dairy supplier to a public agency is a formal quotation of prices with terms and conditions. While the supplier will want to comply with all of the requests of the public agency, it must abide by California's milk and dairy products marketing provisions.

### **Wholesale Customer Bid Requests**

The distinction being a wholesale customer bid request is simply a request for the distributor to quote his regular wholesale prices and terms and conditions. The quoted dairy product prices must follow the distributor's established wholesale price schedule and terms and conditions. Prices must be based on a single delivery to a single delivery location. Deviations from price or service, as based on the price schedule's terms and conditions, may not be allowed and specific requests of service that are not listed as a term or condition may not be offered.

## FOOD AND AGRICULTURAL CODE

**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.

**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.

**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.

**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 many 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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

- (C) Cost of displays and promotional materials.
- (D) Advertising costs.
- (E) Rent for facilities in foreign countries.
- (F) In-store demonstrations.
- (G) Participation in approved trade fairs, exhibits, etc.
- (H) Merchandising costs.
- (I) Public relations costs.
- (J) Introduction of new products.
- (K) Market research cost.

(2) The cost of cooperator personnel employed to work exclusively on foreign agricultural market development projects, or addressing constraints.

(b) Unauthorized Uses. Project funds, both cooperator and third party cooperator contributions and State funds, shall not be spent on the following unauthorized uses:

(1) The cost of individual salaries of a cooperator's staff or a third party cooperator's staff not exclusively devoted to the foreign agricultural market development project.

(2) Except as may otherwise be specifically provided in the Marketing Plan, travel, personal expense, per diem and living costs and value of time of cooperator board or committee members, third party cooperators, or trade team members, participating or attending foreign market development activities.

(3) The cost of membership in clubs and professional organizations.

(4) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the U.S.

(5) Payment of indemnity or fidelity bond costs.

(6) Prizes or awards in connection with contests or similar activities. This does not preclude the use of project funds to purchase appropriate trophies to be awarded in connection with an approved activity of the Cooperator.

(7) Fees for credit cards.

(8) Printing business cards.

(9) Purchasing and mailing seasonal greeting cards.

(10) Office parking fees.

(11) Gift items.

(12) Refreshments for office staff such as coffee, tea, etc., and any related equipment such as coffee pots, cups, glasses, and other such items.

(13) Transportation expenses for prospective job applicants.

(14) Subscriptions to non-trade related publications or publications which are for the personal convenience of staff.

(15) Capital investments such as permanent structures, real estate, office equipment and furniture.

(16) Services generated by USDA or the State for which the cooperator made no expenditure of funds.

(17) The value of free publicity generated by the cooperator.

(18) Giveaways, price off deals or price discounts on the product.

(19) Value of time spent by general audiences who attend and observe a cooperator-sponsored conference, workshop, demonstration or trade seminar.

NOTE: Authority cited: Sections 407, 58563 and 58574, Food and Agricultural Code. Reference: Sections 58563 and 58574, Food and Agricultural Code.

#### § 1712. Transfer of State Funds.

(a) State funds may be transferred to the cooperator as a reimbursement

(1) after the cooperator has completed the total approved marketing plan and project agreement, or

(2) after an identifiable part of the approved marketing plan and project agreement has been completed.

(b) State funds not to exceed fifty percent of the approved expenditure shall be paid to the cooperator upon submission of properly documented, authorized expenses which have been incurred and which have been approved by the Director.

NOTE: Authority cited: Sections 407, 58563 and 58574, Food and Agricultural Code. Reference: Sections 58563 and 58574, Food and Agricultural Code.

## Chapter 3. Milk Stabilization and Marketing of Milk and Dairy Products

### Subchapter 1. Unlawful Practices in Marketing Milk and Dairy Products

#### Article 1. General Provisions

##### § 1800. Authority to Promulgate.

NOTE: Authority cited: Sections 16, 4143, 4361.5, Food and Agricultural Code.

1. Subchapter 3 originally printed 7-25-45 (Title 3).
2. Revised subchapter 3 filed 4-9-56; effective thirtieth day thereafter (Register 56, No. 7). For prior amendments in subchapter 3 refer to Registers 14, No. 5, and 54, No. 3.
3. Repealer filed 7-9-64; effective thirtieth day thereafter (Register 64, No. 15).
4. Editorial correction of printing error in HISTORY 2. (Register 91, No. 24).

##### § 1801. Definition.

"Code," as used in these regulations means the Food and Agricultural Code.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61341, Food and Agricultural Code.

##### HISTORY

1. Amendment filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).

##### § 1802. Violations of Regulations.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61341, Food and Agricultural Code.

##### HISTORY

1. New section filed 10-7-74; designated effective 12-1-74 (Register 74, No. 41). For prior history, see Register 64, No. 15.
2. Amendment filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Repealer filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).

##### § 1803. Invalidity of Provision or Application.

##### HISTORY

1. Repealer filed 7-9-64; effective thirtieth day thereafter (Register 64, No. 15).

##### § 1804. Violations by Agent, Employee, Representative, Subsidiaries, Affiliates.

No handler, manufacturer, distributor, producer, wholesale customer including any producer-distributor or non-profit cooperative association acting as a handler, manufacturer, or distributor, consumer shall violate any of the provisions of this subchapter, directly or indirectly, or through an employee, representative or other agent, or through a subsidiary or affiliated company or corporation. For the purposes of this subchapter, "subsidiary or affiliated company or corporation" includes, but is not limited to, companies or corporations controlled by a handler, manufacturer, distributor, producer, wholesale customer or consumer, directly or indirectly, through ownership of issued capital stock, partnership interests, membership interests, or otherwise.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61391, Food and Agricultural Code.

##### HISTORY

1. Amendment filed 7-9-64; effective thirtieth day thereafter (Register 64, No. 15).
2. Amendment filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment of NOTE filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).
4. Amendment filed 9-1-83; effective thirtieth day thereafter (Register 83, No. 36).
5. Amendment filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

##### § 1805. Application to Corporations and Subsidiaries.

NOTE: Authority cited: Sections 16 and 4143, Food and Agricultural Code. Reference: Chap. 16, Div. 6, Food and Agricultural Code.

## HISTORY

1. Repealer filed 9–8–67; effective thirtieth day thereafter (Register 67, No. 36).

**§ 1806. Confidentiality of Records and Reports.**

Proprietary financial information reported by any person subject to the provisions of this Chapter and any information obtained in the course of an investigation or audit is subject to the confidentiality provisions of Section 61443 of the Code.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61443, Food and Agricultural Code.

## HISTORY

1. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
2. Editorial correction of note filed 5–15–80 (Register 80, No. 20).
3. Amendment filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
4. Amendment filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1807. Meeting Competition.**

## HISTORY

1. Repealer filed 4–9–62; effective thirtieth day thereafter (Register 62, No. 7).

**§ 1808. Applicability of Unlawful Practices.**

The provisions of this subchapter shall apply to any handler, manufacturer, distributor, producer, wholesale customer including any producer–distributor or non–profit cooperative association acting as a handler, manufacturer, distributor, or consumer or any representative of them, that solicits, or colludes with, or jointly participates with, any other person to commit any of the unlawful practices provided for in this subchapter, or that uses any misrepresentation, threat, intimidation or boycott to effectuate the commission of such unlawful practices. Any provision of this subchapter that applies to a distributor shall apply equally to a wholesale customer that buys packaged milk, cream, or any dairy product for resale to other wholesale customers.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61391, Food and Agricultural Code.

## HISTORY

1. New section filed 2–26–70; effective thirtieth day thereafter (Register 70, No. 9).
2. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
3. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
4. Amendment filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1809. Meaning of Distributor.**

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61306 and 61308, Food and Agricultural Code.

## HISTORY

1. New section filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20).
2. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1810. Purpose of Regulations.**

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61341, Food and Agricultural Code.

## HISTORY

1. New section filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20).
2. Amendment filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
3. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1811. Cost Components of Dairy Processing — Manufacturers, Distributors and Handlers.**

In determining whether a manufacturer, distributor, or handler sold milk, cream, or any other dairy product(s) below cost, the Department shall evaluate the total consideration paid or exchanged for the raw product and the total expenses incurred and allocated for manufacturing, processing, handling, sale, and delivery.

(a) Milk processing and distributing costs shall be calculated using cost element categories which include, but which are not limited to, those

specified below. All costs and expenses incurred, and any non–cash or other value received or given must be included in cost calculations.

(1) **Ingredient Cost.** Procurement of raw milk and other ingredients including, but not limited to additives and flavorings, premiums, service charges, federal, state, or local assessments.

(2) **Labor Costs.** All salaries, wages, benefits, and other compensation for workers and staff.

(3) **Packaging Costs.** All costs for purchasing packaging materials and for packaging products for sale.

(4) **Shipping and Freight/Transportation/Storage Expense.** All costs related to storing and transporting products.

(5) **Waste, Shrinkage, Spoilage.** All costs or values related to ingredient and finished product waste, shrinkage, spoilage.

(6) **Manufacturing and Administrative Costs.** All fixed and variable costs directly related to processing, manufacturing, sales and distribution of products, and associated administrative activities. For handlers, manufacturers, and distributors with more than one product line, costs should be allocated to each line using an allocation method that is both consistently applied and which is consistent with Generally Accepted Accounting Principles.

(A) **Fixed Costs.** Land and property expenses, property taxes, financing, leases, insurance, and other costs that are commonly considered fixed.

(B) **Variable Costs.** Plant expenses incurred to manufacture or produce product lines, including maintenance and testing of plant and equipment, non–capitalized furniture and fixtures, supplies, utilities, taxes, and other costs that are commonly considered variable.

(7) **Asset Charges.** Costs related to capital equipment and assets including depreciation, amortization, and capital repairs.

(b) Allocation methods selected for distributing costs must be fair, consistent with Generally Accepted Accounting Principles, and consistently applied.

(c) **Other Costs.** Handlers, manufacturers and distributors must capture all other costs, benefits or value resulting from activities which are directly related to sales of dairy products. These costs include, but are not limited to, promotions, advertising, coupons, slotting allowances, sweepstakes, or any other sales promotions or incentives, as well as the following:

(1) **Low interest loans.** For any low interest loan provided to or guaranteed on behalf of a customer, the handler, manufacturer or distributor must recognize as a cost the value of the portion of the interest rate that is below market, the value of any terms that are more favorable than commercially available, or the value of the guarantee afforded.

(2) **Discounts or rebates on non–dairy items.** For any product other than regulated dairy products that are sold at a discount greater than that afforded to other customers or when non–dairy products are given free of charge to a customer as a direct or indirect part of the sale of a dairy product, the value of the discount or of the free product must be captured and included in the cost calculations.

(3) **Payments made on behalf of the customer.** Any payments or debts forgiven on behalf of a customer as a direct or indirect consequence of a dairy product must be captured and included in the cost calculations.

(4) **Equipment.** For any equipment given or loaned to a customer without a related rental fee, the manufacturer or distributor must capture and include in its costs the value of the gifted equipment or the value of the rental payments foregone.

(5) **Advertising and Promotions.** For any advertising campaign, promotion, giveaway, coupons, or other incentives, the costs related to that campaign must be recognized as a cost following the provisions established in Article 3 of this subchapter.

(6) **Gifts, Prizes, Sales Awards.** The value of any gifts, prizes, sales awards, vacations, trips, gift certificates, cash or items of property given to any customer as a direct or indirect consequence of a sale of a dairy product must be included in the cost calculations.

(7) Expenses Foregone. The value of any expenses foregone in connection with the sale of any dairy product must be included in the cost calculations.

(8) Special or Prepaid Account. Any transfer of anything of value in connection with the sale of any dairy product, including special accounts or funds used to reduce the invoice cost of a dairy product must be included in the cost calculations.

(d) Retention of Data. Handlers, manufacturers, and distributors are responsible for retaining sufficient records to demonstrate compliance with Article 4, Chapter 1, Part 3, Division 21 of the Food and Agricultural Code and this subchapter.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383, 61384, 61441, 61442 and 61443, Food and Agricultural Code.

#### HISTORY

1. New section filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1812. Cost Components of Dairy Processing — Wholesale Customers.

In determining whether any wholesale customer sold milk, cream, or any other dairy product below cost, the Department shall evaluate the total consideration paid or exchanged for the processed dairy product as reflected on such wholesale customer's invoice, or the expense of replacement, whichever is lower, plus that wholesale customer's Cost of Doing Business. For the purposes of this subchapter, "Cost of Doing Business" shall include all costs and expenses related to the wholesale customer's total operation including, but not limited to the following:

(a) Discounts or rebates on non-dairy items. For any products other than regulated dairy products that are sold at a discount greater than that afforded to other customers, or when such products are given free of charge to a customer as a direct or indirect part of the sale of dairy product(s), the value of the discount or of the free product must be captured and included in the cost calculations.

(b) Gifts, Prizes, Sales Awards. The value of any gift, prize, sales award, vacation, trip, gift certificate, cash, or any other item of property given to any customer as a direct or indirect consequence of a sale of a dairy product must be included in the cost calculations.

(c) Advertising and Promotions. For any advertising campaign, promotion, giveaway, coupon, or other incentives, the costs related to that campaign must be recognized as a cost following the provisions of Article 3 of this subchapter.

Costs that directly or indirectly result from activities within a specific region or activity shall be allocated to the dairy product sold or distributed in that region or throughout that activity.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383, 61384, 61441, 61442 and 61443, Food and Agricultural Code.

#### HISTORY

1. New section filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

## Article 2. Record Keeping Requirements

### § 1831. Record Keeping Requirements.

(a) Every distributor shall maintain for the Secretary's inspection and copying, written price schedules which set forth the prices at which each distributor is selling, offering, or agreeing to sell to distributors or wholesale customers, any dairy product and any product sold in conjunction with any dairy product. Such written price schedules shall be maintained and kept 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.

(b) Every distributor in maintaining written price schedules shall do all of the following:

- (1) Clearly state the effective date of each price schedule.
- (2) Define the geographic area in which each price schedule is effective.

(c) Every distributor shall maintain such other records as are required by section 61441 of the Code.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61441, 61442 and 61443, Food and Agricultural Code.

#### HISTORY

1. Repealer of article 2 (sections 1830–1834) and new article 2 (sections 1831–1833) filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20). For prior history see 79, No. 24; 77, No. 52; 77, No. 41; 73, No. 6; 70, No. 9; and 64, No. 15.
2. Repealer of subsection (d) filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
3. Amendment of subsections (a) and (c) filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
4. Amendment of subsection (b) filed 9–12–84; designated effective 11–1–84 (Register 84, No. 37).
5. Change without regulatory effect amending section filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
6. Amendment of subsection (a) and NOTE filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1832. Terms and Conditions.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61377 and 61441, Food and Agricultural Code.

#### HISTORY

1. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
2. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
3. Renumbering and amendment of former Section 1832 to Section 1940 filed 9–12–84; designated effective 11–1–84 (Register 84, No. 37).

### § 1833. Wholesale Price Variations to Public Agencies.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61377 and 61382–61384, Food and Agricultural Code.

#### HISTORY

1. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
2. Amendment of subsection (c) filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
3. Renumbering of Section 1833 to Section 1942(b) filed 9–12–84; designated effective 11–1–84 (Register 84, No. 37).

## Article 3. Advertising and Sales Promotion

### § 1850. Determining and Allocating Costs for Promotions.

Handlers, manufacturers, distributors, including any producer-distributor or non-profit cooperative association acting as a handler, manufacturer, or distributor, and wholesale customers must capture costs related to or resulting from all incentives, advertisements, marketing, sweepstakes, coupons, or any other activity intended to promote sales of dairy products. Such costs include expenses incurred and any and all value derived, gained, or realized.

(a) Advertising, Incentives and Sales Promotions. Any person engaging in any activity regulated by this section must define the benefit period of each sales or advertising campaign that is directly a cost of selling the involved dairy product (the "Defined Benefit Period"). For the purposes of calculating the cost of the involved dairy product, all advertising and sales costs must be allocated to each of the affected products over the applicable Defined Benefit Period. Actual or imputed costs for slotting allowances, exclusive agreements or other related agreements and activities shall be determined and allocated over the appropriate Defined Benefit Period.

(b) Sweepstakes, Drawings, Instant Prizes, and Other Such Sales Campaigns. Any person conducting any such activity shall estimate the approximate costs of the awards actually distributed to winners and allocate them over the Defined Benefit Period. The costs of actual redemption shall be determined, and estimated costs shall be adjusted to reflect actual costs incurred over the Defined Benefit Period.

(c) Coupons. Any person issuing a coupon shall estimate the value of the expected redemption of the coupon and allocate that value over a Defined Benefit Period. Estimated costs shall be adjusted to reflect actual coupon redemption during that Defined Benefit Period.

(d) Compliance with Section. If, upon determination of the actual costs of any activity regulated by this Section 1850, a handler, manufacturer, distributor, or wholesale customer experiences an actual redemption rate for that activity which results in an otherwise prohibited sale below cost, but that handler, manufacturer, distributor or wholesale customer can demonstrate that its estimates of the approximate cost of the redemption made according to the preceding provisions of this Section were made in good faith, and according to Generally Accepted Accounting Principles, and projected sales above its cost, that handler, manufacturer, distributor or wholesale customer shall be deemed to have complied with the Code and this Subchapter.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383, 61384, 61441, 61442 and 61443, Food and Agricultural Code.

#### HISTORY

1. Repealer and new section filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32). For prior history, see Register 79, No. 24.

### § 1851. Wholesale Customer Advertising.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61378, Food and Agricultural Code.

#### HISTORY

1. Amendment filed 10–6–77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
4. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1851.1. Permissible Advertising Allowance.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61377, 61378, and 61441, Food and Agricultural Code.

#### HISTORY

1. Repealer and new section filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20). For prior history see 79, No. 24 and 77, No. 41.
2. Amendment filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
3. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
4. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
5. Change without regulatory effect amending section 1851.1 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
6. Editorial correction of printing error inadvertently omitting subsection (e) (Register 91, No. 19).
7. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1852. Demonstration to Consumer.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61307 and 61375–61378, Food and Agricultural Code.

#### HISTORY

1. Repealer and new section filed 7–17–59; effective thirtieth day thereafter (Register 59, No. 11).
2. Repealer filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).

### § 1853. Demonstration to Wholesale Customer.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61307 and 61375–61378, Food and Agricultural Code.

#### HISTORY

1. Repealer and new section filed 7–17–59; effective thirtieth day thereafter (Register 59, No. 11).
2. Repealer filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).

### § 1870. Prohibition Against Gifts and Free Services As Defined.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61375, Food and Agricultural Code.

#### HISTORY

1. Repealer and new section filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20). For prior history, see 79, No. 24; 74, No. 8; 64, No. 15 and 59, No. 11.
2. Amendment of subsection (h) filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).

3. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
4. Repealer filed 9–12–84; designated effective 11–1–84 (Register 84, No. 37).

## Article 4. Gifts and Free Services

### § 1870.1. Redemption Devices for Retail Sales of Dairy Products.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61375, 61383, and 61384, Food and Agricultural Code.

#### HISTORY

1. New section filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20).
2. Amendment filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
3. Change without regulatory effect amending section 1870.1 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
4. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1870.2. Redemption Devices for Replacement Dairy Products.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61375, 61383, 61384 and 61441, Food and Agricultural Code.

#### HISTORY

1. New section filed 7–15–91; operative 8–14–91 (Register 91, No. 43).
2. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1871. Bona Fide Charities.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61375, Food and Agricultural Code.

#### HISTORY

1. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
2. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1872. Frozen Dairy Products.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61371.5, Food and Agricultural Code.

#### HISTORY

1. New Section filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
2. Amendment filed 9–12–84; designated effective 11–1–84 (Register 84, No. 37).
3. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1873. Sampling of Milk or Dairy Products.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61375, Food and Agricultural Code.

#### HISTORY

1. New section filed 7–15–91; operative 8–14–91 (Register 91, No. 43).
2. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1880. Payment for Manufacturing Milk.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61441, Food and Agricultural Code.

#### HISTORY

1. Repealer of article 5, (sections 1883–1886) and new article 5 (section 1880) filed 10–5–82; effective thirtieth day thereafter (Register 82, No. 44). For prior history (sections 1800–1891) see, Registers 79, No. 24; 74, No. 41; 73, No. 6; and 64, No. 15.
2. Change without regulatory effect renumbering former section 1880 to section 2039 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
3. Editorial correction of printing error (Register 91, No. 18).

### § 1910. Sale of Equipment.

NOTE: Authority cited: Sections 407 and 61341, Food and Agriculture Code. Reference: Sections 61307, 61372, 61375, 61386 and 61441, Food and Agriculture Code.

#### HISTORY

1. Repealer of Subarticle 6 (Sections 1910–1919) filed 6–11–79; effective thirtieth day thereafter (Register 79, No. 24).
2. Change without regulatory effect repealing Article 6 heading and renumbering former Article 9 to Article 6 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 18).
3. Editorial correction adding HISTORY 2. (Register 91, No. 18).

**§ 1929. Procedure for Authorization to Install.**

NOTE: Section 4138, Agricultural Code.

**HISTORY**

1. Renumbering of former section 1930 to new section 1929 filed 8-29-96; operative 9-28-96 (Register 96, No. 35).

**§ 1930. Definitions.**

Unless the context otherwise requires, the following definitions shall govern the construction of this Chapter 3.

(a) "Meeting Competition" means meeting a lawful competitive price.

(b) "Geographic Marketing Area" means one of the following two regions of counties: the Northern California geographic marketing area shall be composed of the counties of Monterey, Kings, Kern, Inyo and all counties north to the Oregon border. The Southern California geographic marketing area shall be composed of the counties of San Luis Obispo, Ventura, Los Angeles, and San Bernardino and all counties south to the Mexican Border.

(c) "Multi-Unit Price" is defined as the total price paid for two or more units or packages of any dairy product.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61384, Food and Agricultural Code.

**HISTORY**

1. Repealer of Article 7 (Sections 1930 and 1931) filed 11-24-61; effective thirtieth day thereafter (Register 61, No. 23).
2. Change without regulatory effect repealing Article 7 heading and renumbering former Article 10 to Article 7 filed 8-16-90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 18).
3. Editorial correction adding HISTORY 2 (Register 91, No. 18).
4. Renumbering of former section 1930 to new section 1929 and new section filed 8-29-96; operative 9-28-96 (Register 96, No. 35).
5. Amendment of subsection (c) and NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

**§ 1931. Meeting Competition—Retail Sales by Wholesale Customers.**

Wholesale customers may meet a lawful competitive price of dairy products of similar defined composition or standard only within the same geographic marketing area. It shall be lawful to meet a competitive price subject to the following provisions:

(a) A price offered by the wholesale customer to meet a competitor's lawful price may be offered only while competitor's price is effective and may not be lower than such competitor's price; and

(b) A lawful competitive price may be met whether or not that price results in a below cost sale by the wholesale customer.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383 and 61384, Food and Agricultural Code.

**HISTORY**

1. New section filed 8-29-96; operative 9-28-96 (Register 96, No. 35).
2. Amendment of subsection (a) and NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

**§ 1932. Meeting Competition—"Multi-Unit Price".**

(a) A lawful multi-unit price may be met by a wholesale customer by dividing the number of units sold together to arrive at an individual unit price.

EXAMPLE: A wholesale customer's lawful multi-unit price for two one-gallon milk containers is priced at \$4.20. Another wholesale customer may meet competition by dividing the multi-unit price by two and lawfully sell a one-gallon unit for \$2.10 (\$4.20 divided by 2 = \$2.10). When the number to be divided is an odd number, the result shall be rounded up.

(b) It is unlawful to divide the weight or volume of a dairy product in a single container to arrive at a per-unit price for the purpose of meeting competition.

EXAMPLE: The price of a five-gallon tub of butter may not be divided by five to arrive at a one pound unit price.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383 and 61384, Food and Agricultural Code.

**HISTORY**

1. New section filed 8-29-96; operative 9-28-96 (Register 96, No. 35).

2. Amendment of section heading, section and NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

**Article 5. Terms and Conditions, Price Differences and Meeting Competition****§ 1940. Terms and Conditions.**

(a) Schedules setting forth the price of each product sold by a distributor shall include any terms and conditions which are applicable in determining the ultimate net price available to the customer for each product purchased. As used herein, "terms and conditions" include the factors stated in section 1942.

(b) Within the boundaries of each geographic area defined in a distributor's written price schedule, terms and conditions shall be uniformly applicable and available to all customers receiving products by the same methods of delivery, and under the same conditions of sale, as such methods of delivery and conditions of sale are defined in section 1942.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383, 61384 and 61441, Food and Agricultural Code.

**HISTORY**

1. Renumbering and amendment of former section 1832 to section 1940 filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37). For history of former section 1940, see Register 65, No. 2 and 61, No. 8.
2. Change without regulatory effect of renumbering former article 8 to article 5 filed 8-16-90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
3. Editorial correction of printing error (Register 91, No. 18).
4. Amendment of NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

**§ 1941. Price Discrimination.**

(a) Discrimination in price by a distributor between customers that purchase milk, cream or any dairy product of like grade and quality, under like conditions of service, is prohibited if the effect of such 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 such price discrimination.

(b) The establishment of price schedules by a distributor which offer to any customer special prices or services which are not offered to all customers purchasing any milk, cream, or dairy product of like quantity, under like terms and conditions, within the same area is prohibited.

(c) Discrimination in price by a wholesale customer between consumers that purchase milk, cream or any dairy product of like grade and quality, under like conditions of service, is prohibited if the effect of such discrimination may be substantially to lessen, injure, destroy or prevent competition with the wholesale customer that grants such price discrimination, or substantially to produce competitive detriment to consumers who are not afforded the benefit of such price discrimination.

(d) A distributor who is not a processor, purchasing processed milk from a distributor that is a processor, whether such milk is packaged under the label of the selling distributor or the label of the purchasing distributor, shall not, except for the purpose of meeting a lawful competitive price or lawful competitive condition, offer or establish lower wholesale prices for such milk than those offered or established by the selling distributor, if the effect of the price differences may be substantially to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of them.

(e) Proof of any sale of, or offer or agreement to sell, milk, cream, or any dairy product, by a distributor at less than the prices offered to other like customers subject to the provisions of Chapter 1, Part 3, Division 21 of the Code and these regulations, or offer by such distributor to sell any other product in combination with any dairy product at less than cost, establishes a rebuttable presumption of a violation of said Chapter 1 and these regulations. This presumption is a presumption affecting the burden of producing evidence. Offers or agreements to sell, as used in this section, include offers, or agreements to sell which are conditional, or for which price schedules will be established at a future date.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383 and 61384, Food and Agricultural Code.

#### HISTORY

1. New section filed 1-29-65; effective thirtieth day thereafter (Register 65, No. 2).
2. Amendment filed 10-77; effective thirtieth day thereafter (Register 77, No. 41).
3. New subsections (e) and (f) filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
4. Repealer and new subsections (e) and (f) filed 5-15-80; effective thirtieth day thereafter (Register 80, No. 20).
5. Amendment of subsection (b) filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).
6. Amendment of subsections (a)-(c) and (f) filed 9-1-83; effective thirtieth day thereafter (Register 83, No. 36).
7. Amendment filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37).
8. Amendment of NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

### § 1942. Permissible Price Variations in Distributor's Price Schedules.

(a) A distributor may vary prices to customers for milk, cream or any dairy product if such price variations, as contained in the distributor's established written price schedules, are based upon the following factors:

(1) *Methods of Delivery* – Price schedules may vary to reflect the following applicable methods of delivery only: at processor dock or nonprocessing depot; at customer's dock; delivery by limited service; and delivery by full service.

(2) *Conditions of Sale* – Price schedules may vary to reflect applicable conditions of sale.

(3) *Classes of Trade* – Price schedules may vary among the following classes of trade: retail stores, food service establishments, public agencies and private schools.

(A) "Food service establishments" as used in this section is defined as follows: establishments where dairy products are sold for consumption on the premises by the consumer.

(b) Wholesale Price Variations to Public Agencies and Private Schools:

(1) Wholesale prices for milk, cream or dairy products offered or established by a distributor for public agencies only, for a fixed term contract not to exceed one year, may vary from the distributor's regular wholesale price schedule.

(2) Such wholesale prices offered or established for public agencies shall be subject to the discriminatory pricing provisions as set forth in Section 61382, the below cost standards contained in sections 61383 and 61384, and to all other provisions of Chapter 1, Part 3, Division 21 of the Code.

(3) A distributor may, at a particular public agency location, meet a current lawful competitive price schedule, including conditions for the sale of milk or any dairy product, without alteration or amendment of the distributor's established wholesale price schedules for such milk or dairy products. When meeting a lawful competitive public agency fixed term price schedule, or a lawful bid or offer for a public agency fixed term contract, such schedule, bid or offer shall be met in its entirety, including all prices, terms and conditions.

(4) If a distributor offers or establishes wholesale prices for public agencies, the distributor may elect to offer such prices to private schools (as "private schools" is defined in subsection (5) of this section), subject to the same quantity and service conditions as are applicable to the distributor's public agency prices, and if so offered, public agency prices shall be applicable to all private schools serviced by the distributor. Public agency prices offered to private schools under this subsection shall be subject to all provisions of this section.

(5) "Private Schools" as used in this section is defined as follows:

(A) Non-public schools that offer instruction in or maintain grades kindergarten through high school (K-12) and provide non-profit food service or lunch programs; or

(B) Non-public post secondary educational institutions that offer the same academic degrees as public universities and colleges and provide a non-profit food service program.

(c) All price variations, within a distributor's price schedules, shall be based upon identifiable costs and shall otherwise conform to the requirements of Chapter 1, Part 3, Division 21 of the Code. Delivery cost factors shall be determined and applied on the basis of a single delivery at a single delivery location.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382, 61383 and 61384, Food and Agricultural Code.

#### HISTORY

1. New section filed 10-6-77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Repealer and new section filed 5-15-80; effective thirtieth day thereafter (Register 80, No. 20).
4. Amendment of note filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).
5. Amendment of subsection (a) filed 9-1-83; effective thirtieth day thereafter (Register 83, No. 36).
6. Amendment filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37).
7. Amendment of subsections (a) and (b) filed 7-15-91; operative 8-14-91 (Register 91, No. 43).
8. Amendment of subsections (b)(2) and (c) and amendment of NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

### § 1943. Prices Offered to Meet Competition Generally.

This article does not prohibit establishment of price schedules, or particular location price variations as provided for in Sections 1944 and 1945, which meet in good faith lawful competitive prices or lawful competitive conditions in the sale of milk or dairy products. "Meeting competition" is a question of fact to be determined under all the facts and circumstances of a particular instance. As a general rule, a distributor shall be deemed to have met in good faith a lawful competitive price or a lawful competitive condition if facts exist which would lead a reasonable and prudent person in the position of such a distributor to believe in good faith that his granting of a particular price (whether or not such price is less than the cost of such distributor as the term "cost" is defined in the Code and these regulations) would in fact meet, but not be lower than a lawful competitive price.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61384, Food and Agricultural Code.

#### HISTORY

1. Renumbering and amendment of former Section 1943 to Section 1944 and new Section 1943 filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37).
2. Amendment of NOTE filed 8-8-2005; operative 9-7-2005 (Register 2005, No. 32).

### § 1944. Prices Offered to Meet Competition at a Particular Location.

A distributor may, at a particular location, other than that authorized for a public agency by Section 1942(b), meet a current lawful competitive price, including conditions, for the sale of milk or any dairy product, without alteration or amendment of the distributor's regular, established price schedule for such milk or dairy product, if done to retain the milk or dairy products business of an existing customer of the distributor.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61384, Food and Agricultural Code.

#### HISTORY

1. New section filed 10-6-77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment of NOTE filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Repealer and new section filed 5-15-80; effective thirtieth day thereafter (Register 80, No. 20).
4. Amendment of NOTE filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).
5. Amendment filed 9-1-83; effective thirtieth day thereafter (Register 83, No. 36).
6. Renumbering and amendment of former Section 1944 to Section 1945 and renumbering and amendment of former Section 1943 to Section 1944 filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37).

7. Amendment of NOTE filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1945. Records to Be Kept As to Price Variation to Meet Competition at a Particular Location.**

(a) A distributor who in good faith meets, or has met, pursuant to the provisions of section 1944, a lawful competitive price, including conditions relating to milk and dairy products, shall retain in his files for the period during which the distributor meets such lawful competitive price, including conditions, and for a period of three years thereafter, information detailing the circumstances applicable to the distributor's meeting of the lawful competitive price, including conditions. Such record information shall include the lawful competitive price and conditions met, the effective date of such price and conditions, and such other information as may be required by the director to determine that the competitive price, including conditions met, represents current marketing practices.

(b) The meeting of competitive prices pursuant to section 1944 and this section shall be subject to the record keeping requirements of section 61441 and 61442 of the Code.

(c) All meeting of competitive prices by a distributor pursuant to section 1944 shall be subject to review by the Secretary at any time in order that the Secretary may verify that such exceptions are current lawful competitive prices and conditions.

(d) Not less often than once every six (6) months, the distributor shall review his records as to meeting competition under the provisions of section 1944, in order to verify that such records, and the prices and conditions therein, are current lawful competitive prices and conditions. If such review discloses that the competitive prices and conditions no longer exist, the distributor shall bring such prices into conformity with his current lawful price.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61384, 61441 and 61442, Food and Agricultural Code.

**HISTORY**

1. New section filed 10–6–77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment of NOTE filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Repealer and new section filed 5–15–80; effective thirtieth day thereafter (Register 80, No. 20).
4. Amendment of subsections (b) and (d) filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
5. Renumbering and amendment of former section 1944 to section 1945 filed 9–12–84; designated effective 11–1–84 (Register 84, No. 37).
6. Change without regulatory effect amending subsection (a) filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
7. Amendment of subsection (c) and NOTE filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1946. Burden of Proof.**

Upon proof being made, in any enforcement proceedings brought by the Secretary under the provisions of Chapter 1, Part 3, Division 21 of the Code, that there has been price discrimination by a distributor, the burden of establishing cost justification for any variations by the distributor in prices between customers, or of otherwise rebutting the prima facie case of price discrimination made by the Secretary, shall be upon such distributor.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61382 and 61384, Food and Agricultural Code.

**HISTORY**

1. New section filed 10–6–77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment of NOTE filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
4. Amendment filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**Article 6. Generally Acceptable Cost Accounting Procedures—Sales by Distributors**

**§ 1950. Records to Be Kept.**

Each distributor, manufacturer, handler, and wholesale customer shall maintain a record of prices at which such distributor, manufacturer, handler, and wholesale customer is selling, offering or agreeing to sell fluid milk and dairy products, and current cost records to reflect costs under the accounting procedures required by Section 61384 of the Code and this subchapter.

For purposes of uniform and impartial enforcement of the "sales below cost" standards contained in Article 4, Chapter 1, Part 3, commencing with Section 61381 of the Code, any distributor, manufacturer, and wholesale customer, upon written demand by the Secretary and within seven calendar days after receipt of such demand, shall submit in writing to the Secretary cost data developed in compliance with the requirements of Article 4, Chapter 1, Part 3, commencing with Section 61381 of the Code and this subchapter in respect to a particular price on one or more dairy products. In cases where a distributor, manufacturer, handler, and wholesale customer have a history of repeated violations, or of not providing cost data timely, the Secretary may require cost data to be submitted within 48 hours of a written demand.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61384, 61441 and 61442, Food and Agricultural Code.

**HISTORY:**

1. New article 9 (sections 1950 and 1951) filed 4–9–62; effective thirtieth day thereafter (Register 62, No. 7).
2. Amendment filed 7–9–64; effective thirtieth day thereafter (Register 64, No. 15).
3. Amendment filed 10–6–77; effective thirtieth day thereafter (Register 77, No. 41).
4. Amendment of article heading filed 8–17–78; designated effective 9–22–78 (Register 78, No. 33).
5. Editorial correction of subsection (b)(6) (Register 80, No. 24).
6. Amendment of note filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
7. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
8. Change without regulatory effect renumbering article 9 to article 6 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
9. Editorial correction of printing error (Register 91, No. 18).
10. Amendment of section heading and section filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

**§ 1950.1. Acceptable Cost Accounting Procedures—Retail Stores.**

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61341, 61343, 61371, 61372, 61383, 61384 and 61443, Food and Agricultural Code.

**HISTORY**

1. New section filed 5–25–78 as an emergency; effective upon filing (Register 78, No. 21).
2. Repealed by operation of Section 11422.1(c), Government Code (Register 79, No. 18).

**§ 1951. Unacceptable Cost Accounting Procedures.**

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61384, Food and Agricultural Code.

**HISTORY**

1. Amendment filed 10–6–77; effective thirtieth day thereafter (Register 77, No. 41).
2. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
3. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

## Article 7. Generally Acceptable Cost Accounting Procedures—Retail Sales by Wholesale Customers

### § 1960. Acceptable Cost Accounting Procedures—Retail Sales by Wholesale Customers.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61384, Food and Agricultural Code.

#### HISTORY

1. New article 10 (sections 1960–1962) filed 8–17–78; designated effective 9–22–78 (Register 78, No. 33). For history of former article 10, see Register 70, No. 9.
2. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
4. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
5. Change without regulatory effect renumbering article 10 to article 7 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
6. Editorial correction of printing error (Register 91, No. 18).
7. Repealer of article 7 (sections 1960–1962) and repealer of section filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1961. Availability of Cost Data—Wholesale Customers Selling at Retail.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61442, Food and Agricultural Code.

#### HISTORY

1. Editorial correction of NOTE filed 5–15–80 (Register 80, No. 20).
2. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
3. Repealer filed 8–8–2005; operative 9–7–2005 (Register 2005, No. 32).

### § 1962. Meeting Competition—Retail Stores.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Sections 61371 and 61372, Food and Agricultural Code.

#### HISTORY

1. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
2. Repealer filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).

## Article 11. Sales of Packaged Market Milk Below Minimum Prices Established by the Director, When and If Such Prices Are Established

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61582, Food and Agricultural Code.

#### HISTORY

1. New Article 11 (Sections 1970 through 1973) filed 5–3–67; effective thirtieth day thereafter (Register 67, No. 18).
2. Repealer of Article 11 (Sections 1970–1973) and new Article 11 (Sections 1970–1973) filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Editorial correction (Register 80, No. 24).
4. Amendment of NOTE filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
5. Repealer of Article 11 (Sections 1970–1973) filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).

## Subchapter 2. Sale of Manufacturing Milk, Market Milk and Dairy Products

### Article 1. General Provisions

#### § 2000. Authority to Promulgate.

NOTE: Authority cited for Group 2: Sections 16, 4143 and 4240, Agricultural Code.

#### HISTORY

1. Repealer and new Article 1 (Sections 2000 through 2005) filed 11–24–61; effective thirtieth day thereafter (Register 61, No. 23).
2. Repealer filed 7–9–64; effective thirtieth day thereafter (Register 64, No. 15).

#### § 2001. Definition.

“Code,” as used in these regulations, means the Food and Agricultural Code.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Section 61891, Food and Agricultural Code.

#### HISTORY

1. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).

#### § 2002. “Section” and “Subdivision” Defined.

#### HISTORY

1. Repealer filed 7–9–64; effective thirtieth day thereafter (Register 64, No. 15).

#### § 2003. Invalidity of Provision or Application.

#### HISTORY

1. Repealer filed 7–9–64; effective thirtieth day thereafter (Register 64, No. 15).

#### § 2004. Violations by Agent, Employee, Representative, Subsidiaries, and Affiliates.

Violations by Agent, Employee, Representative, Subsidiaries, and Affiliates. No handler, producer, wholesale customer, manufacturer, distributor, or consumer shall violate any of the provisions of this group, directly or indirectly, or through an employee, representative or other agent, or through a subsidiary or affiliated company or corporation. “Subsidiary or affiliated company or corporation,” as used herein includes, but is not limited to, companies or corporations controlled by the handler, directly or indirectly, through ownership of issued capital stock or otherwise.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61371 and 62091, Food and Agricultural Code.

#### HISTORY

1. Amendment filed 7–9–64; effective thirtieth day thereafter (Register 64, No. 15).
2. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment of NOTE filed 10–30–82; effective thirtieth day thereafter (Register 82, No. 44).
4. Amendment filed 9–1–83; effective thirtieth day thereafter (Register 83, No. 36).
5. Amendment to section and Reference NOTE filed 11–26–90, operative 12–26–90 (Register 91, No. 2).
6. Amendment filed 11–26–90; operative 12–26–90 (Register 91, No. 2).

#### § 2005. Application to Corporations and Subsidiaries.

NOTE: Authority cited: Sections 16 and 4240, Agricultural Code. Reference: Chap. 17, Div. 6, Agricultural Code.

#### HISTORY

1. Repealer filed 9–8–67; effective thirtieth day thereafter (Register 67, No. 36).

## Article 2. Milk Handler’s License

#### § 2030. Prohibited Practices.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 62143–62145, Food and Agricultural Code.

#### HISTORY

1. New article 3 (section 2030) filed 4–9–62; effective thirtieth day thereafter (Register 62, No. 7).

2. Repealer of article 2 (sections 2020–2023) filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24). For prior history, see Registers 61, No. 8, 61, No. 23, 62, No. 7 and 65, No. 2.
3. Renumbering of article 3 (sections 2030 and 2031) to article 2 (sections 2030 and 2031) filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
4. Editorial correction of NOTE (Register 80, No. 24).
5. Repealer filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44).
6. Editorial correction of Article title (Register 91, No. 19).

### § 2031. Cancellation of Inactive Licenses.

Cancellation of Inactive Licenses. Every licensed handler who (a) within 60 days after issuance of the license fails to actively engage in the business activities permitted by the license; or (b) ceases for 60 consecutive days to engage in the business activities permitted by the license, shall surrender the license to the director for cancellation. Such cancellation shall be without prejudice to an application for another license at such time as the applicant is ready to actively engage in the business activities permitted by the license. A license reissued to the same person for the same premises during the year in which it was cancelled shall not require an additional license fee for the remainder of said year.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61490–61494 and 62141–62145, Food and Agricultural Code.

#### HISTORY

1. New section filed 4–26–66; effective thirtieth day thereafter (Register 66, No. 11).
2. Amendment filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
3. Change without regulatory effect of article 2 heading filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations, (Register 90, No. 44).
4. Amendment of Reference NOTE filed 11–26–90; operative 12–26–90 (Register 91, No. 2).
5. Editorial correction of HISTORY 4. (Register 91, No. 19).

### § 2039. Payment for Manufacturing Milk.

Manufacturing milk handlers and/or market milk handlers purchasing manufacturing milk from producers of manufacturing milk shall pay for such milk in accordance with the date and method of payment provided in section 61411 of the Code and the conforming contract between the producer and handler. If said contract requires an earlier or larger payment than required by section 61411, then payment shall be made in accordance with such contract. Each payment shall be made by cash, or valid check which is immediately negotiable. Payments shall not be made by promissory note, post-dated check, or other evidence of indebtedness.

NOTE: Authority cited: Sections 407 and 61341, Food and Agricultural Code. Reference: Section 61411, Food and Agricultural Code.

#### HISTORY

1. Repealer of article 5 (sections 1883–1886) and new article 5 (section 1880) filed 10–25–82; effective thirtieth day thereafter (Register 82, No. 44). For prior history, see Registers 79, No. 24; 74, No. 41; 73, No. 6; and 64, No. 15).

2. Change without regulatory effect renumbering former section 1880 to section 2039 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).

## Article 3. Payment by Handlers to Producers for Manufacturing Milk and Market Milk

### § 2040. Payment for Market Milk.

Handlers purchasing market milk from producers shall pay for such milk in accordance with provisions of section 62191 of the Code and the conforming contract between the producer and handler; provided, however, if said contract requires an earlier or higher percentage of payment, or both, than that required by section 62191, then payment shall be made in accordance with the contract. Each payment shall be made on or before the date due, shall be in the full amount required and shall be made by cash or valid bank check which is immediately negotiable. Payment shall not be made by promissory note, post-dated check or other evidence of indebtedness.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Section 62191, Food and Agricultural Code.

#### HISTORY

1. New article 4 (section 2040) filed 4–9–62; effective thirtieth day thereafter (Register 62, No. 7).
2. Amendment filed 9–10–63; effective thirtieth day thereafter (Register 63, No. 15).
3. Amendment filed 6–12–79, effective thirtieth day thereafter (Register 79, No. 24).
4. Renumbering of article 4 (sections 2040 and 2041) to article 3 (sections 2040 and 2041) filed 6–12–79; effective thirtieth day thereafter (Register 79, No. 24).
5. Change without regulatory effect amending section 2040 filed 8–16–90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).

### § 2041. Bond Indemnification Agreement Prohibited.

Bond Indemnification Agreement Prohibited. No bond filed with the director pursuant to sections 61404–61407.3 or 62181–62190, inclusive, of the Code shall contain or at any time be subject to any indemnification agreement, waiver or cosignature by any producer from whom the handler purchases manufacturing milk or market milk during the period the bond is in force.

The undertaking of such an obligation by such a producer and the acceptance of the benefits thereof by such a handler are declared to be unlawful trade practices proscribed by sections 61400, 61415, 62078, 62095, and 62095.1 of the Code.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61400, 61415, 62078, 62095, and 62095.1, Food and Agricultural Code.

[The next page is 221.]

## HISTORY

1. New section filed 4-26-66; effective thirtieth day thereafter (Register 66, No. 11).
2. Amendment filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Editorial correction (Register 80, No. 24).
4. Amendment filed 10-25-82; effective thirtieth day thereafter (Register 82, No. 44).
5. Amendment to section and Reference NOTE filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
6. Amendment filed 11-26-90; operative 12-26-90 (Register 91, No. 2).

**§ 2042. Allocation of Handler Payments to Producers for Bulk Milk for Surety Bond and Milk Producers Security Trust Fund Coverage.**

(a) For the purpose of determining whether or not a handler has properly paid producers for milk purchased, all payments shall be applied first to bulk milk sales for all amounts due and payable on the date the payment is made, except in the following situations:

(1) If the handler and producer have historically engaged in a pattern of allocating payments in a manner different from that described above, and that pattern is documented in writing, then payments may be allocated in accordance with that pattern, as long as the execution of the documentation by both parties is simultaneous with the beginning of the pattern of allocating payments; or,

(2) If, simultaneously with payment, the handler delivers to the producer a written notice or remittance device which notifies the producer that the payment is for a specific invoice, delivery, commodity, expense, allowance or other charge.

(b) Payments by a handler to a producer for the purposes of any action by the Secretary associated with a surety bond or the Fund shall be credited first to interest and then to the remaining unpaid principal. Upon the payment of all outstanding interest, principal payments shall be applied first to the amount due for the oldest unpaid delivery, and then successively, in sequence, to the amounts due for the next oldest unpaid delivery.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 62185, 62190, 62501 and 62623, Food and Agricultural Code.

## HISTORY

1. New section filed 10-6-2004; operative 11-5-2004 (Register 2004, No. 41).

**Article 4. Contracts for Purchase of Manufacturing Milk or Market Milk**

**§ 2050. Prohibition Against Procurement Options in Contracts.**

Prohibition Against Procurement Options in Contracts. No contract entered into between a handler and a producer in accordance with the provisions of section 61411 or 62191 of the Code shall provide for an option of the handler to purchase any milk of the producer in excess of the amount which the handler has obligated itself to purchase under the contract, nor shall said contract contain any right of first refusal by the handler to purchase such excess milk no matter whether the right of first refusal is on like terms and conditions as competing purchasers or not. No handler shall require as a condition, whether oral or written, of execution or renewal of a contract, that the producer grant to the handler an option to purchase or any right of first refusal with regard to milk of the producer in excess of the amount the handler has obligated itself to purchase under the contract.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61411 and 62191, Food and Agricultural Code.

## HISTORY

1. New Article 5 (Section 2050) filed 3-25-66; effective thirtieth day thereafter (Register 65, No. 8).
2. Amendment filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment to section and Reference NOTE filed 11-26-90; operative 12-26-90 (Register 91, No. 2).

4. Amendment filed 11-26-90; operative 12-26-90 (Register 91, No. 2).

**§ 2051. Charges to a Producer for Transportation of Manufacturing Milk or Market Milk Hauled by the Handler.**

Charges to a Producer for Transportation of Manufacturing Milk or Market Milk Hauled by the Handler. In compliance with section 61411(d)(2) or 62191(b)(5) of the Code, any establishment of charges or any amendment thereto for transportation of manufacturing milk or market milk hauled by a handler shall be filed by the handler with the director within five (5) days of the effective date of any such charges or amendment.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61411(d)(2) and 62191(b)(5), Food and Agricultural Code.

## HISTORY

1. New section filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment filed 11-26-90; operative 12-26-90 (Register 91, No. 2).

**Article 6. Exclusion from Subdistributor Prices of Certain Fluid Milk and Fluid Cream**

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61581-61584, Food and Agricultural Code.

## HISTORY

1. New Article 6 (Sections 2060, 2061 and 2062) filed 2-22-74; effective thirtieth day thereafter (Register 74, No. 8).
2. Repealer of Article 6 (Sections 2060-2062) filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).

**Subchapter 3. Petitions and Hearings**

**Article 1. Procedures for Filing of Petitions and Conduct of Hearings**

**§ 2080. Purpose.**

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61808.5, 61903, 61991-62032, 62705 and 62717, Food and Agricultural Code.

## HISTORY

1. New Group 3 (Sections 2080-2080.3) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9).
2. Repealer filed 12-15-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 51).

**§ 2080.1. Petition for Adoption, Amendment or Repeal of Regulations.**

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61808.5, 61903, 61991-62032, 62705 and 62717, Food and Agricultural Code.

## HISTORY

1. NOTE filed 6-12-79 (Register 79, No. 24).
2. Editorial correction of subsection (b) filed 5-15-80 (Register 80, No. 20).
3. Repealer filed 12-15-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 51).

**§ 2080.2. Petition for Adoption, Amendment or Termination of Stabilization and Marketing Plans or Milk Pooling Plan.**

(a) Procedures for the adoption, amendment or termination of stabilization and marketing plans are stated in Sections 61991-62032 of the Food and Agricultural Code. Procedures for the adoption, amendment or termination of the milk pooling plan are stated in Sections 62705 and 62717 of the Food and Agricultural Code. In addition to the secretary's authority to adopt, amend or terminate stabilization and marketing plans or the milk pooling plan, any interested person may petition the secretary requesting the adoption, amendment or termination of a stabilization or marketing plan or the milk pooling plan. The petition shall be submitted using the format available from the Department. The format shall be laid out so that the petition shall clearly and concisely give:

(1) a brief written description of the requested changes including a copy of the suggested language to amend the plan;

(2) specifications as to why the petitioner recommends the proposed changes including relevant analysis, comments and data supporting the request; and

(3) The authority of the secretary to take the action requested.

(b) Upon receipt of such petition at the designated Departmental office, the secretary shall notify the petitioner in writing of its receipt. The secretary shall also notify all interested parties of record in writing of the receipt of the petition. Within 15 days of the petition's receipt at the designated office, the secretary shall either schedule the matter for public hearing or deny the petition in writing indicating why the secretary has reached such a decision on the merits of the petition.

(c) The secretary may grant or deny such a petition in whole or in part, and may grant such other relief or take such other action as the secretary may determine to be warranted and shall notify the petitioner in writing of such action.

(d) Any interested person may request reconsideration of any part or all of a decision of the secretary on any petition submitted. Any such request shall be submitted in accordance with subsection (a) of this Section and shall include the reason(s) why the secretary should reconsider the previous decision no later than 60 days after the date of the decision involved. The secretary's reconsideration of any matter relating to a petition shall be subject to the provisions of subsection (b) of this Section.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61903, 61991-61998, 62031, 62032, 62705 and 62717, Food and Agricultural Code.

**HISTORY**

1. NOTE filed 6-12-79 (Register 79, No. 24).
2. Amendment of NOTE filed 9-1-83; effective thirtieth day thereafter (Register 83, No. 36).
3. Amendment of NOTE filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37).
4. Amendment of subsection (a), repealer and new subsections (a)(1) and (a)(2), amendment of subsection (a)(3), repealer and new subsection (b), and amendment of subsections (c) and (d) filed 7-2-96; operative 8-1-96 (Register 96, No. 27).

**§ 2080.3. Mandatory Hearing to Amend or Terminate a Stabilization and Marketing Plan(s) or to Terminate the Milk Pooling Plan.**

(a) Procedures for a mandated hearing to amend or terminate a stabilization and marketing plan are stated in Section 62032 of the Food and Agricultural Code. Procedures for a mandated hearing to terminate the milk pooling plan are stated in Section 62717 of the Food and Agricultural Code. In addition to the procedures laid out in Section 2080.2 to adopt, amend or terminate stabilization and marketing plans or the milk pooling plan, interested procedures may petition the secretary requesting a mandated hearing to amend or terminate a stabilization and marketing plan or to terminate the milk pooling plan. The petition shall be submitted using the format available from the Department, as specified herein. The format shall be laid out so the petition shall clearly and concisely give:

(1) a brief description of the requested changes including a copy of the suggested language to amend the plan;

(2) specifications as to why the petitioner recommends the proposed changes including relevant analysis, comments and data supporting the request; and

(3) the authority of the secretary to take the action requested.

(b) Upon receipt of such petition at the designated Departmental office, the secretary shall notify the petitioner in writing of its receipt. The secretary shall also notify all interested parties of record in writing of the receipt of the petition. Within 60 days of the receipt of the petition, the secretary shall notice the mandated hearing provided that:

(1) the petition meets all the requirements of subsection (a) of this Section;

and

(2) the petition clearly shows the number of market milk producers who have signed the petition and/or are being represented by a petition-

ing cooperative, including their names and producer numbers issued by the Milk Pooling Branch (or their address if they have no such number), as well as the volume of milk produced individually by such producers for the latest available month; the number of producers and volume of milk shall be tabulated by the marketing areas the producers' milk is shipped into;

and

(3) both the number of producers and volume of milk equals or exceeds 55 percent (25 percent for a pooling hearing) of the number of producers shipping into and volume of milk being shipped into each of the marketing areas affected by the petition;

and

(4) in addition, for any nonprofit agricultural cooperative marketing association petitioning, the petition shall be signed by the board of directors or, with proof of authority, by a person so delegated by that board and the petition shall attach proof that the board has been granted specific or general authority by its members to petition the secretary.

(c) If the petition does not meet all the requirements of subsection (b) of this Section, then it shall be subject to the provisions of Section 2080.2, except that the secretary shall have 60 days rather than 15 days from the petition's receipt at the designated office to either schedule the matter for public hearing or deny that petition in writing indicating why the secretary has reached such a decision on the merits of the petition.

NOTE: Authority cited: Sections 407, 61891, 62032 and 62717, Food and Agricultural Code. Reference: Sections 61903, 61991-61998, 62031 and 62705, Food and Agricultural Code.

**HISTORY**

1. Amendment of subsection (f) filed 6-12-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Repealer of reproduction of Food and Agriculture Code section 61903 filed 12-15-82 by OAL pursuant to Government Code section 11349.7(j) (Register 82, No. 51).
3. Amendment of NOTE filed 9-1-83; effective thirtieth day thereafter (Register 83, No. 36).
4. Amendment of subsection (i) filed 9-12-84; designated effective 11-1-84 (Register 84, No. 37).
5. Change without regulatory effect amending subsections (g) and (i) filed 8-16-90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 44).
6. Repealer and new section filed 7-2-96; operative 8-1-96 (Register 96, No. 27).

**§ 2080.4. Conduct of Hearings for Adoption, Amendment or Termination of Stabilization and Marketing Plans or Milk Pooling Plan.**

(a) Hearing Officer and Panel. The secretary or secretary's designee may conduct the hearing, or may select a panel to receive evidence and question witnesses. A hearing officer will preside at the hearing. No member of the panel will be a witness.

(b) Department Exhibits. Department exhibits and Departmental proposals, if any, will be presented by a person who is not a member of the panel. Exhibits which the Department anticipates introducing at the hearing will be available for public inspection at the Department's Sacramento office not less than seven calendar days prior to the hearing. All exhibits will also be available for review during the hearing.

(c) Hearing Roster. Any person desiring to testify shall sign, at the hearing, a roster prepared for such purpose. At the hearing, the hearing officer will announce the manner in which the roster will be used to determine the order of witnesses.

(d) Testimony by Petitioners. If the hearing results from a petition, the petitioners will normally testify immediately after Department officials have introduced explanatory and statistical material, if any. Petitioners will then explain the proposal and submit supporting documents. In such cases, the petitioners, as a group, normally will be allowed up to one hour for testimony. If the hearing results from more than one petition, the multiple groups of petitioners normally will collectively be allowed up to 90 minutes for testimony. The group can (1) divide up the 90 minutes as they wish, (2) have the 90 minutes allocated to each group on a prorata basis, or (3) each have 20 minutes for testimony. In any case, if there does not

appear to be large number of witnesses, the hearing officer may grant each group of petitioners up to an additional 20 minutes of time.

(e) Testimony by Persons Submitting Alternative Proposals. Any person who has submitted an alternative proposal in response to a petition for a public hearing shall be allowed up to 30 minutes for testimony. However, if there does not appear to be a large number of witnesses, the hearing officer may grant up to an additional 20 minutes of time for such testimony.

(f) Other Testimony. Oral testimony shall not exceed the time limit specified by the hearing officer. However, a witness may supplement oral testimony by submitting a written statement at the time the testimony is given. Normally, each witness, or group of witnesses appearing together, will be allowed 20 minutes for direct testimony. However, if there does not appear to be a large number of witnesses, the hearing officer may grant each witness up to an additional 20 minutes of time. After all persons wishing to testify have had an opportunity to do so, not more than an additional 20 minutes of time will be provided to each witness or petitioner who desires to present further testimony.

(g) Questioning of Witnesses. At the conclusion of their testimony, witnesses will be subject to questioning by members of the hearing panel. With respect to Department witnesses, the hearing officer shall permit additional questioning by members of the audience. Any member of the audience may submit questions to the hearing officer for possible use by the hearing panel. Questions of witnesses shall be related to their testimony and pertinent to the call of the hearing.

(h) Written Statements. Any interested person may file a written statement concerning the matter at the hearing. Written statements may be of any length, but limited to relevant matters. They must be signed. Preferably, written statements should be typewritten or printed. Written statements may be delivered personally or by mail any time after the notice of hearing, and shall be received by the Department prior to the close of the hearing. Such statements should be addressed to the hearing officer at the designated Departmental office. Written statements will be available for review during the hearing.

(i) Posthearing Briefs. With respect to posthearing briefs, the provision of Section 61903 of the Code shall be applicable.

(j) Hearing Transcripts. The hearing shall be recorded by a reporter or recorder. Copies of the transcript may be obtained directly from the hearing reporter, or from the Department at the current rate for copies of public records. The Department will maintain and make available for public inspection a hearing transcript at its Sacramento office and, upon reasonable request, at the regional office of the Department nearest the location at which the public hearing was held.

NOTE: Authority cited: Sections 407 and 61891, Food and Agricultural Code. Reference: Sections 61903, 61991–61998, 62031, 62032, 62705 and 62717, Food and Agricultural Code.

#### HISTORY

1. New section filed 7–2–96; operative 8–1–96 (Register 96, No. 27).

## Subchapter 4. Milk Producers Security Trust Fund

### Article 1. Eligibility for Coverage

#### § 2100. Definition of Beneficial Ownership Interest.

(a) For purposes of Milk Producer Security Trust Fund (hereinafter "Fund") coverage criteria for milk shipped by a producer to a handler, as set forth in Food and Agricultural Code Section 62580, the term "beneficial ownership interest" shall be defined as set forth in (b) of this Section.

(b) Except as otherwise provided by law, any person or any other legal entity constituted business entity, including but not limited to, a corporation, limited partnership, limited liability company, joint venture, association, or any other form of cooperative ownership, shall be deemed to have a beneficial ownership interest through owning an interest in a handler, as

defined in Food and Agricultural Code Section 62521(d), in any form, such that they have any interest in the profits, losses, or equity of that handler, with the authority to influence or create policy which affects the handler's policies and business decisions.

(c) Authority to influence or create policy includes service in any discretionary capacity associated with a handler's policies and business decisions, and shall not be limited to service in an official capacity, such as a member of a Board of Directors, or employment as an officer or any administrative position.

(d) An individual possesses a beneficial ownership interest only if he/she owns a 10 percent or greater interest in the equity and/or profits and/or losses of a handler, with the exception that an individual who owns a 10 percent interest or greater interest as community property with his/her spouse shall be deemed to possess a beneficial ownership interest.

(e) A producer who has extended credit to a handler does not possess a beneficial ownership interest unless the terms of the agreement under which such credit was extended permit the producer to acquire a 10 percent or greater ownership interest in the handler in any form.

(f) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.

(1) A cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and /or profits and/or losses and/or equity capital or stock.

(2) A cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses, equity capital or stock.

(g) Producers and cooperative members specifically possess beneficial ownership interests, beyond the general provisions of (b) and (c) in this Section, in the following circumstances:

(1) A producer who is a member of a cooperative has a beneficial ownership interest in that cooperative.

(2) All members of a cooperative, including producers, additionally have beneficial ownership interest in any other cooperatives in which their cooperative has such an interest.

(3) All members of a cooperative, including producers, have a beneficial ownership interest in any handler in which their cooperative has a beneficial ownership interest.

(h) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.

(1) In addition to the general provisions of (b) and (c) in this Section, a cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and/or profits and/or losses and/or equity capital or stock.

(2) In addition to the general provisions of (b) and (c) in this Section, a cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses and/or equity capital or stock.

(i) For purposes of determining whether a corporation possesses a beneficial ownership interest, there are "S" corporations as defined and regulated by the Internal Revenue Service, and "C" corporations, which are all corporations other than "S" corporations.

(1) In determining whether an "S" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns or controls any of the "S" corporation's stock shall be deemed to be owned by the "S" corporation.

(2) In determining whether a "C" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler

held by any person/entity who owns five percent or more of the "C" corporation's stock, regardless of class, shall be deemed to be owned by the "C" corporation.

(3) In addition to the general provisions of (b) and (c) in this Section, any beneficial ownership interest of a "C" corporation shall be attributed to any stockholder who owns a 5 percent or greater interest in any class of stock of the corporation.

(j) A "Controlled Group of Corporations" (hereinafter "CGC") is defined as any group of corporations, partnerships, joint ventures or any other business entities, where a common parent entity owns or controls the largest number of outstanding shares, or any other ownership interest, in each member of the group.

(1) In addition to the general provisions of (b) and (c) of this Section, if a CGC cumulatively owns, as the parent entity of any group of corporations, partnerships, joint ventures or other business entities, as defined in (j) of this Section, a 10 percent or greater interest in any handler derived from these entities, the CGC shall be deemed to have a beneficial ownership interest in that handler.

(2) In addition to the general provisions of (b) and (c) of this Section, if a producer or cooperative owns a 10 percent or greater interest in a handler, and that handler is also a member of a CGC, the producer or cooperative shall be deemed to have a beneficial ownership interest in all corporations, partnerships, joint ventures or other business entities of the CGC.

(3) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest of an "S" corporation shall be attributed to each stockholder of the corporation.

(4) Any beneficial ownership interest held by any common owner or subsidiary company of a CGC shall be considered as being held by each member of the group.

(k) A partnership, limited partnership, joint venture, estate or trust will be deemed to own any beneficial ownership interest attributed to any of its partners or beneficiaries.

(1) A beneficial ownership interest owned by a partnership shall be attributed to each partner of the partnership.

(2) Joint ventures and/or similar arrangements involving the participation of corporate participants shall be treated as partnerships.

(3) All participants in joint ventures and/or similar arrangements shall be treated as partners.

(4) In situations involving trusts and estates, where the beneficiaries have no rights to direct or influence the entity's decisions, these beneficiaries shall be treated like "C" corporation shareholders.

(l) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest owned by a Limited Liability Company (hereinafter "LLC") shall be attributed to each member of the company. Conversely, any beneficial ownership interest owned by a member of a LLC shall be attributed to the LLC.

NOTE: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 62580 and 62587, Food and Agricultural Code.

#### HISTORY

1. New subchapter 4 (articles 1–2), article 1 (sections 2100–2101) and section filed 10–6–2004; operative 11–5–2004 (Register 2004, No. 41).

### § 2101. Definition of Milk Eligible for Trust Fund Coverage.

"Milk" means bulk milk of any composition of milk solids—not-fat, fat, and fluid carrier that has not been altered in any way that further restricts its usage from the milk in its original or natural form. Milk that has been altered by adding processed products, whether dairy or non-dairy, other than for fortifying bulk milk, bulk low fat milk, bulk reduced-fat milk, or bulk skim milk, changes the bulk product such that it can no longer be considered as farm or producer milk, and is therefore ineligible for Trust Fund coverage.

NOTE: Authority cited: Section 407, Food and Agricultural Code. Reference: Section 62521(e), Food and Agricultural Code.

#### HISTORY

1. New section filed 10–6–2004; operative 11–5–2004 (Register 2004, No. 41).

## Article 2. Payment of Claims

### § 2102. Calculation of Trust Fund Obligation to a Producer.

The amount paid to each eligible producer shall be determined as follows:

(a) The total amount owed by the handler to all producers shall be called the "gross default". From the gross default, any surety bond recovery shall be deducted. The resulting amount is called the "adjusted default".

(b) From the adjusted default, any amounts ineligible for coverage per FAC Section 62580 shall be deducted. The resulting amount is called the "net default".

(c) The \$200,000 deductible required by FAC Section 62624 shall be deducted from the net default. The resulting amount is the total maximum exposure of the Fund.

(d) An eligible producer who claims reimbursement from the Fund will be paid his/her pro rata shares from the total maximum exposure amount.

NOTE: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 62580, 62623 and 62624, Food and Agricultural Code.

#### HISTORY

1. New article 2 (section 2102) and section filed 10–6–2004; operative 11–5–2004 (Register 2004, No. 41).

## Chapter 4. Shipping Point Inspection

### § 2200. Schedule of Fees or Charges.

In accordance with the requirements of Division 5, Chapter 1, of the Agricultural Code of the State of California and the provisions of the cooperative agreement between the California Department of Agriculture and the U.S. Department of Agriculture entered into under the authority of said division and chapter, a reasonable schedule of fees or charges shall be established and from time to time amended, for the services provided for under said division and chapter and said co-operative agreement and shall be based upon the approximate costs of the services rendered.

Such costs shall be determined in accordance with generally accepted accounting procedures applicable in the circumstances, and will include the following:

(a) Costs. Costs shall include, but not be limited to, administrative salaries, inspectors' wages, clerical wages, vacation, sick leave, and other compensated time off, health benefits, automobile, travel, rent, retirement, utilities, communications, supplies, depreciation on equipment, departmental administrative pro rata, fees to the U.S. Department of Agriculture required under the co-operative agreement, and all other costs pertinent to the operation of the Bureau of Shipping Point Inspection.

(b) Reserve. A reasonable reserve, in addition to costs, to provide for a proper working capital and unforeseen contingencies. Unexpended funds collected during any marketing season may be carried forward for use during subsequent seasons.

NOTE: Authority cited: Sections 16 and 751, Agricultural Code.

#### HISTORY

1. New Subchapter 4 (Sections 2200–2202) filed 9–11–62; effective thirtieth day thereafter (Register 62, No. 19).

### § 2201. Necessary Data for Establishing Fees.

In establishing the fee schedule for any commodity, or group of commodities, pursuant to Section 2200, the director shall take into consideration all data and information available from producers and handlers and official agencies relating to production, marketing conditions, weather conditions, volume of inspections needed and location of inspection points, which have a bearing upon the cost of such service.