



CDFA

California Department of Food and Agriculture

**California Department of Food and  
Agriculture**



CDFA

California Department of Food and Agriculture

**POLICIES**



CDFA

California Department of Food and Agriculture

*for*

**Marketing Programs**

**4<sup>th</sup> Edition**



CDFA

California Department of Food and Agriculture

**A.G. Kawamura**  
**Secretary of Food and Agriculture**



CDFA

California Department of Food and Agriculture

**May 2006**



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# **POLICIES**

*for*

# **MARKETING PROGRAMS**

4<sup>th</sup> Edition

May 2006



# Policies *for* Marketing Programs

## TABLE OF CONTENTS

### **Chapter 100: Marketing Program Foundation ..... i**

#### **I. CDFFA Policies *for* ... Marketing Orders, Councils, and Agreements**

M200:	Administrative Direction and Oversight .....	M-1
M300:	Public Hearings and Voting.....	M-6
M400:	Communication .....	M-11
M500:	Marketing Branch Charges.....	M-14
M600:	Disputed Charges.....	M-17
M700:	Finance .....	M-21
M800:	Lobbying.....	M-28
M900:	Program Effectiveness Evaluation .....	M-30
M1000:	Contracts.....	M-32
M1100:	Enforcement Support.....	M-36
M1200:	New and Terminating Marketing Orders and Agreements .....	M-40
M1300:	New and Terminating Councils.....	M-44
	<u>Appendices for MOCAs: M1 through M17</u> .....	A-1 thru A-27
	<u>INDEX for MOCAs</u> .....	A-28

#### **II. CDFFA Policies *for* ... Commissions**

C200:	Administrative Direction and Oversight .....	C-1
C300:	Public Hearings and Voting.....	C-6
C400:	Communication .....	C-10
C500:	Marketing Branch Charges.....	C-13
C600:	Disputed Charges.....	C-16
C700:	Finance .....	C-20
C800:	Lobbying.....	C-27
C900:	Program Effectiveness Evaluation .....	C-29
C1000:	New and Terminating Commissions .....	C-31
	<u>Appendices for Commissions: C1 through C10</u> .....	A-1 thru A-17
	<u>INDEX for Commissions</u> .....	A-18

**CHAPTER 100**

**MARKETING PROGRAM FOUNDATION**

**100 OVERVIEW**

Marketing programs are instrumentalities of the State of California that enable agricultural producers and handlers to work together to maintain and expand both domestic and international markets for California agricultural commodities. The marketing program concept as it exists today originated with the California Marketing Act of 1937, which authorized the California Department of Food and Agriculture (CDFA) to provide administrative direction and oversight for marketing programs' governance and operations.

**MARKETING PROGRAMS**

In California today, more than 50 state marketing programs have been activated to represent agricultural commodities. The 2004 farmgate value of these commodities is approximately \$19.9 billion, or 63 percent of California's gross agricultural product.

Commodity marketing has diversified under the many laws that have passed since 1937 to allow for a range of organizational structures. In alphabetical order, these include:

- Commissions
- Councils
- Marketing agreements
- Marketing orders

All marketing programs share the purpose of serving the industry and the public by helping producers and handlers manage issues that affect them. The government purposes in

**AGRICULTURAL PRODUCTS**

"Agricultural products" is a broadly generic term that includes fruits, vegetables, grains, nuts, nursery products, animals, milk, honey, seafood, fiber, feed, flowers, and forest products.

authorizing marketing programs are to stimulate the agricultural economy and ensure a continuous and abundant supply of food and agricultural products. To the extent that marketing programs fulfill these purposes, the well being of California agriculture is inseparable from the well being of consumers.

Figure 100.1 on the following page summarizes the benefits that marketing programs generate for the public and the industry. Because all affected parties stand to gain from marketing program activities, all represented agricultural producers and handlers must abide by relevant statutory provisions, and they share the cost of implementing them.

Typically, marketing programs come into being as the result of an industry vote. They are self-supporting, paying their own operating costs as well as the costs of administrative direction and oversight provided by CDFA. The state makes no subsidy payments to agricultural producers or handlers and appropriates no general state tax revenues to support

## CDFA Policies for Marketing Programs

### CHAPTER 100

marketing programs. All marketing programs are required by law to serve the public interest. CDFAs' administrative direction and oversight support the ability of marketing programs to fulfill this mandate.

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

Figure 100.1 <b>EXAMPLES OF BENEFITS GENERATED BY MARKETING PROGRAMS</b>		
Examples of Benefits <i>to</i> <b>THE PUBLIC</b>		Examples of Benefits <i>to</i> <b>AGRICULTURE</b> Generated by Marketing Programs
Generated by Agriculture	Generated by Marketing Programs	
<ul style="list-style-type: none"> <li>• Production of abundant supply of agricultural products</li> <li>• Sales of ag-related products and services</li> <li>• Exports that help U.S. balance of trade</li> <li>• Jobs</li> <li>• Tax revenue</li> </ul>	<ul style="list-style-type: none"> <li>• Encouragement of agriculture's responsible stewardship of land, water, and marine resources</li> <li>• Health and nutrition research</li> <li>• Consumer education</li> <li>• Establishment of quality standards to ensure wholesome food supply</li> <li>• Implementation of state policy in support of industry-funded self-help programs</li> <li>• Enhanced contribution of agriculture industry to state economy</li> <li>• Research: more productive farming practices</li> <li>• Research: new food products and/or new farm product uses</li> </ul>	<ul style="list-style-type: none"> <li>• Representation of the state's continuing commitment to the agricultural industry</li> <li>• Economic viability of agriculture through coordination of collective action by farmers</li> <li>• Enhanced image of agricultural products grown in California</li> <li>• Expanded domestic and international markets for California farm products</li> <li>• Research to improve farming and handling practices</li> <li>• Market and economic research</li> <li>• Management of issues that affect the ability of California agriculture to compete nationally and internationally</li> </ul>

## **101      ROLE OF THE SECRETARY OF FOOD AND AGRICULTURE**

State law places varying levels of responsibility for the proper functioning of marketing programs on the Secretary of Food and Agriculture. On behalf of the Secretary, the Marketing Branch in CDFAs oversees and liaises with all marketing programs in accordance with applicable laws, regulations, and policies. Appendices M1 and C1 display the organizational placement of the Marketing Branch within CDFAs.

## CDFA Policies for Marketing Programs

### CHAPTER 100

#### **102            TYPES OF MARKETING PROGRAMS**

The generic term “marketing programs” may refer to commissions, councils, marketing agreements, or marketing orders. Authorized activities may include inspection, promotion, education, research, and/or issues management. All marketing programs collect mandatory assessments from those directly affected and maintain offices and staff in various locations around the state. Appendices M2 and C2 in this manual provide a comparison of the authorities of commissions, councils, marketing agreements, and marketing orders.

#### **103            FUNCTIONS OF MARKETING PROGRAMS**

State laws authorize marketing programs to engage in and/or support research, promotion, consumer education, establishment of quality standards, and inspection. Law prohibits price fixing. As indicated in Figure 103.1, the dominant marketing program functions are research, promotion, education, and inspection. The actual range of activities varies from one marketing program to another, depending on the needs of each respective industry. Some engage in all categories of the activities listed in Figure 103.1 while others implement only one or two.

Figure 103.1 <b>Examples of Marketing Program Functions</b>			
RESEARCH	PROMOTION	EDUCATION	INSPECTION
<ul style="list-style-type: none"><li>• Agricultural best practices</li><li>• Consumer confidence</li><li>• Environmental concerns</li><li>• Food safety</li><li>• Market research</li><li>• Nutrition and health</li><li>• Product quality analysis</li></ul>	<ul style="list-style-type: none"><li>• Product promotion and advertising in both domestic and international markets</li><li>• Public relations</li></ul>	<ul style="list-style-type: none"><li>• Consumer, industry, and supply-chain education</li><li>• Issues management</li></ul>	<ul style="list-style-type: none"><li>• Establishment of quality and grading standards</li><li>• Third-party product inspection</li></ul>
Evaluation (all program functions)			

#### **104            PURPOSE OF CDFA’S POLICIES**

On behalf of CDFA, the Marketing Branch has prepared these policies for convenient reference by Branch staff as well as those marketing program staff members who are responsible for administration. These policies also introduce government officials, other interested parties, and/or members of the public to the concept and statutory roots of marketing programs as well as present day practices, rules, and administrative procedures.

## **CDFFA Policies for Marketing Programs**

### **CHAPTER 100**

#### **104.1 Comparability**

The remainder of this document is divided into two major parts: one that describes CDFFA's administrative direction and oversight of marketing orders, councils, and agreements (MOCAs) and one that describes CDFFA's administrative direction and oversight of commissions. In many cases, the procedures are similar if not identical. Exceptions stem from differences in authorizing legislation. In other words, the California Marketing Act governs marketing programs in general and MOCAs operate primarily under this statute, while each commission proceeds according to its own individual authorizing statute. For ease of reference by MOCAs and commissions, CDFFA has eliminated the need to name every procedural exception in its administrative direction and oversight by presenting in full in both separate parts the policies pertaining to MOCAs and commissions, respectively.

**CDFA Policies**  
**Marketing Orders, Councils, and Agreements (MOCAs)**

**TABLE OF CONTENTS**

<b>M200: Administrative Direction and Oversight .....</b>	<b>M-1</b>
M200 OVERVIEW .....	M-1
M201 BOARD RESPONSIBILITY FOR MANAGEMENT OF MARKETING ORDERS, COUNCILS, AND AGREEMENTS (MOCAs) .....	M-1
M201.1 Executive Search .....	M-1
M201.2 Vacancy in the Chief Executive Position .....	M-1
M201.3 Potential for Additional Charges .....	M-2
M201.4 Potential for Conflict of Interest .....	M-2
M201.5 Employment Status of MOCA Employees .....	M-2
M201.6 Office Location .....	M-2
M202 ADVERTISING AND PROMOTION REVIEW .....	M-2
M202.1 Non-routine Review .....	M-3
M202.2 Unsolicited Ad Ideas .....	M-3
M203 LEGAL COUNSEL .....	M-3
M203.1 Procedures for Requesting Legal Opinions .....	M-3
M203.2 Acknowledgement of a MOCA’s Request for Legal Opinion .....	M-4
M203.3 External Inquiries .....	M-4
M204 LITIGATION NOTIFICATION MUTUALITY .....	M-4
M205 PUBLIC RECORDS REQUESTS .....	M-4
M205.1 Routine Public Records Requests .....	M-4
M205.2 Non-routine Public Records Requests .....	M-4
M205.3 Notification to Affected MOCA Chief Executives .....	M-5
M205.4 Notification to the Marketing Branch .....	M-5
M206 MOCA POLICY MANUALS .....	M-5
M207 ADMINISTRATIVE REVIEW .....	M-5
M208 GRIEVANCE PROCEDURE .....	M-5

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**M300: Public Hearings and Voting ..... M-6**

M300	OVERVIEW .....	M-6
M301	PUBLIC HEARINGS .....	M-6
	M301.1 Notice and Testimony .....	M-6
M302	VOTER ELIGIBILITY .....	M-7
	M302.1 Voter Eligibility for <i>New</i> Producers or Handlers .....	M-7
M303	BLOC VOTING .....	M-7
M304	LIST MANAGEMENT .....	M-7
	M304.1 Electronic Format .....	M-8
M305	ACCESS TO VOTER LISTS .....	M-8
	M305.1 Confidentiality .....	M-8
M306	REFERENDA .....	M-8
	M306.1 Referendum Extension under the CA Marketing Act .....	M-9
M307	REAUTHORIZATION .....	M-9
	M307.1 Reauthorization Timing .....	M-9
M308	RELEASE OF VOTING INFORMATION .....	M-9
M309	BOARD NOMINATIONS AND APPOINTMENTS .....	M-9

**M400: Communication ..... M-11**

M400	OVERVIEW .....	M-11
M401	CDFA RESPONSIVENESS .....	M-11
	M401.1 Correspondence .....	M-11
	M401.2 Voice Mail and Email .....	M-11
M402	COMMUNICATION MUTUALITY .....	M-11
	M402.1 Courtesy Copies to the Marketing Branch .....	M-12
	M402.2 Courtesy Copies to Board Chairs .....	M-12
	M402.3 Courtesy Copies to MOCA Chief Executives .....	M-12
	M402.4 Board Roster .....	M-12
M403	MEDIA RELATIONS .....	M-12
	M403.1 Procedure for Requesting Assistance with Media Relations .....	M-13

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**M500: Marketing Branch Charges..... M-14**

M500	OVERVIEW .....	M-14
M501	MARKETING PROGRAM SERVICES ACCOUNT (MPS) .....	M-14
M501.1	Reserve for Unanticipated Expenditures .....	M-14
M501.2	Consultation with the Marketing Branch’s Fiscal/Policy Advisory Committee.....	M-14
M502	BASIS FOR MONTHLY CHARGES .....	M-14
M503	DELINQUENT ACCOUNTS .....	M-15
M504	STANDARDS FOR COST RECOVERY .....	M-15
M505	BUDGETING FOR MARKETING BRANCH CHARGES.....	M-15
M506	CHARGES PAID BY NEW PROPONENT GROUPS .....	M-16

**M600: Disputed Charges ..... M-17**

M600	OVERVIEW .....	M-17
M601	REQUEST FOR CLARIFICATION.....	M-17
M602	PAYMENT OF UNDISPUTED CHARGES.....	M-18
M603	REFERRAL TO THE FISCAL/POLICY ADVISORY COMMITTEE.....	M-18
M603.1	Composition of an Ad Hoc Disputed Charges Subcommittee .....	M-18
M603.2	Disputed Charges Review Process .....	M-18
M603.3	Demonstrated Effectiveness .....	M-19
M604	DISPUTED CHARGES ALTERNATIVE SCENARIOS TIMETABLE .....	M-19

**M700: Finance ..... M-21**

M700	OVERVIEW .....	M-21
M701	BUDGETS AND ASSESSMENT RATES.....	M-21
M701.1	Budget Approval Prior to Beginning of Fiscal Year .....	M-21
M701.2	Budget Completeness .....	M-21
M701.3	Assessment Rates .....	M-21
M701.4	Assessment Crises .....	M-22
M701.5	Budget Amendments .....	M-22
M702	GOVERNMENT RATES AND DISCOUNTS .....	M-22
M702.1	Identification Cards .....	M-22

**CDFR Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

M703	RESERVES .....	M-22
M704	DEPOSIT ACCOUNTS .....	M-23
M705	ACCOUNT BALANCE REPORTS .....	M-23
M706	INVESTMENT OF FUNDS .....	M-24
M707	FINANCIAL STATEMENTS.....	M-24
M708	LOANS AND LINES OF CREDIT .....	M-25
M709	INSURANCE .....	M-25
M710	MOTOR VEHICLE INSURANCE FOR PROGRAM- OWNED VEHICLES .....	M-26
M711	FINANCIAL AUDITS .....	M-26
	M711.1 Management Letter.....	M-26
	M711.2 Approved Audit Sources .....	M-26
	M711.3 Audit Reports.....	M-26
<b>M800:</b>	<b>Lobbying .....</b>	<b>M-28</b>
M800	OVERVIEW.....	M-28
M801	ONE VOICE.....	M-28
	M801.1 Routine Communications .....	M-28
	M801.2 Alternative Opinion .....	M-28
M802	TIME FRAME FOR REVIEW .....	M-28
	M802.1 Routine Review .....	M-28
	M802.2 Emergency Review.....	M-29
<b>M900:</b>	<b>Program Effectiveness Evaluation .....</b>	<b>M-30</b>
M900	OVERVIEW.....	M-30
M901	MARKETING BRANCH ASSISTANCE .....	M-30
M902	STUDY APPROACHES.....	M-30
	M902.1 Recommended Sources of Economic Analysis.....	M-30
	M902.2 Non-economic Analysis Approaches .....	M-31

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**M1000: Contracts ..... M-32**

M1000 OVERVIEW ..... M-32

M1001 STANDARD CONTRACT TERMS ..... M-32

    M1001.1 Multi-year Contracts..... M-33

    M1001.2 Records Retention ..... M-33

M1002 OFFICE OR PROPERTY LEASE TERMINATION ..... M-33

M1003 CONTRACTS REPORT ..... M-33

    M1003.1 Quarterly Contracts Report Exception ..... M-34

    M1003.2 Reciprocal Indemnification Clauses in  
        Contracts with the University of California ..... M-34

M1004 OPTIONAL CONTRACTS REVIEW ..... M-35

M1005 CONTROVERSY ALERT ..... M-35

M1006 LICENSING AGREEMENTS ..... M-35

**M1100: Enforcement Support..... M-36**

M1100 OVERVIEW ..... M-36

M1101 ASSESSMENT TRUSTEES ..... M-36

M1102 OPEN RECORDS ..... M-36

M1103 HANDLER AUDITS ..... M-37

    M1103.1 Out-of-State Handlers..... M-37

    M1103.2 Exceptions ..... M-37

    M1103.3 Intervals ..... M-37

    M1103.4 Individual MOCAs' Handler Audit Policies ..... M-38

M1104 ASSESSMENT COLLECTION BY MOCAs ..... M-38

    M1104.1 Steps for Collecting Delinquent Assessments ..... M-38

    M1104.2 Prohibition Against Refusal to Provide Service..... M-39

    M1104.3 Voting Rights of Delinquent Assessment Payers ..... M-39

    M1104.4 Good Standing ..... M-39

M1105 HANDLER BANKRUPTCY ..... M-39

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**M1200: New and Terminating Marketing Orders and Agreements..... M-40**

M1200	OVERVIEW .....	M-40
M1201	MEMORANDUM OF UNDERSTANDING WITH CDFA .....	M-40
	M1201.1 MOU Specifications .....	M-40
M1202	PROPONENTS' RESPONSIBILITY FOR COSTS .....	M-40
M1203	RATIONALE .....	M-40
M1204	ANALYSIS OF PUBLIC HEARING TESTIMONY .....	M-41
M1205	REFERENDUM .....	M-41
M1206	BOARD RESPONSIBILITY FOR MANAGEMENT OF NEW MARKETING ORDERS OR AGREEMENTS .....	M-41
	M1206.1 Avoiding Conflict of Interest.....	M-41
	M1206.2 Potential for Additional Marketing Branch Charges....	M-42
M1207	TERMINATION .....	M-42
	M1207.1 Payment of Termination Costs .....	M-43

**M1300: New and Terminating Councils ..... M-44**

M1300	OVERVIEW .....	M-44
M1301	MEMORANDUM OF UNDERSTANDING WITH CDFA .....	M-44
	M1301.1 MOU Specifications .....	M-44
M1302	PROPONENTS' RESPONSIBILITY FOR COSTS .....	M-44
M1303	RATIONALE .....	M-44
M1304	REFERENDUM .....	M-45
M1305	BOARD RESPONSIBILITY FOR MANAGEMENT OF NEW COUNCILS .....	M-45
	M1305.1 Avoiding Conflict of Interest.....	M-45
	M1305.2 Potential for Additional Marketing Branch Charges....	M-46
M1306	TERMINATION .....	M-46
	M1306.1 Payment of Termination Costs .....	M-47

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**Appendices**

M1 Organizational Placement of the Marketing Branch.....A-1

M2 California Marketing Orders & Agreements, Councils, and Commissions:  
Comparison of Authorities.....A-2

M3 Confidentiality and Indemnity Agreement and Affidavit: Template.....A-4

M4 Elements of MOCA Policy Manuals .....A-7

M5 Grievance Procedure.....A-9

M6 Suggested Topics for Witnesses at Public Hearings.....A-11

M7 Voter List Certification Form .....A-12

M8 Cost Allocation of Marketing Branch Charges.....A-13

M9 California Government Identification Card: Application and  
Procedures for Use.....A-14

M10 Annual Certification of Employee Insurance Coverage .....A-16

M11 Quarterly Contracts Report.....A-17

M12 Enforcement Flow Chart.....A-18

M13 Detailed Enforcement Procedures for Marketing Orders .....A-19

M14 New Marketing Order or Agreement Establishment Timeline.....A-20

M15 Elements of a Memorandum of Understanding (MOU) for a  
Proposed Marketing Order or Agreement .....A-22

M16 New Council Establishment Timeline .....A-24

M17 Elements of a Memorandum of Understanding for a Proposed Council .....A-26

**INDEX.....A-28**

**CHAPTER M200**

**ADMINISTRATIVE DIRECTION AND OVERSIGHT**

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**M200 OVERVIEW**

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

**MISSION  
Of the Marketing Branch**

Assure the fair, practical, and sound operation of agricultural marketing programs for the benefit of agriculture and the people of California.

**M201 BOARD RESPONSIBILITY FOR MANAGEMENT OF  
MARKETING ORDERS, COUNCILS, AND AGREEMENTS  
(MOCAs)**

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

**M201.1 Executive Search**

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

**M201.2 Vacancy in the Chief Executive Position**

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

**CHAPTER M200**

**M201.3 Potential for Additional Charges**

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

**M201.4 Potential for Conflict of Interest**

CDFA strongly discourages MOCAs from seeking management services from providers that may have conflicts of interest. If a potential conflict of interest exists, CDFA requires the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

- The MOCA hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process. See the confidentiality and indemnity agreement and affidavit template included as Appendix M3.

**M201.5 Employment Status of MOCA Employees**

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

**M201.6 Office Locations**

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

**M202 ADVERTISING AND PROMOTION REVIEW**

Routine advertising and promotion review consists of but is not limited to such Marketing Branch staff activities as attendance at and participation in meetings at which a MOCA board approves advertising and promotion messages. CDFA expects that MOCAs' advertising and promotion messages will be:

- Truthful
- In good taste
- Not disparaging
- Consistent with statute

## ***CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)***

### **CHAPTER M200**

#### **M202.1 Non-routine Review**

CDFA reserves the right to exercise extra review of advertising and promotion messages wherever it deems such review is necessary. This may include intervention in message development prior to placement of messages in a commercial medium or venue.

#### **M202.2 Unsolicited Ad Ideas**

To avoid claims of an implied contract or obligation, CDFA recommends that, if applicable, every MOCA include policy and procedures in its own manual to guide staff in the systematic and documented rejection of unsolicited suggestions for advertising. See Appendix M4 for a basic list of recommended policy manual contents.

### **M203 LEGAL COUNSEL**

The California Attorney General provides legal counsel for the State of California, including MOCAs. The first stop for MOCAs that need legal services is the Marketing Branch in CDFA. The Branch coordinates requests for legal services by preparing and forwarding standard forms for this purpose to CDFA's Legal Office. The Legal Office then determines whether to refer the matter to the Attorney General or to pursue the matter in-house. To reiterate, following the procedure outlined in Section 203.1, MOCAs must obtain approval from the Governor's Office and the Attorney General, through the Marketing Branch, prior to retaining outside legal counsel.

#### **M203.1 Procedures for Requesting Legal Opinions**

Any MOCA may request legal advice or an official legal opinion from CDFA's Legal Office by submitting a request in writing to the Marketing Branch. The Legal Office has discretion whether or not to provide an official legal opinion but must notify CDFA's Marketing Branch of its decision within five business days. Upon receipt of the Legal Office's decision, the Marketing Branch immediately notifies the affected MOCA's chief executive.

#### **M203.2 Acknowledgement of a MOCA's Request for Legal Opinion**

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

## **CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M200**

#### **M203.3 External Inquiries**

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

#### **M204 LITIGATION NOTIFICATION MUTUALITY**

CDFA and all marketing programs are mutually responsible for notification exchange within two working days regarding filed lawsuits that affect either the State's marketing program overall or a particular MOCA.

#### **M205 PUBLIC RECORDS REQUESTS**

The Marketing Branch refers any public records request it receives directly to CDFA's Legal Office for response within the statutory time frame. This includes all requests from the Legislature.

##### **M205.1 Routine Public Records Requests**

The Marketing Branch consults with the Legal Office regarding the Legal Office's review of each public records request and then responds to routine public records requests within the statutory time frame. The Marketing Branch apprises the chief executive(s) of the affected MOCA(s) of these actions.

##### **M205.2 Non-routine Public Records Requests**

Where there is a legal issue over whether a requested record is public, CDFA's Legal Office is allowed to take up to 10 working days (with an extension of 14 additional days in specified unusual circumstances) to provide either the requested record or the grounds for a determination that the record cannot be disclosed.

##### **M205.3 Notification to Affected MOCA Chief Executives**

Whether routine or non-routine, the Legal Office notifies the Marketing Branch of any public records request that CDFA may have received that bypassed the Branch. If the request is routine, the Marketing Branch notifies the affected MOCA chief executive within three working days that CDFA either will or did comply with a routine request for public records.

## **CDFR Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M200**

Non-routine. If the public records request is non-routine, CDFR contacts the affected MOCA chief executive(s) within three working days to exchange information regarding how best to respond. For example, it may be necessary to decide whether to identify and protect proprietary information in the specific records requested. This is especially important when CDFR receives a request for information or records maintained by the affected MOCA(s).

#### **M205.4 Notification to the Marketing Branch**

The chief executive of any MOCA that receives a routine or non-routine public records request is expected to notify the Marketing Branch of such request within three working days.

#### **M206 MOCA POLICY MANUALS**

CDFR requires every MOCA to maintain and update its own program policy manual and submit revisions and/or amendments for CDFR approval. A suggested list of elements for each MOCA's policy manual appears in Appendix M4.

#### **M207 ADMINISTRATIVE REVIEW**

CDFR provides ongoing review through participation in MOCA meetings throughout the year. Furthermore, CDFR conducts a full administrative review of each MOCA no less often than every three years to ascertain compliance with CDFR's policies as well as with each MOCA's own rules and policies. In addition, any MOCA may ask CDFR to conduct a full administrative review at any time.

#### **M208 GRIEVANCE PROCEDURE**

CDFR requires MOCAs to follow the grievance procedure outlined in Appendix M5.

**CHAPTER M300**

**PUBLIC HEARINGS AND VOTING**

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**M300 OVERVIEW**

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

- Implementation
- Major amendment
- Continuation

In addition, CDFA may conduct industry preference votes for the purpose of receiving nominations of industry volunteers whom CDFA may then appoint to advisory boards.

**M301 PUBLIC HEARINGS**

CDFA conducts public hearings to receive evidence and testimony regarding the effectiveness of marketing programs. Before the close of each hearing, the hearing officer asks those in attendance whether to provide for a filing period during which to allow receipt of written testimony. CDFA staff analyze the testimony and evidence presented at the hearing relative to the question under consideration, complete written findings and recommendations and announce a decision within 45 days of the hearing.

**M301.2 Notice and Testimony**

Hearings conducted by CDFA require a minimum of 30 days public notice, which CDFA distributes via regular mail. The official notice:

- Announces the date, time, and location of the hearing; and
- Suggests relevant questions that witnesses should be prepared to answer at the hearing (see Appendix M6).

Witnesses generally testify in the order in which they sign in. The hearing officer restricts all witnesses to speaking only about the marketing program in question. Because these are information-gathering hearings only, witnesses are not cross-examined.

**CHAPTER M300**

However, hearing panel members may ask questions of the witnesses to seek clarification of their testimony.

**M302 VOTER ELIGIBILITY**

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

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

**M302.1 Voter Eligibility for New Producers or Handlers**

CDFFA makes a good faith effort to give new producers and handlers the right to vote. In those cases where volume is one of the voting eligibility criteria, CDFFA may qualify new producers or handlers to vote without weighting those votes by volume.

**M303 BLOC VOTING**

“Bloc voting” refers to the practice by an agricultural cooperative marketing association of casting votes on behalf of its members. CDFFA requires every cooperative that utilizes bloc voting to submit the following items:

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

**NOTE**  
Sections M303 through M307 in this manual may not apply to councils, depending on provisions in individual council statutes.

**M304 LIST MANAGEMENT**

Typically, MOCAs maintain producer and handler contact information lists but, in some cases, another public agency assumes this responsibility. If a MOCA supplies the list, CDFFA

## CDFA Policies *for* ... Marketing Orders, Councils, and Agreements (MOCAs)

### **CHAPTER M300**

requires the MOCA chief executive to certify to the best of his or her knowledge that the official producer and handler records they have submitted contain names, addresses, and volume data, if applicable, that are current, accurate, and complete. Appendix M7 contains the certification form that CDFA requires chief executives to sign.

#### **M304.1 Electronic Format**

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

### **M305 ACCESS TO VOTER LISTS**

Pursuant to Section 58781 of the California Marketing Act, CDFA will make mailings to individuals on voter lists, provided the interested party is willing to pay mailing costs. Although CDFA prefers to manage such mailings, interested parties may obtain the names and addresses of individuals eligible to vote in a referendum or board member election. If CDFA has such lists in its possession, requestors may obtain them from the Marketing Branch upon signing a certification that the lists will not be used for private purposes but only in regard to the formulation, administration, or enforcement of a marketing order or marketing agreement. If it does not possess the requested list(s), CDFA refers the requestor(s) to the affected marketing program(s). Any affected marketing program is responsible in these circumstances for imposing the certification requirement.

#### **NOTE**

Sections M303 through M307 in this manual may not apply to councils, depending on individual council statutes.

#### **M305.1 Confidentiality**

To the extent possible, CDFA accepts responsibility for protecting the confidentiality of producer and handler lists in its possession and, where applicable, expects MOCA chief executives to do the same.

### **M306 REFERENDA**

CDFA conducts the referendum process to ascertain the will of affected producers and handlers with regard to establishing, amending, or continuing marketing orders or agreements. Within CDFA, the Marketing Branch administers referenda; this includes counting and certifying the votes.

**CHAPTER M300**

**M306.1 Referendum Extension under the California Marketing Act**

The standard time frame for voting during a referendum is up to 30 calendar days. The Act allows for deadline extensions up to an additional 15 days under specified circumstances. A minimum of 40 percent of affected producers and handlers must participate in the referendum. The primary reason for extending a voting deadline is to give affected commodity producers and handlers sufficient time to attain the required level of participation.

**M307 REAUTHORIZATION**

The California Marketing Act requires periodic reauthorization of MOCAs, either by public hearing or referendum. In the absence of other reauthorization procedures, CDFA is required to hold a public reauthorization hearing not less often than every five years. Members of the public as well as representatives of the affected industry are invited to testify. If the public hearing results in a substantial question, CDFA may require a referendum on reauthorization; absent a substantial question, CDFA accepts hearing testimony as evidence of support for or rejection of reauthorization. CDFA typically issues a decision on continuation within 45 calendar days after the close of a public hearing and within 10 business days for vote tallying and certification after the deadline for a referendum.

**NOTE**

Sections M303 through M307 in this manual may not apply to councils, depending on individual council statutes.

**M307.1 Reauthorization Timing**

CDFA expects the reauthorization process to be completed early enough to allow sufficient time for potential program wind-down, if indicated, before the end of the current marketing season.

**M308 RELEASE OF VOTING INFORMATION**

Any requester may receive certain referendum voting information, although generally not more often than once a week during the referendum period. As available, for example, CDFA releases participation rates (i.e., number of voters in a given referendum) to non-participants such as media representatives or members of the public. To chief executives and other directly affected parties, CDFA may release the names of those who have voted, but in no case does CDFA disclose how individuals voted.

**M309 BOARD NOMINATIONS AND APPOINTMENTS**

With CDFA's approval, most MOCAs are authorized in statute to establish routine nomination procedures for replacing directors whose terms are expiring and/or to fill other

**CDFR Policies *for ... Marketing Orders, Councils, and Agreements (MOCAs)***

**CHAPTER M300**

vacancies. Common methods for nominating industry volunteers for appointment by CDFR to advisory boards include the following:

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

**CHAPTER M400**

**COMMUNICATION**

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**M400 OVERVIEW**

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

- Maintains frequent and timely communication between MOCA chief executives and CDFA staff
- Prepares and distributes a MONTHLY MARKETING MEMO
- Regularly updates its website (<http://www.cdfa.ca.gov/mkt/mkt/>)
- Provides timely email alerts and advisories, as needed

**M401 CDFA RESPONSIVENESS**

As a function of administrative direction and oversight, CDFA's Marketing Branch supplies information and/or clarification regarding program issues to individual marketing programs upon request.

**M401.1 Correspondence**

When a MOCA provides input, raises an issue, requests a policy ruling, or asks a question, CDFA acknowledges receipt within five working days. The acknowledgement includes a projected timeline for fully responding to the initial communication.

**M401.2 Voice Mail and Email**

Whenever possible, CDFA staff return voice mail and email messages on the day they are received. CDFA's policy is to be accessible to marketing programs. Therefore, CDFA encourages MOCAs that need to communicate an urgent matter to call the Marketing Branch office. If the assigned staff member is not available at the Branch number, the caller should request that the Branch office contact the staff member.

**M402 COMMUNICATION MUTUALITY**

CDFA and all MOCAs are interdependent when it comes to staying current on information of importance to California's overall commodity marketing program.

## **CHAPTER M400**

Therefore, CDFA's policy is to alert MOCAs of all matters that may potentially affect their operating environment.

### **M402.1 Courtesy Copies to the Marketing Branch**

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

### **M402.2 Courtesy Copies to Board Chairs**

CDFA sends to board chairs copies of all correspondence addressed to the MOCA chief executive on matters related to any program's budget and finances, as well as significant policy letters and other correspondence of unique importance.

### **M402.3 Courtesy Copies to MOCA Chief Executives**

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

### **M402.4 Board Roster**

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

- Name
- Mailing address
- Email address
- Phone number

## **M403 MEDIA RELATIONS**

The Marketing Branch facilitates MOCAs' communication with CDFA's Public Affairs Office, which advises the media regarding issues and activities related to MOCAs. When CDFA receives media inquiries, the Marketing Branch refers inquirers to the Public Affairs Office. The Branch also immediately notifies the affected MOCA chief executive regarding the inquiry and, if appropriate, obtains additional information.

**CHAPTER M400**

**M403.1 Procedure for Requesting Assistance with Media Relations**

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

**CHAPTER M500**

**MARKETING BRANCH CHARGES**

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**M500 OVERVIEW**

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

**M501 MARKETING PROGRAM SERVICES ACCOUNT (MPS)**

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

**M501.1 Reserve for Unanticipated Expenditures**

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

**M501.2 Consultation with the Marketing Branch's Fiscal/Policy Advisory Committee**

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

**M502 BASIS FOR MONTHLY CHARGES**

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

**CHAPTER M500**

Office. On the basis of these reports, Marketing Branch accounting staff bill MOCAs for their share of administrative direction and oversight costs in the prior month, plus indirect costs. Appendix M8 illustrates the cost allocation of Marketing Branch charges.

**M503 DELINQUENT ACCOUNTS**

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

**M504 STANDARDS FOR COST RECOVERY**

CDFA recovers costs in keeping with the following standards:

- To avoid having to assess interest charges, CDFA expects to receive reimbursement by the due date on the monthly invoice, which is approximately the last working day of each month.
- CDFA assesses interest on delinquent payments of Marketing Branch charges at a rate established by the California Department of Finance.
- To encourage MOCAs to seek clarification on billing charges, if they have questions, the Marketing Branch authorizes its accounting staff to spend up to two hours on responding to a MOCA's request for more information regarding a specific invoice. Beyond two hours, CDFA will bill any affected MOCA on its next invoice for the hourly cost of additional accounting research.

**M505 BUDGETING FOR MARKETING BRANCH CHARGES**

CDFA expects MOCAs to anticipate Marketing Branch charges in their annual budgets. Estimates should include the (i) standard monthly costs, based on prior years; (ii) the costs of conducting public hearings and/or referenda, if applicable; and (iii) the costs of any other foreseeable activity that would exceed the Branch's routine involvement (for example, proposed legislation that will require bill analysis by Branch staff). In order to compile an

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M500**

estimate that is as accurate and realistic as possible, CDFA expects every MOCA to work with Branch staff in arriving at estimates of Branch charges to its program over the coming year.

**M506 CHARGES PAID BY NEW PROPONENT GROUPS**

New MOCA proponents provide a deposit to CDFA to defray only the direct Marketing Branch costs of preparing the necessary documents and carrying out related responsibilities. If the actual costs of establishing the MOCA exceed the deposit, the proponents are obligated to pay the actual cost. Chapters M1200 and M1300 -- NEW AND TERMINATING MARKETING ORDERS AND AGREEMENTS and NEW AND TERMINATING COUNCILS, respectively -- cover in greater detail CDFA's policies pertaining to cost recovery for establishing new MOCAs.

**CHAPTER M600**

**DISPUTED CHARGES**

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**M600 OVERVIEW**

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

**M601 REQUEST FOR CLARIFICATION**

All invoices are based on monthly budget reports prepared for the Marketing Branch by the Accounting Office in CDFA's Division of Administrative Services. Any MOCA may question charges that appear on monthly invoices by adhering to the following procedure:

- Within the period prior to the payment due date, the affected MOCA should communicate with (i) Marketing Branch accounting staff, (ii) the assigned Economist/Research Analyst, or (iii) the Branch Chief. This communication may be in the form of a telephone call, electronic mail, fax, or letter.
- Within 10 working days, the Marketing Branch's accounting staff will analyze and verify the charges shown on the relevant budget reports prepared by CDFA's Division of Administrative Services.
- If Marketing Branch accounting staff find an error, they will adjust the affected MOCA's invoice accordingly within 30 calendar days and write a letter to accompany the corrected invoice, explaining the error and need for adjustment.
- To encourage MOCAs to seek clarification on billing charges if they have questions, the Marketing Branch authorizes its accounting staff to spend up to two hours on responding to a MOCA's request for more information regarding a specific invoice. Beyond two hours, CDFA

**CHAPTER M600**

will bill any affected MOCA on its next invoice for the hourly cost of additional accounting research.

**M602 PAYMENT OF UNDISPUTED CHARGES**

Documentation prepared by Marketing Branch accounting staff must satisfy the inquiring MOCA that it is liable for the disputed charges. If questions remain, CDFA expects the affected MOCA to pay all undisputed charges by the invoice due date and simultaneously submit a disputed charges letter containing the basis for its nonpayment of the balance.

**M603 REFERRAL TO THE FISCAL/POLICY ADVISORY COMMITTEE**

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

**M603.1 Composition of an Ad Hoc Disputed Charges Subcommittee**

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

**M603.2 Disputed Charges Review Process**

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

- The MOCA that has submitted a disputed charges letter has the right to be present to make its case when the Fiscal/Policy Disputed Charges Review Subcommittee confers.
- If no representative is present, the Marketing Branch will distribute the disputed charges letter to all members of the Fiscal/Policy Disputed Charges Review Subcommittee.

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M600**

- Within five working days of receiving the Fiscal/Policy Disputed Charges Review Subcommittee’s recommendation, the Marketing Branch will notify the affected MOCA in writing of CDFA’s decision.

**M603.3 Demonstrated Effectiveness**

Since its inception, the disputed charges policy and review process outlined in M603 have proven to be effective in ultimately resolving all disputes to the satisfaction of all affected parties. Therefore, CDFA will continue to rely on the Fiscal/Policy Advisory Committee to manage review and resolution of disputed charges.

**M604 DISPUTED CHARGES ALTERNATIVE SCENARIOS TIMETABLE**

<b>DISPUTED CHARGES TIMETABLE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
Dispute specific charges that appear on Branch’s invoice	Affected MOCA	Within period before due date on invoice
Analyze disputed charges	Marketing Branch Accounting Staff	Within 10 working days of request
If Branch was in error, adjust future invoice of affected MOCA, write letter to explain error and need for adjustment	Marketing Branch Accounting Staff	Within 30 calendar days of verifying accounting error
If Branch documents charges but MOCA decides to protest, pay all charges not disputed and submit disputed charges letter containing basis for nonpayment of balance	Affected MOCA	Within period before due date on invoice
Notify protesting MOCA that its disputed charges letter has been referred to the Fiscal/Policy Advisory Committee	Marketing Branch Chief	Within 2 working days of receipt of MOCA’s disputed charges letter
Review disputed charges and make recommendation to the Marketing Branch Chief	Fiscal/Policy Advisory Committee	Earliest date at which at least three members are available to confer
Notify protesting MOCA of CDFA’s decision	Marketing Branch Chief	Within 5 working days of receiving Fiscal/Policy Advisory Committee’s recommendation

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M600**

<b>DISPUTED CHARGES TIMETABLE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<u>SCENARIO I</u> : (a) Advisory Committee finds that the MOCA is liable, and the MOCA agrees to pay in full on time	Affected MOCA	Within 30 calendar days of receipt of CDFA's decision
<u>SCENARIO I</u> : (b) Advisory Committee finds that the MOCA is liable, and the MOCA agrees to pay but is late; interest is added on amount due	Marketing Branch Accounting Staff	Upon MOCA's failure to pay within 30 calendar days of receipt of CDFA's decision
<u>SCENARIO II</u> : Advisory Committee finds that the MOCA is liable, but the protesting MOCA refuses to pay the disputed charges. CDFA notifies board of impending action to attach protesting MOCA's bank account for disputed amount and/or initiate proceedings to terminate the MOCA	California Department of Food and Agriculture	Within 30 calendar days of receipt of CDFA's decision
<u>SCENARIO III</u> : (a) Advisory Committee finds that the MOCA is not liable for any or all of the disputed charges. CDFA adjusts affected MOCA's next invoice accordingly	Marketing Branch Accounting Staff	Within period before issuance of next invoice
<u>SCENARIO III</u> : (b) Advisory Committee finds that the MOCA is not liable for any or all of the disputed charges and recommends another cost recovery sources, e.g., MPS or distribution of costs to all programs.	Marketing Branch Accounting Staff	Immediately upon resolution by Advisory Committee and decision by CDFA

**CHAPTER M700**

**FINANCE**

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**M700 OVERVIEW**

The Food and Agricultural Code designates the California Department of Food and Agriculture (CDFA) as being ultimately accountable for the administrative direction and oversight of marketing orders, councils, and agreements (MOCAs). CDFA is responsible for approving all receipts and expenditures budgeted by MOCAs. "Receipts" includes assessments, grants, reimbursements, and revenues from all other sources.

**M701 BUDGETS AND ASSESSMENT RATES**

CDFA's Marketing Branch is responsible for reviewing and approving the budgets and budget amendments of all MOCAs. CDFA expects each MOCA to submit its budget to the Marketing Branch not more than 30 calendar days following approval by its board. Provided the MOCA has included all required information, CDFA's approval is due within 30 calendar days of receipt of the budget.

**M701.1 Budget Approval Prior to Beginning of Fiscal Year**

CDFA expects every MOCA to submit its board-approved budget in time to receive CDFA's approval prior to the beginning of the affected MOCA's fiscal year. No MOCA is authorized to expend funds before CDFA has approved its budget.

**M701.2 Budget Completeness**

CDFA requires MOCAs to indicate in their annual budget submittals:

- All budgeted expenditures
- All anticipated revenues, including grants
- All reserves

**M701.3 Assessment Rates**

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

## **CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M700**

MOCA's annual budget. CDFA further expects the assessment rate as proposed to be in effect throughout the budget year.

#### **M701.4 Assessment Crises**

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

#### **M701.5 Budget Amendments**

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

### **M702 GOVERNMENT RATES AND DISCOUNTS**

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

#### **M702.1 Identification Cards**

CDFA issues identification cards to MOCA board members and employees, upon request from a chief executive, as evidence of their eligibility for discounts and tax exemptions extended to state government. Appendix M9 contains an application plus steps and procedures for utilization of identification cards.

### **M703 RESERVES**

CDFA expects every MOCA to determine an appropriate level of operating reserves, pursuant to its own policy. Each individual MOCA's operating reserves policy needs

## **CDFFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M700**

to accommodate variables that reflect its individual circumstances -- for example, susceptibility to crop failure, cash flow needs, and potential for litigation.

#### **M704 DEPOSIT ACCOUNTS**

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

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

#### **M705 ACCOUNT BALANCE REPORTS**

Section 19462 of the State Administrative Manual requires that all state agencies prepare an annual report of balances remaining as of June 30 in all accounts outside the State Treasury system into which they have deposited their funds. CDFFA

## **CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M700**

annually distributes to all MOCAs the relevant instructions and standardized reporting forms (STD. 445) to facilitate compliance with this requirement.

#### **M706 INVESTMENT OF FUNDS**

The Food and Agricultural Code provides that MOCAs may place funds available for investment either (i) with the State Treasurer, such as in the Local Agency Investment Fund (LAIF); or (ii) in eligible securities as described in Section 16430 et. seq. of the California Government Code. The Government Code specifies the following as eligible securities:

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

#### **M707 FINANCIAL STATEMENTS**

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

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

**CHAPTER M700**

**M708 LOANS AND LINES OF CREDIT**

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

- In conjunction with a lending institution, prepare a loan proposal or line of credit application containing a standard clause that exempts the State from financial responsibility for paying off the loan.
- Quantify assets and resources the MOCA proposes to offer as collateral. Collateral may include anticipated assessments.

<p><b>STANDARD CLAUSE FOR INCLUSION IN LOAN AGREEMENTS</b></p> <p>“Lender shall seek repayment for the loan only from funds of the [MOCA name].”</p>
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**M709 INSURANCE**

CDFA requires that all MOCAs fund the insurance policies that comprise the Marketing Branch’s group liability insurance plan. To minimize the group plan’s liability exposure, CDFA expects MOCAs to obtain annual certification of insurance coverage from all employees who intend to use their own vehicles in conducting official program business (the certification form developed for this purpose by the Marketing Branch is included in this manual as Appendix M10). The group insurance plan provides coverage in the following areas of liability (refer to specific policies for greater detail):

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

**CHAPTER M700**

**M710 MOTOR VEHICLE INSURANCE FOR PROGRAM-OWNED VEHICLES**

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

**M711 FINANCIAL AUDITS**

State law requires that all expenditures by MOCAs be audited at least once every two years. However, CDFA strongly recommends an annual audit and further recommends completing it within six months of the end of each fiscal year. CDFA expects the executive committee, finance committee, or full board of the MOCA to review and, if necessary, comment on the audit report and management letter before forwarding them to the Marketing Branch.

**M711.1 Management Letter**

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

**M711.2 Approved Audit Sources**

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

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

**M711.3 Audit Reports**

State law requires every MOCA to submit copies of every audit report within 30 calendar days of completion of the audit to CDFA, the Governor, and the State

**CDEA Policies *for ...* Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M700**

Controller. MOCAs may submit all three copies to the Marketing Branch in CDEA, and the Branch will distribute them as indicated.

**CHAPTER M800**

**LOBBYING**

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**M800 OVERVIEW**

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

**M801 ONE VOICE**

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

**M801.1 Routine Communications**

CDFA acknowledges that MOCAs’ efforts to educate and inform are often routine communications. Such communications do not require prior review or approval by CDFA.

**M801.2 Alternative Opinion**

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

**M802 TIME FRAME FOR REVIEW**

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

**M802.1 Routine Review**

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

**CDFR's Policies *for* ... Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M800**

**M802.2 Emergency Review**

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

**CHAPTER M900**

**PROGRAM EFFECTIVENESS EVALUATION**

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**M900 OVERVIEW**

Both the California Department of Food and Agriculture (CDFA) and its marketing orders, councils, and agreements (MOCAs) recognize the importance of demonstrating that marketing programs do attain the goals established for them and do produce the intended benefits. Although California statutes do not require evaluation studies, some Federal marketing orders are mandated to measure the effectiveness of their program activities. To promote progress measurement, CDFA encourages MOCAs to conduct periodic program evaluation studies as a standard management practice.

**M901 MARKETING BRANCH ASSISTANCE**

Recognizing that MOCAs vary in both program complexity and resource availability, CDFA's Marketing Branch can offer assistance to MOCAs that need recommendations for relevant and affordable program effectiveness evaluation strategies. Upon completion, CDFA expects MOCA chief executives to forward the evaluation results to the Marketing Branch as well as to their own boards of directors and constituencies.

**CALIFORNIA MARKETING ACT**

SEC. 58846.5 Each advisory board shall annually report to the members of the industry who are subject to its marketing order on the activities and program, including, but not limited to ...a report of progress in achieving program goals....

**M902 STUDY APPROACHES**

For large, multi-function MOCAs, CDFA has found that comprehensive economic analyses support effective commodity marketing and generate data that document current market position as well as suggest new marketing initiatives. CDFA recommends that, to the extent resources are available for this purpose, MOCAs make periodic economic analysis a standard element in their overall program management plan.

**M902.1 Recommended Sources of Economic Analysis**

To conduct economic analysis studies, MOCAs may contract with independent agricultural economists or research experts from universities or private companies. They may *not* contract with producers or handlers of their own commodities, or employees of such producers or handlers.

**CHAPTER M900**

**M902.2 Non-economic Analysis Approaches**

Small or low-budget programs may satisfy the need to document program effectiveness through appraisal of progress against goals. Such appraisals may be completed either by assigning staff to conduct a review or contracting with an independent evaluator. CDFR expects MOCAs that choose not to complete an economic analysis to consult with the Marketing Branch regarding acceptable study alternatives.

**CHAPTER M1000**

**CONTRACTS**

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**M1000 OVERVIEW**

The California Department of Food and Agriculture (CDFFA) expects contracts for the expenditure of funds administered by marketing orders, councils, and agreements (MOCAs) to comply with relevant standards and rules. These expectations apply to any contract for \$10,000 or more.

**M1001 STANDARD CONTRACT TERMS**

CDFFA expects MOCAs to use standardized contract forms available from CDFFA's Marketing Branch. In keeping with information required on standard forms, CDFFA expects every executed contract to include the following terms and conditions:

- Scope of Work. Describe the work to be performed and specify the time frame for performance completion. MOCAs may authorize multi-year projects but not multi-year payments. Thus, any MOCA must issue a new contract to authorize payment for work that will be completed within the fiscal year for which the contract has been budgeted. An exception to this restriction is that MOCAs may execute multi-year leases that ensure payment beyond the fiscal year in which the leases are executed.
- Deliverables. Itemize the goods and/or describe the service to be supplied by the contractor.
- Compensation. Delineate the (i) amount and intervals of payment, and (ii) specifications for required activity reports the contractor will be expected to submit with invoices.
- Reciprocity. Describe the MOCA's obligations under the contract or agreement.
- Research. Section 58892(c) of the Food and Agricultural Code provides that, insofar as practicable, MOCAs shall contract with the University of California (UC) to perform production, processing, and/or distribution research. Contracts for research with entities other than UC should contain a provision that the MOCA shall retain ownership of copyright and patent rights, including potential royalty

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M1000**

fees. Such contracts should also contain documentation that the contractor acknowledges and accepts this ownership agreement.

**M1001.1 Multi-year Contracts**

For projects that cannot be completed without making a commitment to multi-year agreements, CDFA expects MOCAs to negotiate mutually acceptable terms with contractors and to advise the Marketing Branch of these special circumstances. Examples of successful negotiations have included: (i) budgeting for the full contract amount in the first year and holding in reserve from that amount sufficient funds to meet the MOCA's financial obligations in subsequent years; and (ii) letters exchanged by the MOCA and the contractor to express reciprocal intent to complete the project over multiple fiscal years, subject to funding availability.

**M1001.2 Records Retention**

CDFA requires MOCAs to retain file copies of all executed contracts for a period of three years or until the next administrative review is completed, whichever is longer.

**M1002 OFFICE OR PROPERTY LEASE TERMINATION**

CDFA expects MOCAs to include a clause in every lease contract that relieves both the MOCA and CDFA of an obligation to pay in the event that the MOCA program is terminated. If the leaseholder will not agree to the recommended clause, CDFA expects the MOCA to carry a reserve sufficient to pay in full any lease obligation that will result should the MOCA program cease operations.

**RECOMMENDED OFFICE / PROPERTY LEASE  
TERMINATION CLAUSE**

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

**M1003 CONTRACTS REPORT**

CDFA's responsibility to oversee contracts consists of monitoring MOCAs' contracted expenditures by (i) conducting a periodic administrative review to ensure that all contracts listed on reports submitted to the Marketing Branch are on file; (ii) reviewing all contracts on file, or a sample of contracts on file, to ensure that the

## **CDFFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M1000**

MOCA has adhered to relevant standards and rules; and (iii) requiring every MOCA to provide a quarterly report containing the following information for executed contracts in amounts of \$10,000 or more:

- Contract control number
- Name of Contractor
- Approved budget line item from which the contract will be paid
- Board approval date
- Contract amount
- Performance period and completion date
- Type of project
- Name of project
- Description of project

Upon reviewing the quarterly contracts reports (see Appendix M11), CDFFA staff may request a complete copy of any contract that they determine should receive detailed review. If a MOCA executes *no* contracts during a quarter, the MOCA must nevertheless submit a contracts report with that information.

#### **M1003.1 Quarterly Contracts Report Exception**

Because the University of California (UC) requires that CDFFA review and sign every individual contract that a MOCA enters into with UC, MOCAs are not required to list research contracts with the University of California on the quarterly contracts reports they submit to CDFFA.

#### **M1003.2 Reciprocal Indemnification Clauses in Contracts with the University of California**

Research contracts with the University of California require inclusion of unique reciprocal indemnification clauses that protect both UC and the MOCA. The required clauses are as follows:

- THE REGENTS OF THE UNIVERSITY OF CALIFORNIA shall defend, indemnify, and hold [THE BOARD or THE COUNCIL], THE STATE OF CALIFORNIA and its Agencies, along with their respective officers, employees, and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense,

**CHAPTER M1000**

attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, its officers, agents, or employees.

- [THE BOARD or THE COUNCIL] and THE STATE OF CALIFORNIA shall defend, indemnify, and hold THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, its officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of [THE BOARD or THE COUNCIL] or THE STATE OF CALIFORNIA and its Agencies including their respective officers, agents, or employees.

**M1004      OPTIONAL CONTRACTS REVIEW**

Every MOCA has the option to request CDFA's contract review and/or approval services for any contract. CDFA expects even those MOCAs that utilize this service, however, to submit quarterly contract reports.

**M1005      CONTROVERSY ALERT**

CDFA expects a chief executive to notify the Marketing Branch if he or she has reason to believe that a contract the MOCA intends to execute may be perceived as controversial. Marketing Branch staff will work with the chief executive to mitigate or resolve the controversy.

**M1006      LICENSING AGREEMENTS**

CDFA requires contracts allowing for the use of a MOCA's copyright, trademark, patent, or intellectual or similar property belonging to the MOCA to include a provision that, should the MOCA program terminate, CDFA shall be the successor-in-interest, with all rights to such property transferring to CDFA. CDFA further expects that all licensing agreements shall be included on the quarterly contracts report form.

**CHAPTER M1100**

**ENFORCEMENT SUPPORT**

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**M1100 OVERVIEW**

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

Enforcement activities include:

- Auditing handlers subject to statutory provisions
- Obtaining delinquent assessment reports from MOCAs
- Making deficiency determinations (marketing orders and agreements only)
- Overseeing full payment of delinquent assessments, including pursuing remedies through small claims or civil court as necessary

**NOTE**

Various sections within this Chapter may not apply to councils, depending on individual council statutes.

Appendices M12 and M13 contain flow charts that depict CDFA's enforcement actions for marketing orders and agreements. Individual council statutes contain variations.

**M1101 ASSESSMENT TRUSTEES**

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

**M1102 OPEN RECORDS**

Section 59201 of the California Marketing Act gives CDFA the discretion to take whatever actions are necessary to ensure proper administration of MOCAs, including imposing a requirement that handlers maintain books and records that comprehensively and accurately reflect operation of the business. The Marketing Act also requires handlers to allow a representative from CDFA to inspect books and records relating to payment of assessments.

**CHAPTER M1100**

**M1103 HANDLER AUDITS**

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

**M1103.1 Out-of-State Handlers**

Additional rules apply to out-of-state commodity handlers. In general, wherever this business arrangement is in effect, CDFA considers the affected California grower to be the handler with regard to payment of assessments.

**M1103.2 Exceptions**

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

- Marketing orders with inspection programs
- Marketing programs for which other government agencies collect and verify data, such as:
  - The Milk Pooling Branch, for dairy marketing programs
  - Department of Fish and Game, for the California Salmon Council

**M1103.3 Intervals**

CDFA audits most non-exempt handlers at least once every three years, because Section 59231 of the California Marketing Act sets a three-year statute of limitations on filing any action or penalty against a handler for violation of reporting requirements in the Act. However, in recognition of excellent performance and in an effort to minimize costs without compromising the goals and purpose of the audit program, CDFA, with agreement from MOCA chief

**CHAPTER M1100**

executives, may audit less frequently those handlers with satisfactory compliance histories. "Satisfactory compliance" means that, in the prior two audits, the auditor detected no variance from what should have been reported and paid.

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

**M1103.4 Individual MOCAs' Handler Audit Policies**

CDFA expects MOCAs to write their own board-approved handler audit policies. In support of MOCAs' policies, CDFA conducts handler audits at the intervals specified in each individual MOCA's policy.

**M1104 ASSESSMENT COLLECTION BY MOCAs**

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

**M1104.1 Steps for Collecting Delinquent Assessments**

CDFA's Marketing Branch expects MOCAs to take the following steps to collect delinquent assessments:

1. Delinquency Alert by Telephone. If the MOCA does not receive payment within 15 days after the due date, contact the delinquent party by telephone immediately. Document all contacts with the handler.
2. Demand Letter. If the MOCA does not receive payment within 15 days after the delinquency notification telephone call, send a letter to the handler demanding payment for the assessments due. In this letter, advise the handler that unless the MOCA receives payment within 15 calendar days, the next step will be to refer his/her account to the California Department of Food and Agriculture for initiation of a statutory collection procedure. Simultaneously send a copy of the demand letter to CDFA's Marketing Branch.

## **CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M1100**

3. Importance of Formal Notification. Sending a demand letter does not preclude following up by telephone; however, a telephone call should not be used in lieu of a written demand for payment.
4. Referral to CDFA. If the MOCA does not receive payment within 15 calendar days from the postmarked date of the demand letter, refer the account without delay, along with all pertinent documentation, to CDFA's Marketing Branch.

#### **M1104.2 Prohibition Against Refusal to Provide Service**

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

#### **M1104.3 Voting Rights of Delinquent Assessment Payers**

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

#### **M1104.4 Good Standing**

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

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

### **M1105 HANDLER BANKRUPTCY**

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

**CHAPTER M1200**

**NEW AND TERMINATING MARKETING ORDERS AND AGREEMENTS**

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**M1200 OVERVIEW**

Appendix M14 depicts all steps involved in establishing a new marketing order or agreement. Chapter M1300 contains parallel procedures for establishing councils. The California Department of Food and Agriculture (CDFA) expects any marketing order or agreement that finds it necessary to terminate its operations to follow the procedures outlined at the end of this Chapter.

**M1201 MEMORANDUM OF UNDERSTANDING WITH CDFAs**

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

**M1201.1 MOU Specifications**

In the standard form MOU (see Appendix M15), CDFAs's Marketing Branch specifies the amount that proponents must deposit with CDFAs to start the authorization process. The MOU also provides an estimated cost for each additional step in creating a new marketing order or agreement and further delineates the responsibilities of all parties.

**M1202 PROPONENTS' RESPONSIBILITY FOR COSTS**

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

**M1203 RATIONALE**

Before the Marketing Branch goes to work, CDFAs expects proponents for a new marketing order or agreement to demonstrate that members of the industry can

## **CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M1200**

reasonably assume they will benefit from the proposed programs. CDFA further expects the proponents' rationale to indicate that industry support is adequate to achieve the desired goals.

#### **M1204 ANALYSIS OF PUBLIC HEARING TESTIMONY**

One of the steps CDFA is required to take in connection with establishing a new marketing order or agreement is to hold a hearing and invite testimony from members of the industry and the public. The Marketing Branch is responsible for completing a comprehensive analysis of the public hearing testimony and relevant data. This analysis conforms to the format and addresses the issues specified in statute. It is the goal of the Branch to prepare the analysis and issue a decision within 45 calendar days of the close of the public hearing record. The Branch does not accept additional input ex parte during those 45 days.

#### **M1205 REFERENDUM**

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

#### **M1206 BOARD RESPONSIBILITY FOR MANAGEMENT OF NEW MARKETING ORDERS OR AGREEMENTS**

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

##### **M1206.1 Avoiding Conflict of Interest**

CDFA strongly discourages marketing orders and agreements from seeking management services from providers that may have conflicts of interest. If a potential conflict of interest exists, CDFA requires the management services

## **CDFFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **CHAPTER M1200**

contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

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

#### **M1206.2 Potential for Additional Marketing Branch Charges**

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

#### **M1207 TERMINATION**

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

- Date for closing the office
- Date for notifying employees of their termination
- Schedule for notifying vendors of termination of services
- Copy of notification to bank of addition of CDFFA employees as account signatories
- Plan for disposition of assets (a marketing order or agreement terminating to become a commission must prepare an MOU regarding the transfer of assets to the commission)
- Plan for transfer of intellectual property
- Plan for archiving and transfer of records to CDFFA
- Wind down budget, including:

**CDFFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**CHAPTER M1200**

- Payment of employee leave balances
- Payment of employee severance (if provided for in employment manual or individual employee contracts)
- Resolution of pension benefits (if applicable)
- Plan for commissioning final audit
- Plan for the refund of remaining fund balances

**M1207.1 Payment of Termination Costs**

CDFFA expects a terminating marketing order or agreement to pay the full costs incurred by CDFFA in terminating the program.

**CHAPTER M1300**

**NEW AND TERMINATING COUNCILS**

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**M1300 OVERVIEW**

Appendix M16 depicts all steps involved in establishing a new council. In short, the proponents of a council must secure a commitment from an Assembly Member or Senator to carry legislation, craft language for a bill to authorize the council, and guide the bill through the legislative process until, ultimately, the Governor signs it into law. At that point, council proponents must adhere to additional procedures as described in this Chapter. The California Department of Food and Agriculture (CDFA) expects any council that finds it necessary to terminate its operations to follow the procedures outlined at the end of this Chapter.

**M1301 MEMORANDUM OF UNDERSTANDING WITH CDFA**

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

**M1301.1 MOU Specifications**

In the standard form MOU (see Appendix M17), CDFA's Marketing Branch specifies the amount that proponents must deposit with CDFA to start the authorization process. The MOU also provides an estimated cost for each additional step in creating a new council and further delineates the responsibilities of all parties.

**M1302 PROPONENTS' RESPONSIBILITY FOR COSTS**

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

**M1303 RATIONALE**

CDFA expects proponents of a council to prepare a written rationale similar to that expected from proponents of marketing orders and agreements.

**CHAPTER M1300**

**Excerpt from CDFA's Policies for Marketing Orders and Agreements, Section M1203:**

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

**M1304 REFERENDUM**

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

**M1305 BOARD RESPONSIBILITY FOR MANAGEMENT OF NEW COUNCILS**

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

**M1305.1 Avoiding Conflict of Interest**

CDFA strongly discourages councils from seeking management services from providers that may have conflicts of interest. If a potential conflict of interest exists, CDFA requires the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

- The council hires a separate party to collect and handle assessments and other confidential information; *or*

**CHAPTER M1300**

- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process.

**M1305.2 Potential for Additional Marketing Branch Charges**

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

**M1306 TERMINATION**

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

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

**CDFA Policies *for ...* Marketing Orders, Councils, and Agreements (MOCAs)**

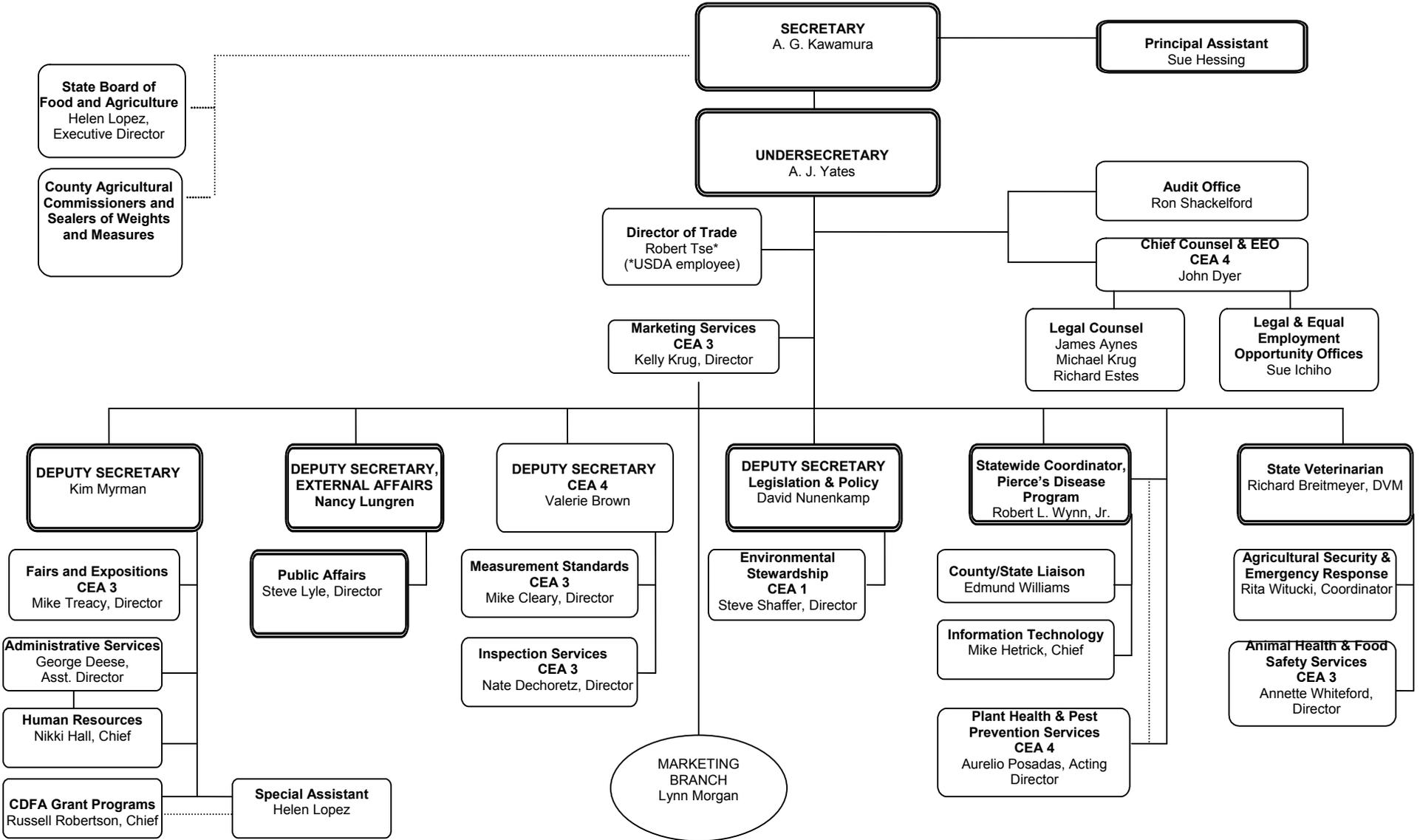
**CHAPTER M1300**

**M1306.1 Payment of Termination Costs**

CDFA expects a terminating council to pay the full costs incurred by CDFA in terminating the program.



# Appendix M1 ORGANIZATIONAL PLACEMENT OF THE MARKETING BRANCH



— Direct Reporting  
 ..... Indirect Reporting

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M2</b>			
<b>CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: COMPARISON OF AUTHORITIES</b>			
	<b>MARKETING ORDER or AGREEMENT</b>	<b>COUNCIL</b>	<b>COMMISSION</b>
<b>This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.</b>			
<b>STATUTORY AUTHORITY FOR CREATION</b>	Under general enabling authority provided in the California Marketing Act of 1937 and implemented administratively by the Department of Food and Agriculture.	Through commodity specific legislation.	Through commodity specific legislation.
<b>SCOPE OF ACTIVITIES</b>	Promotion, advertising, education, production research, quality standards, inspection and supply control.* * No marketing order currently utilizes supply control authority.	Promotion, advertising, education, marketing research, and research. Subject to CDFA's approval, any council may petition to adopt and administer any activity authorized by the California Marketing Act.	Promotion, advertising, education, marketing research, and production research. Subject to CDFA's approval, any commission may petition to adopt and administer any activity authorized by the California Marketing Act.
<b>PROCEDURE TO ESTABLISH</b>	A. Industry prepares preliminary draft of order. B. If deemed appropriate by CDFA, CDFA conducts public hearing. C. CDFA conducts industry vote if hearing testimony demonstrates that proposed marketing order may benefit the industry. D. If industry meets specified voting requirements, CDFA orders the marketing order into effect.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies council.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies commission.
<b>AMENDMENTS</b>	Major amendments must be developed in the same manner as the original order. CDFA may make minor amendments upon recommendation of a Board <i>only</i> for clarification or administrative purposes.	Same procedure as establishing the original council law. However, an industry vote generally is not required. In general, councils have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.	Same procedure as establishing the original commission law. However, an industry vote generally is not required. In general, commissions have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.
<b>PROGRAM AUTHORITY AND ROLE OF THE DEPARTMENT</b>	Marketing order and agreements Boards are advisory to CDFA. All actions of an Advisory Board are subject to CDFA's approval.	Councils are advisory to CDFA. All actions of a Council are subject to CDFA's approval.	In general, commissions are not advisory to CDFA. However, CDFA has authority in most cases to issue cease and desist orders in response to commission actions that CDFA deems to be not in the public interest. For many commissions, CDFA must concur with the annual budget and activities statement. CDFA has a non-voting ex-officio member position on most commissions.

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M2</b>			
<b>CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: COMPARISON OF AUTHORITIES</b>			
	<b>MARKETING ORDER or AGREEMENT</b>	<b>COUNCIL</b>	<b>COMMISSION</b>
<b>MEMBERSHIP AND SELECTION PROCESS</b>	Advisory Board may consist of producers and handlers, depending upon who is affected, and may have one public member. Industry peers recommend individuals through a nomination process, and CDFA appoints members from among those nominated.	Generally the same as marketing orders and agreements.	Commissions may consist of producers and handlers, depending upon who is affected, and may be required to have one public member that is appointed by CDFA (from nominees recommended by the commission). With exception of one commission, industry members are elected directly by industry peers and are not appointed by CDFA.
<b>CONTINUATION</b>	A public hearing is required at least once every five years. Some marketing orders and agreements have referenda, rather than hearings, to meet the continuation requirement.	In general, an industry hearing is required at least once every five years. However the Dairy Council requires a public hearing at least once every four years, while the Beef Council has no specified periodic re-approval requirement.	Re-approval requirements and intervals vary from commission to commission. In general, an industry vote or hearing is required at least once every five years.
<b>TERMINATION</b>	<p>A. Advisory Board may recommend that a budget and assessment rate not be established, in effect suspending the Board. CDFA may terminate a marketing order after three years if it has received no recommended budget and assessment rate.</p> <p>B. CDFA may conduct a public hearing if it receives a petition supported by at least 25% of producers or handlers that are directly affected and who produce or handle at least 25% of the volume. If questions exist as to the effectiveness of the marketing order, CDFA conducts an industry vote to determine whether the marketing order or agreement shall continue.</p> <p>C. CDFA must terminate a marketing order if it receives a petition supported by at least 51% of producers or handlers that are directly affected and who produce or handle at least 51% of the volume.</p>	<p>In general, councils can be terminated only during the continuation process.</p> <p><b>Note:</b> Termination of the Beef Council shall be submitted to an industry vote if CDFA or the Council determines that the Council is not effective. In addition, producers may petition for a vote of the industry.</p>	<p>Generally as follows:</p> <p>A. By a 2/3 vote, a commission may recommend that CDFA conduct an industry vote for termination.</p> <p>B. CDFA conducts an industry vote for termination if it receives a petition supported by 20% of the affected producers or handlers who account for 20% of the volume.</p> <p>C. CDFA terminates a commission directly if it receives a petition supported by 51% of the affected producers or handlers who account for 51% of the volume.</p>
<b>NON-COMPLIANCE PENALTIES</b>	Criminal and civil	Similar	Similar

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**Appendix M3**

**CONFIDENTIALITY AND INDEMNITY AGREEMENT AND AFFIDAVIT:  
TEMPLATE**

**Confidentiality Agreement**

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

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

*[Print or type name of MOCA]*

\_\_\_\_\_  
An Instrumentality of the State of California's Department of Food and Agriculture (hereafter "CDFA")

*and*

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

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

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

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

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

## CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)

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

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

- To a person explicitly entitled by CDFA and the MOCA to receive it.
- Any attorney employed by CDFA or the MOCA to provide advice and counsel regarding confidential information.
- By court order.

I, \_\_\_\_\_, agree not to use protected information:  
INITIAL

- *Except* in connection with my responsibilities as the MOCA's Program Executive/Manager.
- In my own self-interest or for the benefit of any other individual or entity.

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

I, \_\_\_\_\_, agree to inform CDFA within a minimum of 48 hours of any request for protected information.  
INITIAL

I, \_\_\_\_\_, agree not to release protected information prior to alerting CDFA, unless compelled by court order.  
INITIAL

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

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

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

I, \_\_\_\_\_, acknowledge that misuse of protected information may be punishable as a crime or subject to civil  
INITIAL action.

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

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

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

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

**CDEA Policies *for ...* Marketing Orders, Councils, and Agreements (MOCAs)**

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

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

## **CDFFA Policies *for* ... Marketing Orders, Councils, and Agreements (MOCAs)**

### **Appendix M4**

#### **ELEMENTS OF MOCA POLICY MANUALS**

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

ANNUAL REPORTS ... to members, with a copy to CDFFA

AUTHORITIES AND RESPONSIBILITIES OF THE MANAGER

COMMUNICATIONS

- Advertising and promotion
- Internal
- With CDFFA
- Media relations

CONFLICT OF INTEREST

- Annual Statement (Form 700)

CONTRACTS

ETHICS TRAINING

EMPLOYMENT MANAGEMENT

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

## **CDFA Policies *for ...* Marketing Orders, Councils, and Agreements (MOCAs)**

### FILE MANAGEMENT

- Records Retention Schedule

### FINANCE

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

### GRIEVANCES (members)

### INSURANCE

### ISSUES MANAGEMENT

### LEGAL SERVICES

### LEGISLATIVE AFFAIRS

### LIST MANAGEMENT

### LOBBYING

### OPEN MEETINGS

### PROGRAM EFFECTIVENESS EVALUATION

### PURCHASING

- Bid standards and procedures
- Credit cards
- Inventory

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M5 GRIEVANCE PROCEDURE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>1. Any person aggrieved by the actions or determinations of a marketing order, council, or agreement (MOCA) and unable to resolve the matter informally through review of the problem with the MOCA's chief executive may request a hearing before the MOCA Board's Grievance Committee.</li> <li>2. "Aggrieved Person" means a member of the industry regulated by the affected MOCA.</li> <li>3. "Aggrieved Person" does <i>not</i> mean employee. Aggrieved employees must follow the MOCA's employee grievance procedures</li> <li>4. Due to public requirements for due process, neither the MOCA nor CDFA can guarantee the confidentiality of information submitted in written complaints.</li> <li>5. A MOCA's Executive Committee shall act as the Grievance Committee unless the Board determines that a special Grievance Committee should be appointed. A special Grievance Committee shall be composed of not fewer than three nor more than seven members of the industry.</li> </ol>		
<ul style="list-style-type: none"> <li>• Attempt to resolve grievance through informal discussion with MOCA's chief executive</li> </ul>	<p>Aggrieved Person MOCA Chief Executive</p>	<ul style="list-style-type: none"> <li>• 89 or fewer days from the date of action or determination that is subject of claim</li> </ul>
<ul style="list-style-type: none"> <li>• File written claim with MOCA and CDFA, via Marketing Branch</li> </ul>	<p>Aggrieved Person</p>	<ul style="list-style-type: none"> <li>• Within 90 days of date of action or determination that is subject of claim</li> <li>• If complaint concerns assessment, within 90 days after assessment's final due date, as established by MOCA</li> </ul>
<ul style="list-style-type: none"> <li>• Issue confirmation to aggrieved person of MOCA's and CDFA's receipt of written complaint</li> </ul>	<p>MOCA</p>	<ul style="list-style-type: none"> <li>• Within 20 days of receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>• Notify aggrieved person and CDFA of the date, time, and place of Grievance Committee's meeting</li> </ul>	<p>MOCA</p>	<ul style="list-style-type: none"> <li>• At least 20 days prior to the date of the meeting</li> </ul>
<ul style="list-style-type: none"> <li>• Convene to examine facts and circumstances of the grievance</li> <li>• This process includes consideration of oral and written testimony and other evidence presented by aggrieved person and other interested parties, including but not limited to MOCA staff</li> <li>• The meeting shall be recorded and/or transcribed</li> </ul>	<p>Grievance Committee</p>	<ul style="list-style-type: none"> <li>• Within 60 days of MOCA's receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>• Submit to MOCA Board an analysis of merits of the grievance and recommendation for resolution</li> </ul>	<p>Grievance Committee</p>	<ul style="list-style-type: none"> <li>• Within 30 days after Grievance Committee's meeting</li> </ul>
<ul style="list-style-type: none"> <li>• Recommend to CDFA whether to approve or deny Grievance Committee's recommendation</li> </ul>	<p>MOCA</p>	<ul style="list-style-type: none"> <li>• Within 60 days of receipt of Grievance Committee's recommendation</li> </ul>

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M5 GRIEVANCE PROCEDURE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<ul style="list-style-type: none"> <li>Issue final decision to MOCA and aggrieved person</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within 60 days of receipt of MOCA's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>If CDFA's decision is unfavorable, appeal decision by submitting to CDFA a written request for appeal, outlining reasons why appeal is warranted</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Within 60 days of receipt of CDFA's decision</li> </ul>
<ul style="list-style-type: none"> <li>If appeal is denied by CDFA or unfavorable decision is upheld, petition appropriate court for judicial review</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Not time-specified</li> </ul>
<ul style="list-style-type: none"> <li>If grievance concerns assessments, file assessment reports and pay assessments until matter is resolved</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>According to ordinary assessment report filing and payment schedule</li> </ul>
<ul style="list-style-type: none"> <li>If grievance concerns assessments and aggrieved person prevails in all or part of the claim, refund amount of assessment payments, penalties, and/or interest due to aggrieved person according to ultimate decision</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Not time-specified</li> </ul>

**Appendix M6**

**SUGGESTED TOPICS FOR WITNESSES  
AT PUBLIC HEARINGS**

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

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

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**Appendix M7**

**VOTER LIST CERTIFICATION FORM**

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

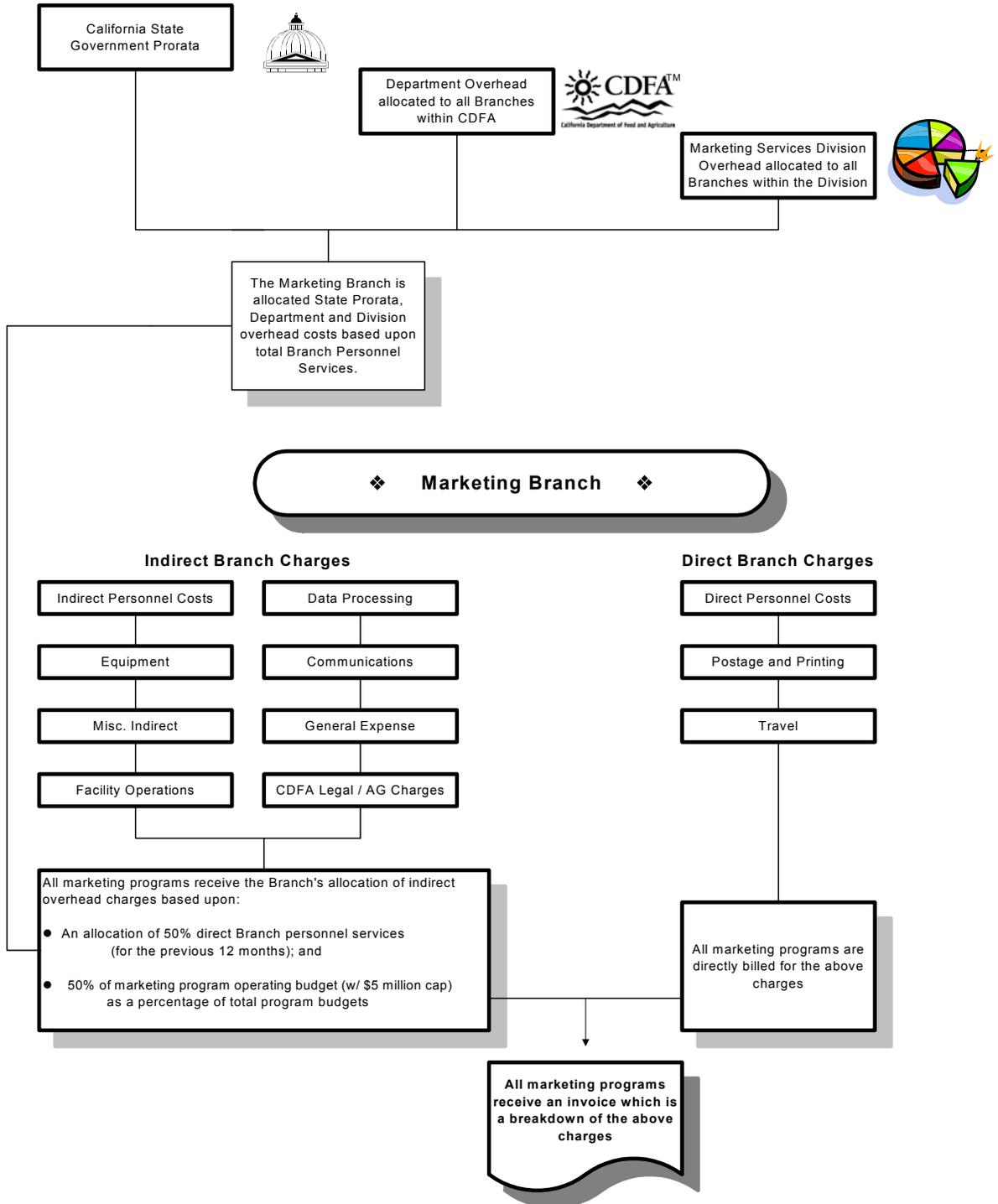
**\*\*\* IMPORTANT \*\*\***

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

<b><u>VOTER LIST CERTIFICATION</u></b>		
I, _____ [name], _____ [title], with [program name], declare as follows:		
1. As _____ [title], I am the person charged with the responsibility of maintaining and updating the list of California _____ [commodity name] growers that are subject to the provisions of the California _____ [program name].		
2. Since the last notice to file process in _____ [year], the list has been updated on a regular basis. The procedure used to update the list is: _____ [describe].		
3. The list I am providing to CDFA on this date is, to the best of my knowledge, a current, complete, and accurate list of California _____ [commodity name] growers that are subject to the provisions of the California _____ [program name].		
_____ Date	_____ Signature	_____ Name (print or type)

Appendix M8

COST ALLOCATION OF MARKETING BRANCH CHARGES



**Appendix M9**

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

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

Application Steps:

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

<p><b>Chief Executive Certification</b></p>
---

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

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

**CDFFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

\_\_\_\_\_  
Name of Program - (print or type)

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

\_\_\_\_\_  
Applicant's Position (print or type)

\_\_\_\_\_  
Name of Chief Executive (print or type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Applicant Certification**

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

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

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

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

\_\_\_\_\_  
Date

**For CDFFA Marketing Branch Use Only**

\_\_\_\_\_  
Approved Marketing Branch Chief Date

\_\_\_\_\_  
Card Number

\_\_\_\_\_  
Date

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**Appendix M10**

**ANNUAL CERTIFICATION OF  
EMPLOYEE INSURANCE COVERAGE**

**State of California  
DEPARTMENT OF FOOD AND AGRICULTURE  
Authorization to Use Privately-Owned Vehicles on Official Business**

In accordance with California Department of Food and Agriculture (CDFA) policies for marketing orders, councils, and agreements (MOCAs), I request approval to use privately-owned vehicles to conduct official MOCA business. I expect such usage for the upcoming year to total (please check the appropriate mileage below):

Less than 500 miles    
  Between 500 and 5,000 miles    
  More than 5,000

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

1. Adequate for the work to be performed.
2. Equipped with safety belts in operating condition.
3. To the best of my knowledge, in safe mechanical condition.
4. Covered by liability insurance for the amounts applicable to my declared level of private car usage as shown below:

<b>Expected Level of Usage</b>	<b>Insurance Requirements</b>
Under 500 miles per year	<ul style="list-style-type: none"> <li>• \$15,000 for personal injury to or death of one person</li> <li>• \$30,000 for injury to or death of two or more persons in one accident</li> <li>• \$5,000 for property damage</li> </ul>
500 to 5,000 miles per year	<ul style="list-style-type: none"> <li>• \$50,000 for personal injury to or death of one person</li> <li>• \$100,000 for injury to or death of two or more persons in one accident</li> <li>• \$25,000 for property damage</li> </ul>
More than 5,000 miles per year	<ul style="list-style-type: none"> <li>• \$100,000 for personal injury to, or death of one person</li> <li>• \$300,000 for injury to or death of two or more persons in one accident</li> <li>• \$50,000 for property damage</li> </ul>

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

**For CDFA Marketing Branch Use Only**

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

Signature	Title	Date
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CDEA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)

Appendix M11

QUARTERLY CONTRACTS REPORT

MARKETING BRANCH CONTRACTS REPORT FORM
Submitted by: \_\_\_\_\_ on behalf of \_\_\_\_\_
(Executive / staff name) (MOCA name)

Reporting Period (please check the box next to the reporting period and specify the year):

- Jan - Mar (Due April 30)
Apr - Jun (Due July 30)
Jul - Sep (Due October 30)
Oct - Dec (Due January 30)

Check this box if there are no contracts required to be reported pursuant to Section M1003: [ ]

Are any contracts listed below controversial? YES NO If YES, please discuss with your Branch representative.

CONTRACT NO.: Contractor:
Approved Budget Line Item: Recommendation Date:
Contract Amount: Completion Period: Continuing Project (Yes/No):
Type of Project (check box): Promotion: Scientific Research: Inspection: Lease: Other:
Name of Project (provide description below or on attached sheet):

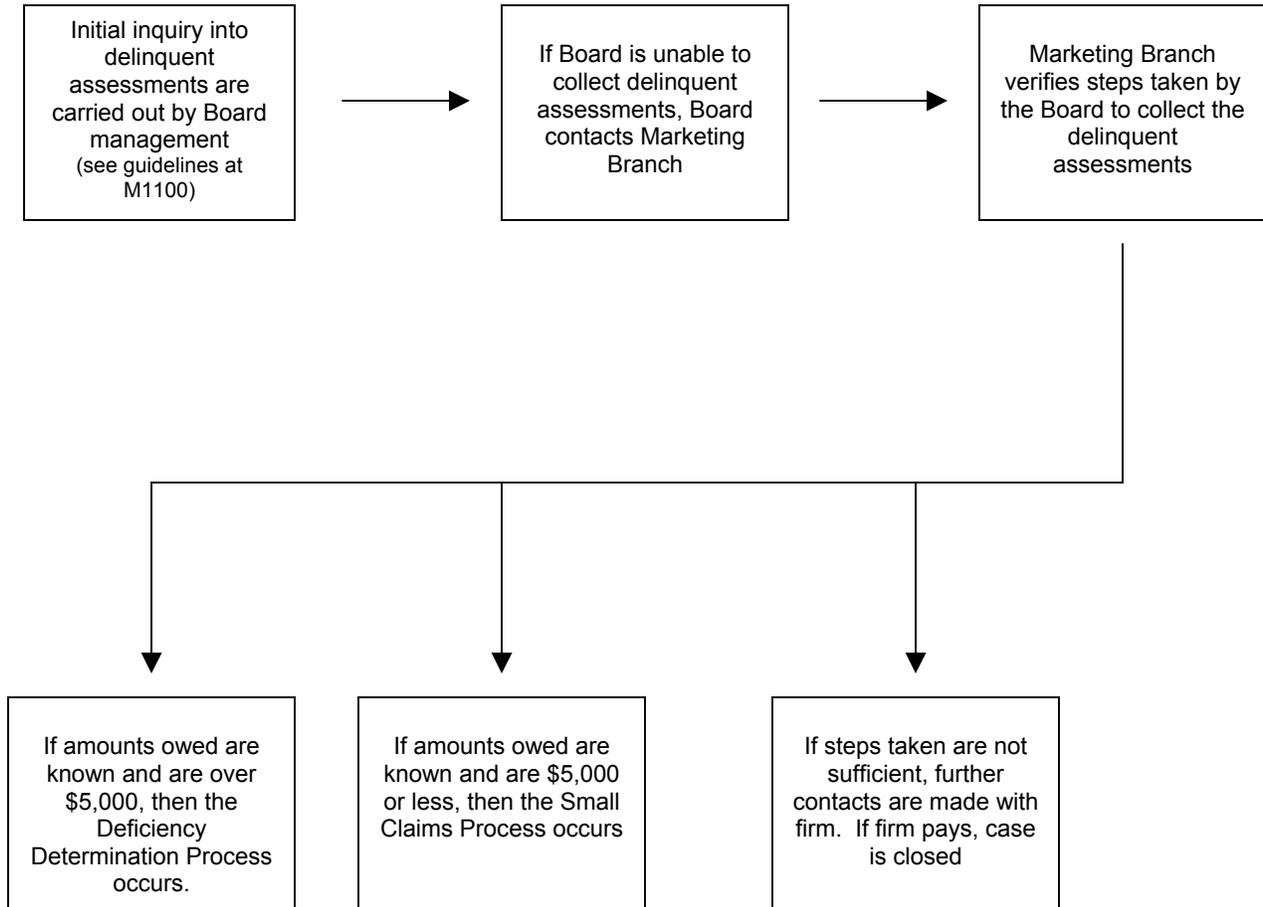
CONTRACT NO.: Contractor:
Approved Budget Line Item: Recommendation Date:
Contract Amount: Completion Period: Continuing Project (Yes/No):
Type of Project (check box): Promotion: Scientific Research: Inspection: Lease: Other:
Name of Project (provide description below or on attached sheet):

CONTRACT NO.: Contractor:
Approved Budget Line Item: Recommendation Date:
Contract Amount: Completion Period: Continuing Project (Yes/No):
Type of Project (check box): Promotion: Scientific Research: Inspection: Lease: Other:
Name of Project (provide description below or on attached sheet):

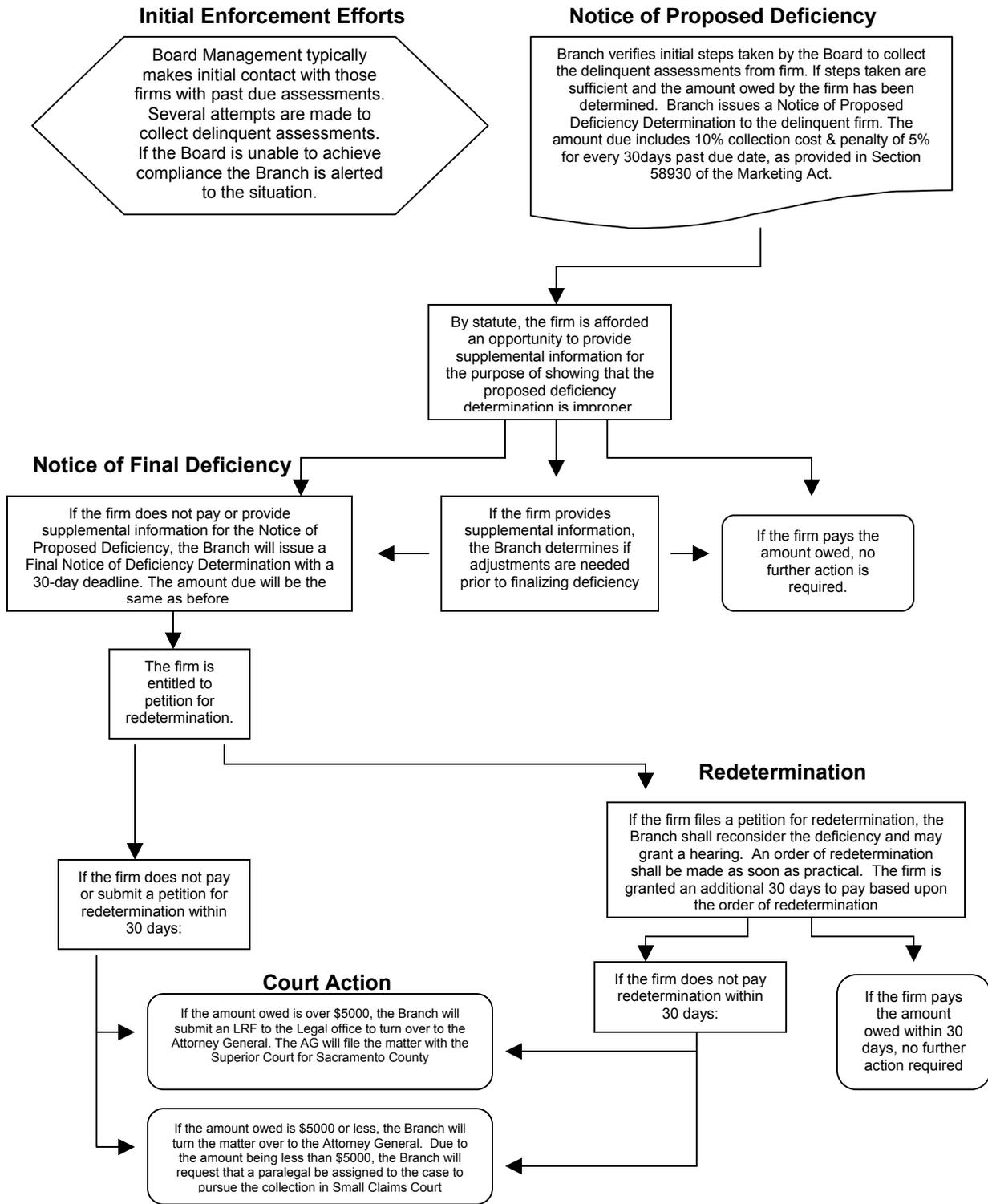
**CDEFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**Appendix M12  
ENFORCEMENT FLOW CHART**

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## Appendix M13 DETAILED ENFORCEMENT PROCEDURES FOR MARKETING ORDERS



This chart is provided as an overview. See Food & Agriculture Code 59234.5 for specific statutory requirements. Please refer to applicable council statutes for specific requirements.

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M14</b>		
<b>NEW MARKETING ORDER OR AGREEMENT ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<b>Preliminary Work</b>		
<ul style="list-style-type: none"> <li>Conduct meetings with affected industry to determine whether sufficiently broad base of support exists</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Prepare written rationale that documents adequate industry support</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Prior to seeking CDFA action</li> </ul>
<ul style="list-style-type: none"> <li>If support is adequate, submit written request to CDFA to create a new marketing order or agreement</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Estimate costs of implementing proposed marketing order or agreement</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within 10 days after receipt of request</li> </ul>
<ul style="list-style-type: none"> <li>Deposit full amount of cost estimate with CDFA and sign Memorandum of Understanding (MOU)</li> </ul>	Proponents & CDFA	<ul style="list-style-type: none"> <li>At Proponents' discretion</li> </ul>
<b>Implementation Process Timeline Begins</b>		
<ul style="list-style-type: none"> <li>Craft language for the proposed marketing order or agreement</li> </ul>	CDFA, with input from Proponents	<ul style="list-style-type: none"> <li>Within 30 days after signing of MOU</li> </ul>
<ul style="list-style-type: none"> <li>Assemble list of growers and/or handlers who would be assessed ... if necessary, contact all handlers on record in order to develop the producer list</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Up to 90 days after signing of MOU</li> </ul>
<ul style="list-style-type: none"> <li>File with CDFA list of affected growers, including each one's production volume</li> </ul>	Handlers	<ul style="list-style-type: none"> <li>Within 30 days of receipt of CDFA's request</li> </ul>
<ul style="list-style-type: none"> <li>When a public hearing has been scheduled, send to industry a hearing notice, (i) including copy of the wording for the proposed marketing order, and (ii) indicating possibility of an industry vote</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Minimum of 30 days prior to the hearing</li> </ul>
<ul style="list-style-type: none"> <li>Conduct hearing to determine whether:                             <ul style="list-style-type: none"> <li>→ Industry representatives can document rationale for creating the marketing order or agreement</li> <li>→ Adequate industry funds are available to support a marketing order or agreement of the size required to achieve stated goals</li> <li>→ The proposed marketing order has the potential to invest available funds wisely to secure the desired industry benefits</li> </ul> </li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Not more than 120 days after signing of MOU</li> </ul>

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M14</b>		
<b>NEW MARKETING ORDER OR AGREEMENT ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<ul style="list-style-type: none"> <li>Request short filing period after the hearing during which CDFA may receive additional comments</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not more than 15 days after the date of the hearing</li> </ul>
<ul style="list-style-type: none"> <li>Complete analysis of public hearing findings</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within approximately 45 days of hearing or extended comment period, if one was requested, during which time no additional comments are accepted</li> </ul>
<ul style="list-style-type: none"> <li>Upon determination that creation of a new marketing order or agreement is justified:                             <ul style="list-style-type: none"> <li>→ Conduct referendum (industry vote) for new marketing order; <b>or</b></li> <li>→ Coordinate industry sign-up for new marketing agreement</li> </ul> </li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Typical industry voting period for new marketing order is 30 days</li> <li>Typical industry sign-up period for new marketing agreement is 30 days</li> </ul>
<ul style="list-style-type: none"> <li>Monitor referendum to determine that statutory standards and requirements are met</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Typically, 30 days</li> </ul>
<ul style="list-style-type: none"> <li>For the referendum to be <u>valid</u>, at least 40% of eligible voters on record must vote</li> </ul>	Proponents	
<ul style="list-style-type: none"> <li>For the referendum to <u>pass</u>, it must meet the standards set in statute:                             <ul style="list-style-type: none"> <li>(i) 65% of voters representing 51% of total volume submitted valid ballots and voted in favor; <b>or</b></li> <li>(ii) 51% of voters representing 65% of total volume submitted valid ballots and voted in favor</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>If 40% participation in referendum is not achieved, exercise option to request voting period extension</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not more than 15 additional days</li> </ul>
<ul style="list-style-type: none"> <li>If 40% participation is not achieved, deem referendum to be invalid and do not tally votes</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within 24 hours of end of voting period</li> </ul>
<ul style="list-style-type: none"> <li>Tally votes and certify results</li> <li>Sign order to approve or deny creation of new marketing order or agreement</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within 24 hours of end of voting period</li> </ul>
<ul style="list-style-type: none"> <li>If approved, post and send “Notice of Issuance” to industry</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Generally, new marketing order or agreement goes into effect before beginning of next marketing season</li> </ul>

**Appendix M15**

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

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

**AUTHORITY**

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

**ROLE AND RESPONSIBILITIES OF CDFA**

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

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

## **CDFA Policies *for ...* Marketing Orders, Councils, and Agreements (MOCAs)**

8. Appoint initial board members and assist in calling and conducting the first board meeting.

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

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

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

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M16</b>		
<b>NEW COUNCIL ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<b>Preliminary Work</b>		
<ul style="list-style-type: none"> <li>Conduct meetings with affected industry to determine whether sufficiently broad base of support exists</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Prepare written rationale that documents adequate industry support</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Prior to seeking authors for legislation</li> </ul>
<ul style="list-style-type: none"> <li>If support is adequate, secure commitment from an Assembly Member or Senator to carry authorizing legislation</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Craft bill language and work with author to provide necessary support throughout the legislative and bill-signing process</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Estimate costs of implementing proposed council</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within 10 days after receipt of request</li> </ul>
<ul style="list-style-type: none"> <li>Deposit full amount of cost estimate with CDFA and sign Memorandum of Understanding (MOU)</li> </ul>	Proponents & CDFA	<ul style="list-style-type: none"> <li>At Proponents' discretion</li> </ul>
<b>Implementation Process Timeline Begins</b>		
<ul style="list-style-type: none"> <li>Assemble list of growers and/or handlers who would be assessed ... if necessary, contact all handlers on record in order to develop the producer list</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Up to 90 days after signing of MOU</li> </ul>
<ul style="list-style-type: none"> <li>File with CDFA a list of affected growers, including each one's production volume</li> </ul>	Handlers	<ul style="list-style-type: none"> <li>Within 30 days of receipt of CDFA's request</li> </ul>
<ul style="list-style-type: none"> <li>Conduct referendum (industry vote) for new council</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Typical industry voting period for new council is 30 days</li> </ul>
<ul style="list-style-type: none"> <li>Monitor referendum to determine that statutory standards and requirements are met</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Typically, 30 days</li> </ul>
<ul style="list-style-type: none"> <li>For the referendum to be <u>valid</u>, the percentage of eligible voters specified in the proposed council's authorizing legislation must vote</li> </ul>	Proponents	
<ul style="list-style-type: none"> <li>For the referendum to <u>pass</u>, it must meet the specific standards set in the proposed council's authorizing legislation</li> </ul>	Proponents	
<ul style="list-style-type: none"> <li>If required participation in referendum is not achieved, exercise option to request voting period extension</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not more than 15 additional days</li> </ul>

**CDFFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M16</b>		
<b>NEW COUNCIL ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<ul style="list-style-type: none"> <li>• If required participation is not achieved, deem referendum to be invalid and do not tally votes</li> </ul>	CDFFA	<ul style="list-style-type: none"> <li>• Within 24 hours of end of voting period</li> </ul>
<ul style="list-style-type: none"> <li>• Tally votes and certify results</li> <li>• Sign order to approve or deny creation of council</li> </ul>	CDFFA	<ul style="list-style-type: none"> <li>• Within 24 hours of end of voting period</li> </ul>
<ul style="list-style-type: none"> <li>• If approved, notify members of industry</li> </ul>	CDFFA	<ul style="list-style-type: none"> <li>• Generally, new council goes into effect before beginning of next marketing season</li> </ul>

**Appendix M17**

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

---

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

**AUTHORITY**

Every council has its own enabling statute. Most council statutes require compliance with specified Sections of the California Marketing Act.

**ROLE AND RESPONSIBILITIES OF CDFA**

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

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

**ROLE AND RESPONSIBILITIES OF THE PROPONENTS**

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

**CDFR Policies *for ...* Marketing Orders, Councils, and Agreements (MOCAs)**

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



**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**INDEX**

<b>- E -</b>		Litigation notification mutuality.....4	
Economic analysis research.....	30	Loans and lines of credit.....25	
Electronic format.....	8	Lobbying.....28	
Email.....	11		
Employment status of MOCA employees.....	2	<b>- M -</b>	
Evaluation.....	30ff	Marketing Branch	
Executive search.....	1	Approvals of MOCA actions	
Extension for referendum period.....	9	Advertising and promotion.....2, 3	
<b>- F -</b>		Annual budgets.....21	
Financial audits.....	26	Budget amendments.....22	
Approved sources.....	26	Contracts.....33-4	
Management letter requirement.....	26	Lobbying.....28-9	
Report submittal requirement.....	26	Charges.....14ff, A-13	
Financial statements.....	24	Additional.....2, 42, 43, 46, 47	
Fiscal/Policy Advisory Committee.....	14, 18	Basis.....14, A-13	
Fund investment.....	24	Billing questions.....17	
<b>- G -</b>		Budgeting for.....15	
Good standing of board members.....	39	Cost allocation of.....13	
Government rates and discounts.....	22	Delinquent accounts.....15	
Identification cards.....22, A-14ff		Disputed.....17ff	
Grievance procedure.....	5, A-7ff	Disputed charges review process.....18-20	
<b>- H -</b>		Late payments.....15	
Handler audits.....	37	Monthly invoices.....14, 17	
Handler bankruptcy.....	39	Paid by proponents for new MOCAs.....16	
<b>- I -</b>		Payment of undisputed charges.....18	
Identification cards (government rates).....	22, A-14ff	Reserve for unanticipated expenditures.....14	
Indemnity		Standards for cost recovery.....15	
Confidentiality agreements.....	A-5	Fiscal/Policy Advisory Committee.....14, 18	
Contracts with University of California.....	34	Liaison with CDFA Legal Office.....3	
Insurance		Marketing Program Services Account.....14	
Annual certification of employee coverage.....	A-16	Mission.....1	
Employee eligibility for PERS insurance.....	2	MOCA effectiveness evaluation.....30-1	
General.....	25	Monthly Marketing Memo.....11	
Motor vehicle insurance.....	26	Referenda.....8	
Investment of funds.....	24	Reserve for unanticipated expenditures.....14	
<b>- L -</b>		Review requirements	
Legal counsel.....	3	Advertising and promotion.....2, 3	
Procedure for requesting legal opinions.....	3	Annual budgets.....21	
Licensing agreements.....	35	Audit report.....26	
List management ( <i>see also</i> Voting)		Budget amendments.....22	
Access to voter lists.....	8	Contracts.....33-4	
Confidentiality of voter lists.....	8	Lobbying.....28-9	
Content standards.....	7	Quarterly contracts report.....33	
Electronic format.....	8	Role within CDFA.....ii, A-1	
Voter list certification form.....	12	Website.....11	
		Marketing order, council, or agreement	
		<i>See</i> MOCAs	
		Marketing order or agreement membership.....A-3	
		Marketing Programs	
		Benefits.....i, ii	
		Definition.....i	

## CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)

### INDEX

<p>Functions .....iii</p> <p>Policies .....iii</p> <p>Purpose .....i</p> <p>Types ..... iii, A-2</p> <p>Media relations ..... 12</p> <p style="padding-left: 20px;">Assistance from CDFA’s Public Affairs Office .. 13</p> <p>Membership, MOCAs .....A-3</p> <p>Memorandum of understanding with CDFA</p> <p style="padding-left: 20px;">New council ..... 44, A-26ff</p> <p style="padding-left: 20px;">New marketing order or agreement ..... 40, A-22ff</p> <p>MOCAs</p> <p style="padding-left: 20px;">Assessment collection ..... 38</p> <p style="padding-left: 20px;">Assessment rates ..... 21</p> <p style="padding-left: 20px;">Authorities .....A-2</p> <p style="padding-left: 20px;">Budgets ..... 21</p> <p style="padding-left: 20px;">Conflict of interest ..... 41</p> <p style="padding-left: 20px;">Employment ..... 2</p> <p style="padding-left: 20px;">Good standing of MOCA Board members ..... 39</p> <p style="padding-left: 20px;">Handler audit policies ..... 38</p> <p style="padding-left: 20px;">Management ..... 1, 41, 45</p> <p style="padding-left: 40px;">Acting Chief Executive ..... 1, 41, 45</p> <p style="padding-left: 40px;">Executive Search ..... 1</p> <p style="padding-left: 40px;">Selection of Chief Executive ..... 1</p> <p style="padding-left: 40px;">Vacancy, Chief Executive ..... 1, 41, 45</p> <p style="padding-left: 20px;">Membership .....A-3</p> <p style="padding-left: 20px;">Policy manuals ..... 5, A-7</p> <p style="padding-left: 20px;">Prohibition against refusal to provide service ..... 39</p> <p style="padding-left: 20px;">Reauthorization ..... 9, A-3</p> <p style="padding-left: 20px;">Termination</p> <p style="padding-left: 40px;">Council ..... 46, A-3</p> <p style="padding-left: 40px;">Marketing order or agreement ..... 42, A-3</p> <p>Monthly Marketing Memo ..... 11</p> <p>Motor vehicle insurance ..... 26</p> <p>MOU, <i>see</i> Memorandum of understanding</p> <p>Multi-year contracts ..... 33</p>	<p>Conflict of interest ..... 41</p> <p>Continuation .....A-3</p> <p>Establishment procedure .....A-2</p> <p>Establishment timeline .....A-20</p> <p>Membership .....A-3</p> <p>Memorandum of understanding ..... 40, A-22</p> <p>Proponents’ responsibility for costs ..... 40</p> <p>Public hearing requirement ..... 41</p> <p>Rationale, in writing ..... 40</p> <p>Referendum ..... 41</p> <p>Nomination of MOCA Board members ..... 9, A-3</p> <p>Noncompliance penalties .....A-3</p> <p>Notice of public hearings ..... 6</p>
<b>- N -</b>	
<p>New council ..... 44-6, A-2, A-24</p> <p style="padding-left: 20px;">Board responsibility for management ..... 45</p> <p style="padding-left: 20px;">Conflict of interest ..... 45</p> <p style="padding-left: 20px;">Continuation .....A-3</p> <p style="padding-left: 20px;">Establishment procedure .....A-2</p> <p style="padding-left: 20px;">Establishment timeline .....A-24</p> <p style="padding-left: 20px;">Membership .....A-3</p> <p style="padding-left: 20px;">Memorandum of understanding ..... 44, A-26</p> <p style="padding-left: 20px;">Proponents’ responsibility for costs ..... 44</p> <p style="padding-left: 20px;">Rationale, in writing ..... 44</p> <p style="padding-left: 20px;">Referendum ..... 45</p> <p>New marketing order or agreement ... 40-2, A-2, A-20</p> <p style="padding-left: 20px;">Analysis of public hearing testimony ..... 41</p> <p style="padding-left: 20px;">Board responsibility for management ..... 41</p>	<p style="text-align: center;"><b>- O -</b></p> <p>Office</p> <p style="padding-left: 20px;">Lease termination ..... 33</p> <p style="padding-left: 20px;">Location ..... 2</p> <p>Office of Risk and Insurance Management ..... 26</p> <p>One voice ..... 28</p>
<b>- P -</b>	
	<p>Penalties for noncompliance .....A-3</p> <p>PERS ..... 2</p> <p>Policy manuals ..... 5, A-7</p> <p>Procedure for requesting legal opinions ..... 3</p> <p>Program effectiveness evaluation ..... 30ff</p> <p>Proprietary information ..... 1, A-4</p> <p>Protected information, defined .....A-4</p> <p>Public Affairs Office, CDFA ..... 12, 13</p> <p>Public Employment Retirement System ..... 2</p> <p>Public hearings ..... 6</p> <p style="padding-left: 20px;">Analysis of findings re: new marketing order or agreement ..... 41</p> <p style="padding-left: 20px;">Notice ..... 6</p> <p style="padding-left: 20px;">Testimony ..... 6, A-9</p> <p>Public records requests ..... 4</p>
<b>- Q -</b>	
	<p>Quarterly contracts report ..... 33, A-17</p>
<b>- R -</b>	
	<p>Reauthorization ..... 9, A-3</p> <p>Records retention, contracts ..... 33</p> <p>Referenda ..... 8</p> <p style="padding-left: 20px;">Referendum extension ..... 9</p> <p>Reserves for MOCA operating expenses ..... 22</p> <p>Roster, MOCA Boards of Directors ..... 12</p>

**CDEA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

**INDEX**

---

**- S -**

Secretary of Food and Agriculture  
    Role in regulating marketing programs ..... ii, A-2  
Standard clauses for inclusion in contracts  
    Loans and lines of credit ..... 25  
    Office/property lease termination ..... 33  
    Reciprocal indemnification with UC ..... 34  
Standards for advertising/promotion content ..... 2

**- T -**

Termination  
    Council ..... 46, A-3  
    Marketing order or agreement ..... 42, A-3  
    Office or property lease ..... 33  
Testimony at public hearings ..... 6, A-11  
Travel costs (government discounts) ..... 22

**- U -**

Unsolicited ad ideas ..... 3

**- V -**

Vacancy, Chief Executive ..... 1, 41, 45  
Vehicle insurance ..... 26  
Voice mail ..... 11  
Voting  
    Access to voter lists ..... 8  
    Bloc voting ..... 7  
    Confidentiality ..... 8  
    Reauthorization ..... 9, A-3  
    Release of voting information ..... 9  
    Rights of delinquent assessment payers ..... 39  
    Voter eligibility ..... 7  
    Voter list certification form ..... A-12

# CDFA Policies Commissions

## TABLE OF CONTENTS

<b>C200: Administrative Direction and Oversight .....</b>	<b>C-1</b>
C200 OVERVIEW .....	C-1
C201 BOARD RESPONSIBILITY FOR MANAGEMENT OF COMMISSIONS .....	C-1
C201.1 Executive Search .....	C-1
C201.2 Vacancy in the Chief Executive Position .....	C-1
C201.3 Potential for Additional Charges .....	C-1
C201.4 Potential for Conflict of Interest .....	C-2
C201.5 Employment Status of Commission Employees .....	C-2
C201.6 Office Location .....	C-2
C202 ADVERTISING AND PROMOTION REVIEW .....	C-2
C202.1 Non-routine Review .....	C-3
C202.2 Unsolicited Ad Ideas .....	C-3
C203 PROCEDURES FOR REQUESTING LEGAL OPINIONS .....	C-3
C203.1 Acknowledgement of a Commission’s Request for Legal Opinion .....	C-3
C203.2 External Inquiries .....	C-3
C204 LITIGATION NOTIFICATION MUTUALITY .....	C-4
C205 PUBLIC RECORDS REQUESTS .....	C-4
C205.1 Routine Public Records Requests .....	C-4
C205.2 Non-routine Public Records Requests .....	C-4
C205.3 Notification to Affected Commission Chief Executives .....	C-4
C205.4 Notification to the Marketing Branch .....	C-5
C206 COMMISSION BYLAWS .....	C-5
C207 ADMINISTRATIVE REVIEW .....	C-5
C208 GRIEVANCE PROCEDURE .....	C-5
<b>C300: Public Hearings and Voting .....</b>	<b>C-6</b>
C300 OVERVIEW .....	C-6
C301 PUBLIC HEARINGS .....	C-6
C301.1 Notice and Testimony .....	C-6

## CDFA Policies *for ... Commissions*

C302	VOTER ELIGIBILITY .....	C-6
C303	BLOC VOTING .....	C-6
C304	LIST MANAGEMENT .....	C-7
C304.1	Electronic Format .....	C-7
C305	ACCESS TO VOTER LISTS .....	C-7
C305.1	Confidentiality .....	C-7
C306	REFERENDA .....	C-8
C306.1	Referendum Extension .....	C-8
C307	REAUTHORIZATION .....	C-8
C307.1	Reauthorization Timing .....	C-8
C308	RELEASE OF VOTING INFORMATION .....	C-8
C309	NOMINATIONS AND ELECTIONS .....	C-9
<b>C400:</b>	<b>Communication .....</b>	<b>C-10</b>
C400	OVERVIEW .....	C-10
C401	CDFA RESPONSIVENESS .....	C-10
C401.1	Correspondence .....	C-10
C401.2	Voice Mail and Email .....	C-10
C402	COMMUNICATION MUTUALITY .....	C-10
C402.1	Courtesy Copies to the Marketing Branch .....	C-11
C402.2	Courtesy Copies to Board Chairs .....	C-11
C402.3	Courtesy Copies to Commission Chief Executives .....	C-11
C402.4	Board Roster .....	C-11
C403	MEDIA RELATIONS .....	C-11
C403.1	Procedure for Requesting Assistance with Media Relations .....	C-12
<b>C500:</b>	<b>Marketing Branch Charges .....</b>	<b>C-13</b>
C500	OVERVIEW .....	C-13
C501	MARKETING PROGRAM SERVICES ACCOUNT (MPS) .....	C-13
C501.1	Reserve for Unanticipated Expenditures .....	C-13
C501.2	Consultation with the Marketing Branch's Fiscal/Policy Advisory Committee .....	C-13
C502	BASIS FOR MONTHLY CHARGES .....	C-13
C503	DELINQUENT ACCOUNTS .....	C-14

**CDFA Policies for ... Commissions**

C504	STANDARDS FOR COST RECOVERY .....	C-14
C505	BUDGETING FOR MARKETING BRANCH CHARGES.....	C-14
C506	CHARGES PAID BY NEW PROPONENT GROUPS .....	C-15
<b>C600:</b>	<b>Disputed Charges .....</b>	<b>C-16</b>
C600	OVERVIEW.....	C-16
C601	REQUEST FOR CLARIFICATION.....	C-16
C602	PAYMENT OF UNDISPUTED CHARGES .....	C-17
C603	REFERRAL TO THE FISCAL/POLICY ADVISORY COMMITTEE.....	C-17
C603.1	Composition of an Ad Hoc Disputed Charges Subcommittee .....	C-17
C603.2	Disputed Charges Review Process .....	C-17
C603.3	Demonstrated Effectiveness .....	C-18
C604	DISPUTED CHARGES ALTERNATIVE SCENARIOS TIMETABLE .....	C-18
<b>C700:</b>	<b>Finance .....</b>	<b>C-20</b>
C700	OVERVIEW.....	C-20
C701	BUDGETS AND ASSESSMENT RATES.....	C-20
C701.1	Budget Approval Prior to Beginning of Fiscal Year .....	C-20
C702	GOVERNMENT RATES AND DISCOUNTS .....	C-20
C702.1	Identification Cards .....	C-20
C703	RESERVES .....	C-21
C704	DEPOSIT ACCOUNTS .....	C-21
C705	INVESTMENT OF FUNDS .....	C-22
C706	FINANCIAL STATEMENTS.....	C-22
C707	LOANS AND LINES OF CREDIT .....	C-23
C708	MOTOR VEHICLE INSURANCE FOR PROGRAM- OWNED VEHICLES.....	C-23
C709	FINANCIAL AUDITS.....	C-24
C710	HANDLER AUDITS .....	C-24

## **CDFA Policies for ... Commissions**

C711	CONTRACTS .....	C-25
C711.1	Multi-year Contracts.....	C-25
C711.2	Records Retention .....	C-25
C711.3	Office or Property Lease Terminations .....	C-25
C712	ASSESSMENT CONCERNS .....	C-26
C712.1	Response to Nonpayment of Assessments .....	C-26
C712.2	Good Standing.....	C-26
C712.3	Nonpayment of Assessments as Grounds for Removal of Commissioners .....	C-26
C712.4	Voting Rights of Delinquent Assessment Payers.....	C-26
<b>C800:</b>	<b>Lobbying .....</b>	<b>C-27</b>
C800	OVERVIEW.....	C-27
C801	ONE VOICE.....	C-27
C801.1	Routine Communications .....	C-27
C801.2	Alternative Opinion .....	C-27
C802	TIME FRAME FOR REVIEW .....	C-27
C802.1	Routine Review .....	C-28
C802.2	Emergency Review.....	C-28
<b>C900:</b>	<b>Program Effectiveness Evaluation .....</b>	<b>C-29</b>
C900	OVERVIEW.....	C-29
C901	MARKETING BRANCH ASSISTANCE .....	C-29
C902	STUDY APPROACHES.....	C-29
C902.1	Recommended Sources of Economic Analysis.....	C-29
C902.2	Non-economic Analysis Approaches .....	C-29
<b>C1000:</b>	<b>New and Terminating Commissions .....</b>	<b>C-31</b>
C1000	OVERVIEW.....	C-31
C1001	MEMORANDUM OF UNDERSTANDING WITH CDFA .....	C-31
C1001.1	MOU Specifications .....	C-31
C1002	PROPONENTS' RESPONSIBILITY FOR COSTS.....	C-31
C1003	RATIONALE .....	C-31
C1004	REFERENDUM.....	C-32

**CDFA Policies *for ...* Commissions**

C1005 BOARD RESPONSIBILITY FOR MANAGEMENT OF  
NEW COMMISSIONS ..... C-32  
    C1005.1 Avoiding Conflict of Interest..... C-32  
    C1005.2 Potential for Additional Marketing Branch Charges..... C-33  
C1006 TERMINATION ..... C-33  
    C1006.1 Payment of Termination Costs ..... C-34

**Appendices**

C1 Organizational Placement of the Marketing Branch.....A-1  
C2 California Marketing Orders & Agreements, Councils, and Commissions:  
Comparison of Authorities.....A-2  
C3 Confidentiality and Indemnity Agreement and Affidavit:  
Template Used by MOCAs .....A-4  
C4 Grievance Procedure for Marketing Orders, Councils, and Agreements .....A-7  
C5 Suggested Topics for Witnesses at Public Hearings.....A-9  
C6 Voter List Certification Form .....A-10  
C7 Cost Allocation of Marketing Branch Charges.....A-11  
C8 California Government Identification Card: Application and  
Procedures for Use.....A-12  
C9 New Commission Establishment Timeline.....A-14  
C10 Elements of a Memorandum of Understanding (MOU) for a  
Proposed Commission .....A-16  
**INDEX**.....A-18

**CHAPTER C200**

**ADMINISTRATIVE DIRECTION AND OVERSIGHT**

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**C200 OVERVIEW**

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

<p style="text-align: center;"><b>MISSION</b> <b>Of the Marketing Branch</b></p> <p>Assure the fair, practical, and sound operation of agricultural marketing programs for the benefit of agriculture and the people of California.</p>
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**C201 BOARD RESPONSIBILITY FOR MANAGEMENT OF COMMISSIONS**

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

**C201.1 Executive Search**

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

**C201.2 Vacancy in the Chief Executive Position**

In the absence of a chief executive, CDFA expects the affected commission to hire or contract with a replacement in a timely manner. CDFA assumes that the commission's board chairperson will serve as the acting chief executive, unless the affected commission has notified CDFA of its intent to utilize a different procedure. While exercising the functions of acting chief executive, the chairperson shall not have access to confidential and/or proprietary industry information that is garnered by the commission in the course of normal operations.

**C201.3 Potential for Additional Charges**

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

## **CDFA Policies *for ...* Commissions**

### **CHAPTER C200**

#### **C201.4 Potential for Conflict of Interest**

CDFA strongly discourages commissions from seeking management services from providers that may have conflicts of interest. If a potential conflict of interest exists, CDFA expects the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

- The commission hires a separate party to collect and handle assessments and other confidential information; *or*
- The contractor or employee signs a management agreement stipulating protections for confidential or proprietary information that it obtains in the management process. See the confidentiality agreement template included as Appendix C3.

#### **C201.5 Employment Status of Commission Employees**

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

#### **C201.6 Office Locations**

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

### **C202 ADVERTISING AND PROMOTION REVIEW**

Routine advertising and promotion review consists of but is not limited to such Marketing Branch staff activities as attendance at and participation in meetings at which the commission board approves advertising and promotion messages. CDFA expects that commissions' advertising and promotion messages will be:

- Truthful
- In good taste
- Not disparaging
- Consistent with statute

## **CDFA Policies *for* ... Commissions**

### **CHAPTER C200**

#### **C202.1 Non-routine Review**

CDFA reserves the right to exercise exceptional review of advertising and promotion messages wherever it deems such review is warranted. This may include intervention in message development prior to placement of messages in a commercial medium or venue.

#### **C202.2 Unsolicited Ad Ideas**

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

### **C203 PROCEDURES FOR REQUESTING LEGAL OPINIONS**

Any commission may request legal advice or an official legal opinion from CDFA's Legal Office by submitting a request in writing to the Marketing Branch. The Legal Office has discretion whether or not to provide an official legal opinion but must notify CDFA's Marketing Branch of its decision within five business days. Upon receipt of the Legal Office's decision, the Marketing Branch immediately notifies the affected commission's chief executive.

#### **C203.1 Acknowledgement of a Commission's Request for Legal Opinion**

Within five working days, CDFA acknowledges having received a request for a legal opinion. The Legal Office typically requires at least two weeks to prepare responses to such requests unless (i) the commission specifies the need for an expedited response; (ii) the Legal Office determines that the matter requires immediate attention; or (iii) the Legal Office declines to produce the requested opinion. CDFA notifies the affected commission of a rejected request or any unexpected delay.

#### **C203.2 External Inquiries**

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

**CHAPTER C200**

**C204 LITIGATION NOTIFICATION MUTUALITY**

CDFA and all marketing programs are mutually responsible for notification exchange within two working days regarding filed lawsuits that affect either the State's marketing program overall or a particular commission.

**C205 PUBLIC RECORDS REQUESTS**

The Marketing Branch refers any public records request it receives directly to CDFA's Legal Office for response within the statutory time frame. This includes all requests from the Legislature.

**C205.1 Routine Public Records Requests**

The Marketing Branch consults with the Legal Office regarding the Legal Office's review of each public records request and then responds to routine public records requests within the statutory time frame. The Marketing Branch apprises the chief executive(s) of the affected commission(s) of these actions.

**C205.2 Non-routine Public Records Requests**

Where there is a legal issue over whether a requested record is public, CDFA's Legal Office is allowed to take up to 10 working days (with an extension of 14 additional days in specified unusual circumstances) to provide either the requested record or the grounds for a determination that the record cannot be disclosed.

**C205.3 Notification to Affected Commission Chief Executives**

Whether routine or non-routine, the Legal Office notifies the Marketing Branch of any public records request that CDFA may have received that bypassed the Branch. If the request is routine, the Marketing Branch notifies the affected commission's chief executive within three working days that CDFA either will or did comply with a routine request for public records.

Non-routine. If the public records request is non-routine, CDFA contacts the affected commission's chief executive within three working days to exchange information regarding how best to respond. For example, it may be necessary to decide whether to identify and protect proprietary information in the specific records requested. This is especially important when CDFA receives a request for information or records maintained by the affected commission(s).

## **CDFA Policies *for ...* Commissions**

### **CHAPTER C200**

#### **C205.4 Notification to the Marketing Branch**

The chief executive of any commission that receives a routine or non-routine public records request is expected to notify the Marketing Branch of such request within three working days.

#### **C206 COMMISSION BYLAWS**

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

#### **C207 ADMINISTRATIVE REVIEW**

In addition to ongoing administrative direction and oversight, as required by statute, and CDFA's interactions with commissions throughout the year, any commission may ask CDFA to conduct a full administrative review at any time to ascertain compliance with CDFA policy as well as with the affected commission's own rules and policies.

#### **C208 GRIEVANCE PROCEDURE**

Most individual commission statutes provide for adoption of a grievance procedure. CDFA recommends that commissions adopt a grievance procedure similar to that suggested in Appendix C4.

**CHAPTER C300**

**PUBLIC HEARINGS AND VOTING**

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**C300 OVERVIEW**

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

**C301 PUBLIC HEARINGS**

CDFA conducts public hearings to receive evidence and testimony regarding the effectiveness of marketing programs. Before the close of each hearing, the hearing officer asks those in attendance whether to provide for a filing period during which to allow receipt of written testimony. CDFA staff analyze the testimony and evidence presented at the hearing relative to the question under consideration, complete written findings and recommendations, and announce a decision within 45 days of the hearing.

**C301.1 Notice and Testimony**

Hearings conducted by CDFA require a minimum of 30 days public notice, which CDFA distributes via regular mail. The official notice:

- Announces the date, time, and location of the hearing; and
- Suggests relevant questions that witnesses should be prepared to answer at the hearing (see Appendix C5).

Witnesses generally testify in the order in which they sign in. The hearing officer restricts all witnesses to speaking only about the marketing program in question. Because these are information-gathering hearings only, witnesses are not cross-examined. However, hearing panel members may ask questions of the witnesses to seek clarification of their testimony.

**C302 VOTER ELIGIBILITY**

Individual commission statutes define voter eligibility of producers and handlers.

**C303 BLOC VOTING**

“Bloc voting” refers to the practice by an agricultural cooperative marketing association of casting votes on behalf of its members. Individual commission statutes may or may not

## CDFA Policies *for ... Commissions*

### **CHAPTER C300**

authorize bloc voting. Wherever applicable, CDFA requires every cooperative that utilizes bloc voting to submit the following items:

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

### **C304 LIST MANAGEMENT**

Typically, commissions maintain producer and handler contact information lists but, in some cases, another public agency assumes this responsibility. If a commission supplies the list, CDFA requires the commission chief executive to certify to the best of his or her knowledge that the official producer and handler records submitted contain names, addresses, and volume data, if applicable, that are current, accurate, and complete. Appendix C6 contains the certification form that CDFA requires chief executives to sign.

#### **C304.1 Electronic Format**

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

### **C305 ACCESS TO VOTER LISTS**

CDFA's policy is to encourage commissions to grant indirect access to their voter lists by directly managing mailings on behalf of interested parties that are willing to pay mailing costs.

#### **C305.1 Confidentiality**

To the extent possible, CDFA accepts responsibility for protecting the confidentiality of producer and handler lists in its possession and, where applicable, expects chief executives of commissions to do the same. Most commission statutes specifically protect lists of producer and handler names and addresses unless mandated to do otherwise by court order.

**CHAPTER C300**

**C306 REFERENDA**

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

**C306.1 Referendum Extension**

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

**C307 REAUTHORIZATION**

Most individual commission statutes require periodic industry reauthorization of commissions, either by public hearing or by referendum. If reauthorization is by referendum, refer to Section C306. If the required reauthorization process is a public hearing, CDFA is responsible for conducting the hearing. Members of the public as well as representatives of the affected industry are invited to testify. If the public hearing results in a substantial question, CDFA may require a referendum on reauthorization; absent a substantial question, CDFA accepts hearing testimony as evidence of support for or rejection of reauthorization. CDFA typically issues a decision on continuation within 45 calendar days after the close of a public hearing and within 10 business days for vote tallying and certification after the deadline for a referendum.

**C307.1 Reauthorization Timing**

CDFA expects the reauthorization process to be completed early enough to allow sufficient time for potential program wind-down, if indicated, before the end of the current marketing season.

**C308 RELEASE OF VOTING INFORMATION**

Any requester may receive certain referendum voting information, although generally not more often than once a week during the referendum period. As available, for example, CDFA releases participation rates (i.e., number of voters in a given referendum) to non-participants such as media representatives or members of the public. To chief executives and

**CDFA Policies *for ... Commissions***

**CHAPTER C300**

other directly affected parties, CDFA may release the names of those who have voted, but in no case does CDFA disclose how individuals voted.

**C309 NOMINATIONS AND ELECTIONS**

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

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

**CHAPTER C400**

**COMMUNICATION**

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**C400 OVERVIEW**

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

- Maintains frequent and timely communication between commission chief executives and CDFA staff
- Prepares and distributes a MONTHLY MARKETING MEMO
- Regularly updates its website (<http://www.cdfa.ca.gov/mkt/mkt/>)
- Provides timely email alerts and advisories, as needed

**C401 CDFA RESPONSIVENESS**

As a function of administrative direction and oversight, CDFA's Marketing Branch supplies information and/or clarification regarding program issues to individual commissions upon request.

**C401.1 Correspondence**

When a commission provides input, raises an issue, requests a policy ruling, or asks a question, CDFA acknowledges receipt within five working days. The acknowledgement includes a projected timeline for fully responding to the initial communication.

**C401.2 Voice Mail and Email**

Whenever possible, CDFA staff return voice mail and email messages on the day they are received. CDFA's policy is to be accessible to marketing programs. Therefore, CDFA encourages commissions that need to communicate an urgent matter to call the Marketing Branch office. If the assigned staff member is not available at the Branch number, the caller should request that the Branch office contact the staff member.

**C402 COMMUNICATION MUTUALITY**

CDFA and all commissions are interdependent when it comes to staying current on information of importance to California's overall commodity marketing program.

## CDFA Policies *for ... Commissions*

### **CHAPTER C400**

Therefore, CDFA's policy is to alert commissions to all matters that may potentially affect their operating environment.

#### **C402.1 Courtesy Copies to the Marketing Branch**

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

#### **C402.2 Courtesy Copies to Board Chairs**

CDFA sends to board chairs copies of all correspondence addressed to the commission's chief executive on matters related to any commission's budget and finances, as well as significant policy letters and other correspondence of unique importance.

#### **C402.3 Courtesy Copies to Commission Chief Executives**

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

#### **C402.4 Board Roster**

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

- Name
- Mailing address
- Email address
- Phone number

### **C403 MEDIA RELATIONS**

The Marketing Branch facilitates commissions' communication with CDFA's Public Affairs Office, which advises the media regarding issues and activities related to commissions. When CDFA receives media inquiries, the Marketing Branch refers inquirers to the Public Affairs Office. The Branch also immediately notifies the affected commission chief executive regarding the inquiry and, if appropriate, obtains additional information.

**CDFA Policies *for ... Commissions***

**CHAPTER C400**

**C403.1 Procedure for Requesting Assistance with Media Relations**

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

**CHAPTER C500**

**MARKETING BRANCH CHARGES**

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**C500 OVERVIEW**

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

**C501 MARKETING PROGRAM SERVICES ACCOUNT (MPS)**

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

**C501.1 Reserve for Unanticipated Expenditures**

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

**C501.2 Consultation with the Marketing Branch's Fiscal/Policy Advisory Committee**

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

**C502 BASIS FOR MONTHLY CHARGES**

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

## CDFA Policies *for ... Commissions*

### **CHAPTER C500**

from CDFA's Accounting Office. On the basis of these reports, Marketing Branch accounting staff bill commissions for their share of administrative direction and oversight costs in the prior month, plus indirect costs. Appendix C7 illustrates the cost allocation of Marketing Branch charges.

#### **C503 DELINQUENT ACCOUNTS**

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

#### **C504 STANDARDS FOR COST RECOVERY**

CDFA recovers costs in keeping with the following standards:

- To avoid having to assess interest charges, CDFA expects to receive reimbursement by the due date on the monthly invoice, which is approximately the last working day of each month.
- CDFA assesses interest on delinquent payments of Marketing Branch charges at a rate established by the Department of Finance.
- To encourage commissions to seek clarification on billing charges, if they have questions, the Marketing Branch authorizes its accounting staff to spend up to two hours on responding to a commission's request for more information regarding a specific invoice. Beyond two hours, CDFA will bill any affected commission on its next invoice for the hourly cost of additional accounting research.

#### **C505 BUDGETING FOR MARKETING BRANCH CHARGES**

CDFA expects commissions to anticipate Marketing Branch charges in their annual budgets. Estimates should include the (i) standard monthly costs, based on prior years; (ii) the costs of conducting public hearings and/or referenda, if applicable; and (iii) the costs of any other foreseeable activity that would exceed the Branch's routine involvement (for example,

## CDFA Policies *for ... Commissions*

### **CHAPTER C500**

proposed legislation that will require bill analysis by Branch staff). In order to compile an estimate that is as accurate and realistic as possible, CDFA expects every commission to work with Branch staff in arriving at estimates of Branch charges to its program over the coming year.

#### **C506            CHARGES PAID BY NEW PROPONENT GROUPS**

New commission proponents provide a deposit to CDFA to defray only the direct Marketing Branch costs of preparing the necessary documents and carrying out related responsibilities. If the actual costs of establishing the commission exceed the deposit, the proponents are obligated to pay the actual cost. Chapter C1000 NEW AND TERMINATING COMMISSIONS covers in greater detail CDFA's policies pertaining to cost recovery for establishing new commissions.

**CHAPTER C600**

**DISPUTED CHARGES**

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**C600 OVERVIEW**

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

**C601 REQUEST FOR CLARIFICATION**

All invoices are based on monthly budget reports prepared for the Marketing Branch by the Accounting Office in CDFA's Division of Administrative Services. Any commission may question charges that appear on monthly invoices by adhering to the following procedure:

- Within the period prior to the payment due date, the affected commission should communicate with (i) Marketing Branch accounting staff, (ii) the assigned Economist/Research Analyst, or (iii) the Branch Chief. This communication may be in the form of a telephone call, electronic mail, fax, or letter.
- Within 10 working days, the Marketing Branch's accounting staff will analyze and verify the charges shown on the relevant budget reports prepared by CDFA's Division of Administrative Services.
- If Marketing Branch accounting staff find an error, they will adjust the affected commission's invoice accordingly within 30 calendar days and write a letter to accompany the corrected invoice, explaining the error and need for adjustment.
- To encourage commissions to seek clarification on billing charges if they have questions, the Marketing Branch authorizes its accounting staff to spend up to two hours on responding to a commission's request for more information regarding a specific invoice. Beyond two hours,

**CHAPTER C600**

CDFA will bill any affected commission on its next invoice for the hourly cost of additional accounting research.

**C602 PAYMENT OF UNDISPUTED CHARGES**

Documentation prepared by Marketing Branch accounting staff must satisfy the inquiring commission that it is liable for the disputed charges. If questions remain, CDFA expects the affected commission to pay all undisputed charges by the invoice due date and simultaneously submit a disputed charges letter containing the basis for its nonpayment of the balance.

**C603 REFERRAL TO THE FISCAL/POLICY ADVISORY COMMITTEE**

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

**C603.1 Composition of an Ad Hoc Disputed Charges Subcommittee**

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

**C603.2 Disputed Charges Review Process**

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

- The commission that has submitted a disputed charges letter has the right to be present to make its case when the Fiscal/Policy Disputed Charges Review Subcommittee confers.
- If no representative is present, the Marketing Branch will distribute the disputed charges letter to all members of the Fiscal/Policy Disputed Charges Review Subcommittee.

**C DFA Policies for ... Commissions**

**CHAPTER C600**

- Within five working days of receiving the Fiscal/Policy Disputed Charges Subcommittee’s recommendation, the Marketing Branch will notify the affected commission in writing of CDFA’s decision.

**C603.3 Demonstrated Effectiveness**

Since its inception, the disputed charges policy and review process outlined in C603 have proven to be effective in ultimately resolving all disputes to the satisfaction of all affected parties. Therefore, CDFA will continue to rely on the Fiscal/Policy Advisory Committee to manage review and resolution of disputed charges.

**C604 DISPUTED CHARGES ALTERNATIVE SCENARIOS**  
**TIMETABLE**

<b>DISPUTED CHARGES TIMETABLE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
Dispute specific charges that appear on Branch’s invoice	Affected commission	Within period before due date on invoice
Analyze disputed charges	Marketing Branch Accounting Staff	Within 10 working days of request
If Branch was in error, adjust future invoice of affected commission, write letter to explain error and need for adjustment	Marketing Branch Accounting Staff	Within 30 calendar days of verifying accounting error
If Branch documents charges but commission decides to protest, pay all charges not disputed and submit disputed charges letter containing basis for nonpayment of balance	Affected commission	Within period before due date on invoice
Notify protesting commission that its disputed charges letter has been referred to the Fiscal/Policy Advisory Committee	Marketing Branch Chief	Within 2 working days of receipt of commission’s disputed charges letter
Review disputed charges and make recommendation to the Marketing Branch Chief	Fiscal/Policy Advisory Committee	Earliest date at which at least three members are available to confer
Notify protesting commission of CDFA’s decision	Marketing Branch Chief	Within 5 working days of receiving Fiscal/Policy Advisory Committee’s recommendation

**CDFA Policies for ...Commissions**

**CHAPTER C600**

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

**CHAPTER C700**

**FINANCE**

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**C700 OVERVIEW**

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

**C701 BUDGETS AND ASSESSMENT RATES**

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

**C701.1 Budget Concurrence Prior to Beginning of Fiscal Year**

CDFA expects every commission to submit its board-approved budget in time to receive CDFA's concurrence prior to the beginning of the affected commission's fiscal year. Most commissions are not authorized to expend funds before CDFA has concurred in their budgets.

**C702 GOVERNMENT RATES AND DISCOUNTS**

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

**C702.1 Identification Cards**

Upon request from a chief executive, CDFA issues identification cards to commission board members and employees as evidence of their eligibility for

## CDFA Policies *for ... Commissions*

### **CHAPTER C700**

discounts and tax exemptions extended to state government. Appendix C8 contains an application plus steps and procedures for utilization of identification cards.

#### **C703 RESERVES**

CDFA expects every commission to determine an appropriate level of operating reserves, pursuant to its own policy. Each individual commission's operating reserves policy should accommodate variables that reflect its individual circumstances -- for example, susceptibility to crop failure, cash flow needs, and potential for litigation.

#### **C704 DEPOSIT ACCOUNTS**

CDFA expects commissions to exercise prudence in safekeeping their funds. Specifically, CDFA recommends that commissions follow a protocol similar to that utilized by marketing orders, councils, and agreements (MOCAs). See the excerpt below from CDFA's policies for MOCAs.

##### **Excerpt from CDFA's Policies for MOCAs, Section M704:**

[CDFA expects marketing programs] to deposit program funds in a bank or other depository that is approved by the California Department of Finance. To receive this clearance, CDFA requires [marketing programs] to submit to the Marketing Branch the indicated information for all new depository relationships. This includes account transfers necessitated by bank mergers or changes in bank ownership. The Branch will forward the relevant information to the Department of Finance. The statutory information requirements are as follows:

- The legal name of the program and the official designation of the account
- The name and location of the proposed bank or savings and loan association
- Evidence that the bank or savings and loan association is insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC), respectively
- The amount, source, and purpose of the funds to be deposited
- The type of account, (time deposit, savings account, etc.), length of deposit, and rate of interest the account will earn

## CDFA Policies *for ... Commissions*

### **CHAPTER C700**

- Terms and conditions governing the withdrawal of funds
- A letter from a representative confirming that the proposed financial institution is aware that the program's funds are public funds and that the institution will therefore handle the program's funds in conformance with all collateralization and investment requirements as specified in the California Government Code

### **C705 INVESTMENT OF FUNDS**

CDFA expects commissions to exercise prudence in investing their funds. CDFA recommends that commissions follow a protocol similar to that utilized by marketing orders, councils, and agreements (MOCAs). See the excerpt below from CDFA's policies for MOCAs.

#### **Excerpt from CDFA's Policies for MOCAs, Section M706:**

[Marketing programs] may place funds available for investment either (i) with the State Treasurer, such as in the Local Agency Investment Fund (LAIF); or (ii) in eligible securities as described in Section 16430 et. seq. of the California Government Code. The Government Code specifies the following as eligible securities:

- Bonds (see Section 16430 for details)
- Commercial paper of "prime" quality as defined by a nationally recognized rating organization
- Bills of exchange (also known as bankers acceptances)
- Negotiable certificates of deposit
- Bank loans guaranteed by the U. S. Small Business Administration, U. S. Farmers Home Administration, Export-Import Bank (see Section 16430 for additional sources of bank loan or obligation guarantees)
- Student loan notes insured under the Guaranteed Student Loan Program

### **C706 FINANCIAL STATEMENTS**

CDFA expects commissions to prepare periodic financial statements. The Marketing Branch recommends that commissions attach their financial statements to minutes from all meetings at which the chief executive has distributed financial statements.

## CDFA Policies for ... Commissions

### CHAPTER C700

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

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

#### C707 LOANS AND LINES OF CREDIT

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

- In conjunction with a lending institution, prepare a loan proposal or line of credit application containing a standard clause that exempts the State from financial responsibility for paying off the loan.
- Quantify assets and resources the commission proposes to offer as collateral. Collateral may include anticipated assessments.

#### **STANDARD CLAUSE FOR INCLUSION IN LOAN AGREEMENTS**

"Food and Agricultural Code Section [fill in correct number] authorizes [name of commission] to incur liability in any loan, lease, or other financial transaction up to the amount of \$\_\_\_\_\_."

**NOTE:** In the absence of a commission-specific code section, substitute the standard clause used by MOCAs. See Section M708.

#### C708 MOTOR VEHICLE INSURANCE FOR PROGRAM- OWNED VEHICLES

The Office of Risk and Insurance Management (ORIM) provides vehicle insurance for State-owned vehicles. CDFA encourages commissions that own vehicles to purchase coverage under the ORIM plan. ORIM has recommended that commissions that do not participate in the ORIM plan should obtain at least \$1 million in liability coverage. The ORIM insurance plan provides unlimited primary coverage for

## **CDFA Policies *for* ... Commissions**

### **CHAPTER C700**

liability exposures. However, the plan does not include coverage for physical damage losses. Each participating program needs to secure physical damage coverage from a private insurance vendor.

#### **C709 FINANCIAL AUDITS**

The statute that authorizes each commission specifies the audit requirements for that commission. In most cases, the law requires that CDFA concur in a commission's selection of an audit firm.

#### **C710 HANDLER AUDITS**

Every marketing program is funded through mandatory assessments on the affected industry. Some commissions assess producers, some assess handlers, and others assess both. In nearly all cases, the first handler of the commodity remits the assessment. Each handler reports the amount sold and/or delivered and remits the appropriate assessment to the commission or collection agency approved for that commodity. Commissions may contract with CDFA or other entities to conduct handler audits. Section M1103 contains a general description of CDFA's handler audit procedures for MOCAs (see the excerpt below). Commissions' handler audits may differ slightly, depending on respective commission statutes.

#### **Excerpt from CDFA's Policies for MOCAs, Section M1103:**

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

**CHAPTER C700**

**C711 CONTRACTS**

CDFA expects contracts for the expenditure of funds administered by commissions to comply with relevant standards and rules. CDFA recommends that commissions adopt contract administration procedures and protocols.

**C711.1 Multi-year Contracts**

For projects that cannot be completed without making a commitment to multi-year agreements, CDFA recommends that commissions negotiate mutually acceptable terms with contractors. Examples of successful negotiations have included: (i) budgeting for the full contract amount in the first year and holding in reserve from that amount sufficient funds to meet the commission's financial obligations in subsequent years; and (ii) reciprocal intent letters exchanged by the commission and the contractor.

**C711.2 Records Retention**

CDFA recommends that commissions retain file copies of all executed contracts for a period of three years or until the next administrative review is completed, whichever is longer.

**C711.3 Office or Property Lease Termination**

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

**RECOMMENDED OFFICE / PROPERTY  
LEASE TERMINATION CLAUSE**

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

**CHAPTER C700**

**C712 ASSESSMENT CONCERNS**

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

**C712.1 Response to Nonpayment of Assessments**

CDFA recommends that commissions consult with legal counsel before deciding to refuse to provide services to entities that have not paid assessments.

**C712.2 Good Standing**

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

**Excerpt from CDFA’s Policies for Marketing Orders, Councils, and Agreements, Section M1104.4:**

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

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

**C712.3 Nonpayment of Assessments as Grounds for Removal of Commissioners**

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

**C712.4 Voting Rights of Delinquent Assessment Payers**

Commissions may not exclude producers or handlers whose assessments are delinquent or unpaid from voting in board elections or referenda.

**CHAPTER C800**

**LOBBYING**

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**C800 OVERVIEW**

Existing commission laws do not expressly prohibit “lobbying.” Section 58604 of the Food and Agricultural Code provides that agricultural commodity advertising and sales promotion include “the presentation of facts to and negotiations with state, federal, or foreign government agencies on matters which affect the marketing of any commodity” (see also individual commission statutes for variations on this basic premise).

**C801 ONE VOICE**

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

**C801.1 Routine Communications**

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

**C801.2 Alternative Opinion**

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

**C802 TIME FRAME FOR REVIEW**

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

## CDFA Policies *for ... Commissions*

### **CHAPTER C800**

#### **C802.1 Routine Review**

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

#### **C802.2 Emergency Review**

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

**CHAPTER C900**

**PROGRAM EFFECTIVENESS EVALUATION**

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**C900 OVERVIEW**

Both the California Department of Food and Agriculture (CDFA) and its commissions recognize the importance of demonstrating that commissions do attain the goals established for them and do produce the intended benefits. Although California statutes do not require evaluation studies, some Federal marketing orders are mandated to measure the effectiveness of their program activities. To promote progress measurement, CDFA encourages commissions to conduct periodic program evaluation studies as a standard management practice.

**C901 MARKETING BRANCH ASSISTANCE**

Recognizing that commissions vary in both program complexity and resource availability, CDFA's Marketing Branch can offer assistance to commissions that request recommendations for relevant and affordable program effectiveness evaluation strategies. Upon completion, CDFA expects commission chief executives to forward the evaluation results to the Marketing Branch as well as to their own boards of directors and constituencies.

**C902 STUDY APPROACHES**

For large, multi-function commissions, CDFA has found that comprehensive economic analyses support effective commodity marketing and generate data that document current market position as well as suggest new marketing initiatives. CDFA recommends that, to the extent resources are available for this purpose, commissions make periodic economic analysis a standard element in their overall program management plan.

**C902.1 Recommended Sources of Economic Analysis**

To conduct economic analysis studies, commissions may contract with independent agricultural economists or research experts from universities or private companies. They may *not* contract with producers or handlers of their own commodities, or employees of such producers or handlers.

**C902.2 Non-economic Analysis Approaches**

Small or low-budget commissions may satisfy the need to document program effectiveness through appraisal of progress against goals. Such appraisals may be completed either by assigning staff to conduct a review or contracting with an

**C DFA Policies *for ... Commissions***

**CHAPTER C900**

independent evaluator. CDFA expects commissions that choose not to complete an economic analysis to consult with the Marketing Branch regarding acceptable study alternatives.

**CHAPTER C1000**

**NEW AND TERMINATING COMMISSIONS**

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**C1000 OVERVIEW**

Appendix C9 depicts steps involved in establishing a new commission. In short, the proponents of a commission must secure a commitment from an Assembly Member or Senator to carry legislation, craft language for a bill to authorize the commission, and guide the bill through the legislative process until, ultimately, the Governor signs it into law. At that point, commission proponents must adhere to the additional procedures described in this Chapter. The California Department of Food and Agriculture (CDFA) advises any commission that finds it necessary to terminate its operations to follow the procedures outlined at the end of this Chapter,

**C1001 MEMORANDUM OF UNDERSTANDING WITH CDFA**

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

**C1001.1 MOU Specifications**

In the standard form MOU (see Appendix C10), CDFA's Marketing Branch specifies the amount that proponents must deposit with CDFA to start the authorization process. The MOU also provides an estimated cost for each additional step in creating a new commission and further delineates the responsibilities of all parties.

**C1002 PROPONENTS' RESPONSIBILITY FOR COSTS**

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

**C1003 RATIONALE**

CDFA expects proponents of a commission to demonstrate that members of the industry can reasonably assume they will benefit from the proposed programs.

## CDFA Policies *for ... Commissions*

### **CHAPTER C1000**

CDFA further expects the proponents' rationale to indicate that industry support is adequate to achieve the desired goals.

#### **C1004      REFERENDUM**

Following enactment of authorizing legislation and finalization of the MOU between CDFA and commission proponents, CDFA conducts the required implementation referendum. After the MOU is signed and before the referendum is conducted, CDFA's Marketing Branch develops a list of producers and/or handlers eligible to vote in the referendum. The Branch may use existing lists if the lists are deemed acceptable or their accuracy has been certified. If the implementation referendum wins approval by the industry, CDFA declares the commission operative.

#### **C1005      BOARD RESPONSIBILITY FOR MANAGEMENT OF NEW COMMISSIONS**

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

##### **C1005.1    Avoiding Conflict of Interest**

CDFA strongly discourages commissions from seeking management services from providers that may have conflicts of interest. If a potential conflict of interest exists, CDFA requires the management services contractor or employee to prove ability to provide some degree of safeguard. This may include the following methods:

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

## CDFA Policies *for ... Commissions*

### **CHAPTER C1000**

#### **C1005.2 Potential for Additional Marketing Branch Charges**

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

#### **C1006 TERMINATION**

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

#### **Excerpt from CDFA's Policies for Marketing Orders and Agreements, Section M1207:**

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

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

**CDFA Policies *for ...* Commissions**

**CHAPTER C1000**

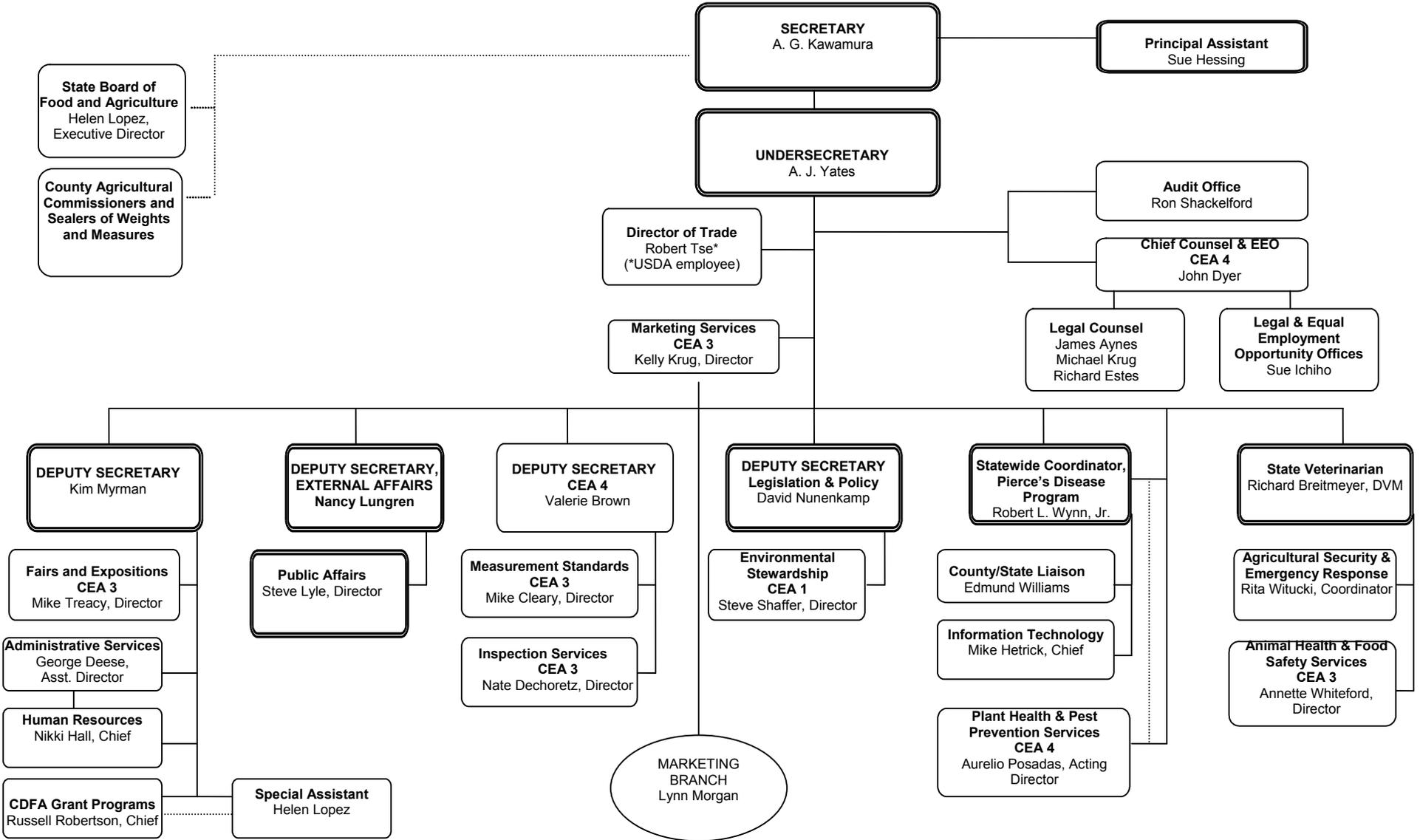
- Plan for commissioning final audit
- Plan for the refund of remaining fund balances

**C1006.1 Payment of Termination Costs**

CDFA expects a terminating commission to pay the full costs incurred by CDFA in terminating the program.



# Appendix C1 ORGANIZATIONAL PLACEMENT OF THE MARKETING BRANCH



— Direct Reporting  
 ..... Indirect Reporting

**CDFA Policies for ... Commissions**

<b>Appendix C2</b>			
<b>CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: COMPARISON OF AUTHORITIES</b>			
	<b>MARKETING ORDER or AGREEMENT</b>	<b>COUNCIL</b>	<b>COMMISSION</b>
<b>This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.</b>			
<b>STATUTORY AUTHORITY FOR CREATION</b>	Under general enabling authority provided in the California Marketing Act of 1937 and implemented administratively by the Department of Food and Agriculture.	Through commodity specific legislation.	Through commodity specific legislation.
<b>SCOPE OF ACTIVITIES</b>	Promotion, advertising, education, production research, quality standards, inspection and supply control.* * No marketing order currently utilizes supply control authority.	Promotion, advertising, education, marketing research, and research. Subject to CDFA's approval, any council may petition to adopt and administer any activity authorized by the California Marketing Act.	Promotion, advertising, education, marketing research, and production research. Subject to CDFA's approval, any commission may petition to adopt and administer any activity authorized by the California Marketing Act.
<b>PROCEDURE TO ESTABLISH</b>	A. Industry prepares preliminary draft of order. B. If deemed appropriate by CDFA, CDFA conducts public hearing. C. CDFA conducts industry vote if hearing testimony demonstrates that proposed marketing order may benefit the industry. D. If industry meets specified voting requirements, CDFA orders the marketing order into effect.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies council.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies commission.
<b>AMENDMENTS</b>	Major amendments must be developed in the same manner as the original order. CDFA may make minor amendments upon recommendation of a Board <i>only</i> for clarification or administrative purposes.	Same procedure as establishing the original council law. However, an industry vote generally is not required. In general, councils have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.	Same procedure as establishing the original commission law. However, an industry vote generally is not required. In general, commissions have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.
<b>PROGRAM AUTHORITY AND ROLE OF THE DEPARTMENT</b>	Marketing order and agreements Boards are advisory to CDFA. All actions of an Advisory Board are subject to CDFA's approval.	Councils are advisory to CDFA. All actions of a Council are subject to CDFA's approval.	In general, commissions are not advisory to CDFA. However, CDFA has authority in most cases to issue cease and desist orders in response to commission actions that CDFA deems to be not in the public interest. For many commissions, CDFA must concur with the annual budget and activities statement. CDFA has a non-voting ex-officio member position on most commissions.

**CDFA Policies for ... Commissions**

<b>Appendix C2</b>			
<b>CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: COMPARISON OF AUTHORITIES</b>			
	<b>MARKETING ORDER or AGREEMENT</b>	<b>COUNCIL</b>	<b>COMMISSION</b>
<b>MEMBERSHIP AND SELECTION PROCESS</b>	Advisory Board may consist of producers and handlers, depending upon who is affected, and may have one public member. Industry peers recommend individuals through a nomination process, and CDFA appoints members from among those nominated.	Generally the same as marketing orders and agreements.	Commissions may consist of producers and handlers, depending upon who is affected, and may be required to have one public member that is appointed by CDFA (from nominees recommended by the commission). With exception of one commission, industry members are elected directly by industry peers and are not appointed by CDFA.
<b>CONTINUATION</b>	A public hearing is required at least once every five years. Some marketing orders and agreements have referenda, rather than hearings, to meet the continuation requirement.	In general, an industry hearing is required at least once every five years. However the Dairy Council requires a public hearing at least once every four years, while the Beef Council has no specified periodic re-approval requirement.	Re-approval requirements and intervals vary from commission to commission. In general, an industry vote or hearing is required at least once every five years.
<b>TERMINATION</b>	<p>A. Advisory Board may recommend that a budget and assessment rate not be established, in effect suspending the Board. CDFA may terminate a marketing order after three years if it has received no recommended budget and assessment rate.</p> <p>B. CDFA may conduct a public hearing if it receives a petition supported by at least 25% of producers or handlers that are directly affected and who produce or handle at least 25% of the volume. If questions exist as to the effectiveness of the marketing order, CDFA conducts an industry vote to determine whether the marketing order or agreement shall continue.</p> <p>C. CDFA must terminate a marketing order if it receives a petition supported by at least 51% of producers or handlers that are directly affected and who produce or handle at least 51% of the volume.</p>	<p>In general, councils can be terminated only during the continuation process.</p> <p><b>Note:</b> Termination of the Beef Council shall be submitted to an industry vote if CDFA or the Council determines that the Council is not effective. In addition, producers may petition for a vote of the industry.</p>	<p>Generally as follows:</p> <p>A. By a 2/3 vote, a commission may recommend that CDFA conduct an industry vote for termination.</p> <p>B. CDFA conducts an industry vote for termination if it receives a petition supported by 20% of the affected producers or handlers who account for 20% of the volume.</p> <p>C. CDFA terminates a commission directly if it receives a petition supported by 51% of the affected producers or handlers who account for 51% of the volume.</p>
<b>NON-COMPLIANCE PENALTIES</b>	Criminal and civil	Similar	Similar

**C DFA Policies for ... Commissions**

**Appendix C3**

**CONFIDENTIALITY AND INDEMNITY AGREEMENT AND AFFIDAVIT:  
TEMPLATE USED BY MOCAs**

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Marketing orders, councils, and agreements (MOCAs) use the template reproduced in this Appendix whenever circumstances arise in which they find it necessary to protect confidential and/or proprietary information that MOCAs obtain and use in the ordinary course of conducting business. Commissions may find it useful to follow this format in similar circumstances.

**Confidentiality Agreement**

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

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

*[Print or type name of MOCA]*

\_\_\_\_\_  
An Instrumentality of the State of California's Department of Food and Agriculture (hereafter "C DFA")

*and*

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

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

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

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

INITIAL

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

## CDFA Policies for ...Commissions

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

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

- To a person explicitly entitled by CDFFA and the MOCA to receive it.
- Any attorney employed by CDFFA or the MOCA to provide advice and counsel regarding confidential information.
- By court order.

I, \_\_\_\_\_, agree not to use protected information:  
INITIAL

- *Except* in connection with my responsibilities as the MOCA's Program Executive/Manager.
- In my own self-interest or for the benefit of any other individual or entity.

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

I, \_\_\_\_\_, agree to inform CDFFA within a minimum of 48 hours of any request for protected information.  
INITIAL

I, \_\_\_\_\_, agree not to release protected information prior to alerting CDFFA, unless compelled by court order.  
INITIAL

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

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

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

I, \_\_\_\_\_, acknowledge that misuse of protected information may be punishable as a crime or subject to civil  
INITIAL action.

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

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

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

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

**C DFA Policies *for ...* Commissions**

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

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

**CDFA Policies for ... Commissions**

<b>Appendix C4</b> <b>GRIEVANCE PROCEDURE FOR MARKETING ORDERS,            COUNCILS, AND AGREEMENTS (MOCAs)</b> <b><u>IMPORTANT:</u> MOCAs are <i>required</i> to follow the grievance procedure outlined in this Appendix.</b> <b>The California Department of Food and Agriculture recommends that commissions adopt and            implement a similar procedure.</b>		
Action	Party	Time Frame
<b>Notes:</b> <ol style="list-style-type: none"> <li>Any person aggrieved by the actions or determinations of a marketing order, council, or agreement (MOCA) and unable to resolve the matter informally through review of the problem with the MOCA's chief executive may request a hearing before the MOCA Board's Grievance Committee.</li> <li>"Aggrieved Person" means a member of the industry regulated by the affected MOCA.</li> <li>"Aggrieved Person" does <i>not</i> mean employee. Aggrieved employees must follow the MOCA's employee grievance procedures</li> <li>Due to public requirements for due process, neither the MOCA nor CDFA can guarantee the confidentiality of information submitted in written complaints.</li> <li>A MOCA's Executive Committee shall act as the Grievance Committee unless the Board determines that a special Grievance Committee should be appointed. A special Grievance Committee shall be composed of not fewer than three nor more than seven members of the industry.</li> </ol>		
<ul style="list-style-type: none"> <li>Attempt to resolve grievance through informal discussion with MOCA's chief executive</li> </ul>	Aggrieved Person MOCA Chief Executive	<ul style="list-style-type: none"> <li>89 or fewer days from the date of action or determination that is subject of claim</li> </ul>
<ul style="list-style-type: none"> <li>File written claim with MOCA and CDFA, via Marketing Branch</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>Within 90 days of date of action or determination that is subject of claim</li> <li>If complaint concerns assessment, within 90 days after assessment's final due date, as established by MOCA</li> </ul>
<ul style="list-style-type: none"> <li>Issue confirmation to aggrieved person of MOCA's and CDFA's receipt of written complaint</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>Within 20 days of receipt of written complaint</li> </ul>
<ul style="list-style-type: none"> <li>Notify aggrieved person and CDFA of the date, time, and place of Grievance Committee's meeting</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>At least 20 days prior to the date of the meeting</li> </ul>
<ul style="list-style-type: none"> <li>Convene to examine facts and circumstances of the grievance</li> <li>This process includes consideration of oral and written testimony and other evidence presented by aggrieved person and other interested parties, including but not limited to MOCA staff</li> <li>The meeting shall be recorded and/or transcribed</li> </ul>	Grievance Committee	<ul style="list-style-type: none"> <li>Within 60 days of MOCA's receipt of written complaint</li> </ul>

**CDFA Policies for ... Commissions**

<b>Appendix C4</b> <b>GRIEVANCE PROCEDURE FOR MARKETING ORDERS,            COUNCILS, AND AGREEMENTS (MOCAs)</b> <b><u>IMPORTANT:</u> MOCAs are <i>required</i> to follow the grievance procedure outlined in this Appendix.            The California Department of Food and Agriculture recommends that commissions adopt and            implement a similar procedure.</b>		
Action	Party	Time Frame
<ul style="list-style-type: none"> <li>• Submit to MOCA Board an analysis of merits of the grievance and recommendation for resolution</li> </ul>	Grievance Committee	<ul style="list-style-type: none"> <li>• Within 30 days after Grievance Committee's meeting</li> </ul>
<ul style="list-style-type: none"> <li>• Recommend to CDFA whether to approve or deny Grievance Committee's recommendation</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>• Within 60 days of receipt of Grievance Committee's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>• Issue final decision to MOCA and aggrieved person</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>• Within 60 days of receipt of MOCA's recommendation</li> </ul>
<ul style="list-style-type: none"> <li>• If CDFA's decision is unfavorable, appeal decision by submitting to CDFA a written request for appeal, outlining reasons why appeal is warranted</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>• Within 60 days of receipt of CDFA's decision</li> </ul>
<ul style="list-style-type: none"> <li>• If appeal is denied by CDFA or unfavorable decision is upheld, petition appropriate court for judicial review</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>• Not time-specified</li> </ul>
<ul style="list-style-type: none"> <li>• If grievance concerns assessments, file assessment reports and pay assessments until matter is resolved</li> </ul>	Aggrieved Person	<ul style="list-style-type: none"> <li>• According to ordinary assessment report filing and payment schedule</li> </ul>
<ul style="list-style-type: none"> <li>• If grievance concerns assessments and aggrieved person prevails in all or part of the claim, refund amount of assessment payments, penalties, and/or interest due to aggrieved person according to ultimate decision</li> </ul>	MOCA	<ul style="list-style-type: none"> <li>• Not time-specified</li> </ul>

**Appendix C5**

**SUGGESTED TOPICS FOR WITNESSES  
AT PUBLIC HEARINGS**

---

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

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

CDFA Policies *for ... Commissions*

Appendix C6

VOTER LIST CERTIFICATION FORM

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

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

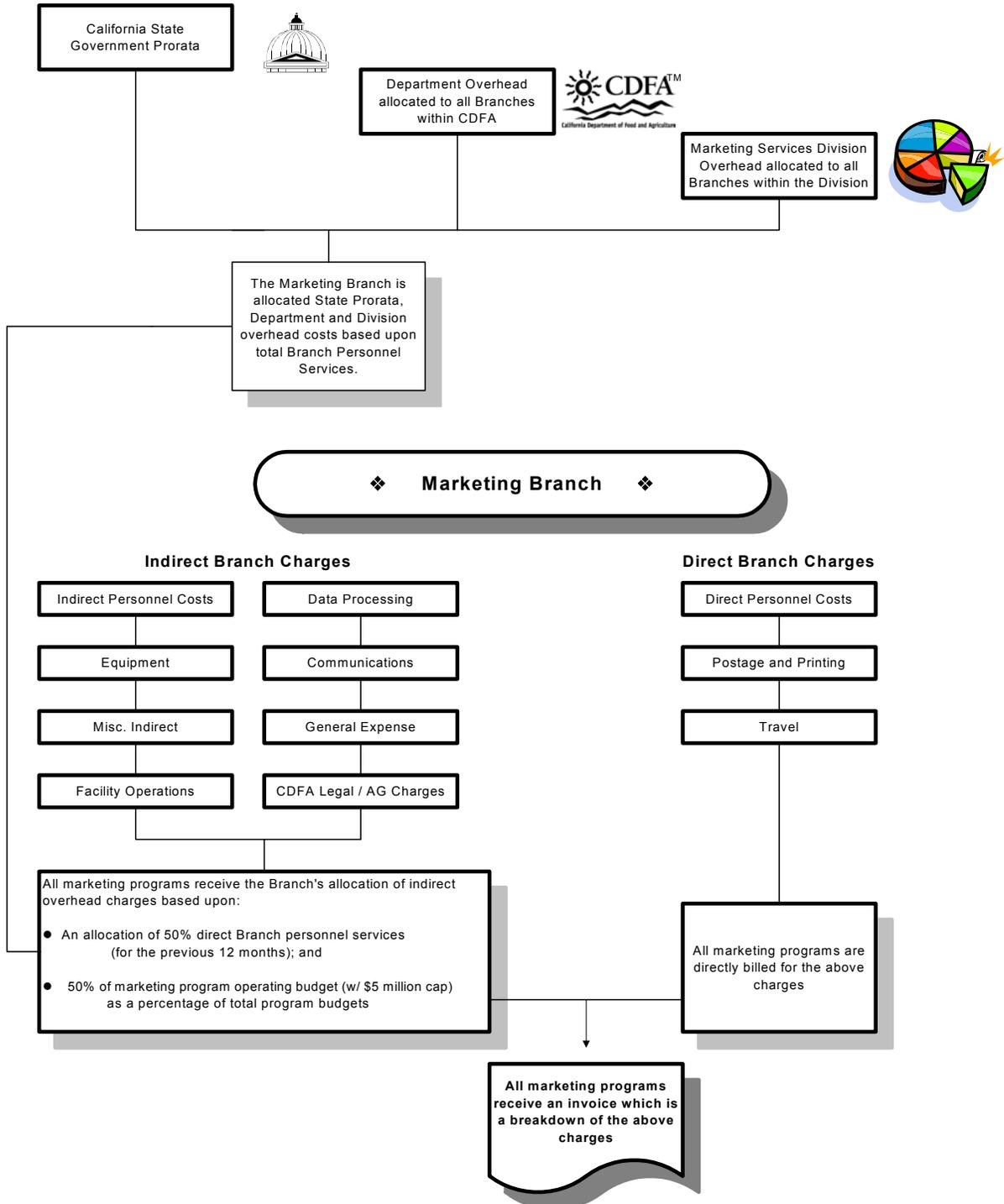
The voting list certification form must be submitted exactly as presented below, with the exception of filling in the blanks with the indicated information. Any alteration of the form will cause CDFA to reject it as invalid.

<u>VOTER LIST CERTIFICATION</u>		
I, _____ [name], _____ [title], with [program name], declare as follows:		
1. As _____ [title], I am the person charged with the responsibility of maintaining and updating the list of California _____ [commodity name] growers that are subject to the provisions of the California _____ [program name].		
2. Since the last notice to file process in _____ [year], the list has been updated on a regular basis. The procedure used to update the list is: _____ [describe].		
3. The list I am providing to CDFA on this date is, to the best of my knowledge, a current, complete, and accurate list of California _____ [commodity name] growers that are subject to the provisions of the California _____ [program name].		
_____ Date	_____ Signature	_____ Name (print or type)

**CDFA Policies for ... Commissions**

**Appendix C7**

**COST ALLOCATION OF MARKETING BRANCH CHARGES**



Revised 7/00

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**CDFA Policies for ... Commissions**

**Appendix C8**

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

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

Application Steps:

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

<b>Chief Executive Certification</b>
--------------------------------------

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

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

**C DFA Policies *for* ... Commissions**

\_\_\_\_\_  
Name of Program - (print or type)

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

\_\_\_\_\_  
Applicant's Position (print or type)

\_\_\_\_\_  
Name of Chief Executive (print or type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Applicant Certification**

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

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

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

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

\_\_\_\_\_  
Date

**For CDFA Marketing Branch Use Only**

\_\_\_\_\_  
Approved Marketing Branch Chief Date

\_\_\_\_\_  
Card Number

\_\_\_\_\_  
Date

**CDFA Policies for ... Commissions**

<b>Appendix C9</b>		
<b>NEW COMMISSION ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<b>Preliminary Work</b>		
<ul style="list-style-type: none"> <li>Conduct meetings with affected industry to determine whether sufficiently broad base of support exists</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Prepare written rationale that documents adequate industry support</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Prior to seeking authors for legislation</li> </ul>
<ul style="list-style-type: none"> <li>If support is adequate, secure commitment from an Assembly Member or Senator to carry authorizing legislation</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Craft bill language and work with author to provide necessary support throughout the legislative and bill-signing process</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
<ul style="list-style-type: none"> <li>Estimate costs of implementing proposed commission</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Within 10 days after receipt of request</li> </ul>
<ul style="list-style-type: none"> <li>Deposit full amount of cost estimate with CDFA and sign Memorandum of Understanding (MOU)</li> </ul>	Proponents & CDFA	<ul style="list-style-type: none"> <li>At Proponents' discretion</li> </ul>
<b>Implementation Process Timeline Begins</b>		
<ul style="list-style-type: none"> <li>Assemble list of growers and/or handlers who would be assessed ... if necessary, contact all handlers on record in order to develop the producer list</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Up to 90 days after signing of MOU</li> </ul>
<ul style="list-style-type: none"> <li>File with CDFA a list of affected growers, including each one's production volume</li> </ul>	Handlers	<ul style="list-style-type: none"> <li>Within 30 days of receipt of CDFA's request</li> </ul>
<ul style="list-style-type: none"> <li>Conduct referendum (industry vote) for new commission</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Typical industry voting period for new commission</li> </ul>
<ul style="list-style-type: none"> <li>Monitor referendum to determine that statutory standards and requirements are met</li> </ul>	CDFA	<ul style="list-style-type: none"> <li>Typically, 30 days</li> </ul>
<ul style="list-style-type: none"> <li>For the referendum to be <u>valid</u>, the percentage of eligible voters specified in the proposed commission's authorizing legislation must vote</li> </ul>	Proponents	
<ul style="list-style-type: none"> <li>For the referendum to <u>pass</u>, it must meet the specific standards set in the proposed commission's authorizing legislation</li> </ul>	Proponents	
<ul style="list-style-type: none"> <li>If required participation in referendum is not achieved, exercise option to request voting period extension</li> </ul>	Proponents	<ul style="list-style-type: none"> <li>Not more than 15 additional days</li> </ul>

**CDFFA Policies *for ...* Commissions**

<b>Appendix C9</b>		
<b>NEW COMMISSION ESTABLISHMENT TIMELINE</b>		
<b>Action</b>	<b>Party</b>	<b>Time Frame</b>
<ul style="list-style-type: none"> <li>• If required participation is not achieved, deem referendum to be invalid and do not tally votes</li> </ul>	CDFFA	<ul style="list-style-type: none"> <li>• Within 24 hours of end of voting period</li> </ul>
<ul style="list-style-type: none"> <li>• Tally votes and certify results</li> <li>• Sign order to approve or deny creation of new commission</li> </ul>	CDFFA	<ul style="list-style-type: none"> <li>• Within 24 hours of end of voting period</li> </ul>
<ul style="list-style-type: none"> <li>• If approved, notify members of industry</li> </ul>	CDFFA	<ul style="list-style-type: none"> <li>• Generally, new commission goes into effect before beginning of next marketing season</li> </ul>

**Appendix C10**

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

---

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

**AUTHORITY**

Every commission has its own enabling statute. Most commission statutes require compliance with specified Sections of the California Marketing Act.

**ROLE AND RESPONSIBILITIES OF CDFA**

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

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

**ROLE AND RESPONSIBILITIES OF THE PROPONENTS**

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

### **CDFA Policies *for ... Commissions***

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

**CDFA Policies for ... Commissions**

**INDEX**

**- A -**

Administrative review by CDFA.....5  
Advertising and promotion review ..... 2-3  
Amendment, commission statutes ..... A-2  
Assessments  
    Nonpayment as grounds for removal ..... 26  
    Rates.....20  
    Voting rights of delinquent assessment payers....26  
Audits  
    Financial.....24  
    Handler.....24  
Authorities of marketing programs..... A-2ff

**- B -**

Benefits generated by marketing programs .....i, ii  
Bloc voting .....7  
Board of Directors  
    Election of members.....9  
    Good standing of members.....26  
    Nomination of members.....9  
    Responsibilities  
        Conflict of interest.....2, 32  
        Management of commission ..... 1, 32  
        Selection of Chief Executive..... 1, 32  
    Roster ..... 11  
Budgeting  
    Additional Marketing Branch charges.....2  
Budgets  
    Amendments .....22  
    Concurrence prior to beginning of fiscal year .....20  
    Marketing Branch charges..... 13  
    Potential for additional Marketing Branch  
        charges ..... 1, 33, 34  
    Reserves .....21  
Bylaws, commission.....5

**- C -**

Charges paid by proponents of new  
    commission ..... 15, 31  
Chief Executive ..... 1, 32  
Civil Service status of commission employees.....2  
Commission Bylaws.....5  
Commission membership .....A-3  
Communication ..... 10  
    Correspondence..... 10  
    Electronic format..... 8  
    Email .....10  
    Marketing Branch website.....10  
    Media relations.....11  
    Monthly Marketing Memo .....10  
    Notification mutuality

Board roster.....11  
Courtesy copies (correspondence).....11  
Litigation.....4  
Public records requests.....4, 5  
One voice .....27  
    Alternative opinion.....27  
Public records requests.....4  
Voice mail .....10  
Confidential information ..... 1, 2, 7  
    Access to voter lists.....7  
    Definition .....A-4  
Confidentiality agreement ..... 2, A-4ff  
    Indemnity .....A-5  
Conflict of interest.....2, 32  
Continuation .....A-3  
Contracts  
    Multi-year.....25  
    Office or property lease termination.....25  
    Records retention.....25  
Council ..... iii, A-2

**- D -**

Deposit accounts.....21  
Disputed charges review process.....17-19

**- E -**

Economic analysis research.....29  
Election of Commission board members.....9  
Electronic format .....7  
Email .....10  
Employment status of commission employees .....2  
Evaluation.....29ff  
Executive search.....1  
Extension for referendum period.....8

**- F -**

Financial audits.....24  
Financial statements .....22  
Fiscal/Policy Advisory Committee ..... 13, 17  
Fund investment .....22

**- G -**

Good standing of board members.....26  
Government rates and discounts.....20  
    Identification cards ..... 20, A-12ff  
Grievance procedure.....5, A-7ff

**- H -**

Handler audits.....24

# CDFA Policies for ... Commissions

## INDEX

<b>- I -</b>	
Identification cards (government rates) .....	20, A-12ff
Indemnity, confidentiality agreement template .....	A-5
Insurance	
Employee eligibility for PERS insurance .....	2
Motor vehicle insurance .....	23
Investment of funds .....	22
<b>- L -</b>	
Legal opinions, request procedure .....	3
List management ( <i>see also</i> Voting)	
Access to voter lists .....	7
Confidentiality of voter lists .....	7
Content standards .....	7
Electronic format .....	7
Voter list certification form .....	A-10
Litigation notification mutuality .....	4
Loans and lines of credit .....	23
Lobbying .....	27ff
<b>- M -</b>	
Marketing agreement .....	iii, A-2
Marketing order .....	iii, A-2
Marketing Branch	
Charges .....	13ff, A-11
Additional .....	1, 33, 34
Basis .....	13, A-11
Billing questions .....	16
Budgeting for .....	14
Cost allocation of .....	A-11
Delinquent accounts .....	14
Disputed .....	16ff
Disputed charges review process .....	17-19
Late payments .....	14
Monthly invoices .....	13, 16
Paid by proponents for new commissions .....	15
Payment of undisputed charges .....	17
Reserve for unanticipated expenditures .....	13
Standards for cost recovery .....	14
Fiscal/Policy Advisory Committee .....	13, 17
Liaison with CDFA Legal Office .....	3
Marketing Program Services Account .....	13
Mission .....	1
Reviews	
Advertising and promotion .....	2, 3
Annual budgets .....	20
Lobbying .....	27-8
Role within CDFA .....	ii, A-1
Website .....	10
Marketing order, council, or agreement	
<i>See</i> MOCAs	
Marketing Programs	
Benefits .....	i, ii
Definition .....	i
Functions .....	iii
Policies .....	iii
Purpose .....	i
Types .....	iii, A-2
Media relations .....	11
Assistance from CDFA's Public Affairs Office ..	12
Membership, commission .....	A-3
Memorandum of understanding	
with CDFA .....	31, A-16ff
MOCAs	
Council .....	iii, A-2ff
Marketing agreement .....	iii, A-2ff
Marketing order .....	iii, A-2ff
Monthly Marketing Memo .....	10
Motor vehicle insurance .....	23
MOU, <i>see</i> Memorandum of understanding	
Multi-year contracts .....	25
<b>- N -</b>	
New commission .....	31-3, A-2, A-14ff
Board responsibility for management .....	32
Conflict of interest .....	32
Continuation .....	A-3
Establishment procedure .....	A2
Establishment timeline .....	A-14ff
Membership .....	A-3
Memorandum of understanding .....	31, A-16ff
Proponents' responsibility for costs .....	31
Rationale, in writing .....	31
Referendum .....	32
Nomination of Commission board members .....	9
Noncompliance penalties .....	A-3
Notice of public hearings .....	6
<b>- O -</b>	
Office	
Lease termination .....	25
Location .....	2
Office of Risk and Insurance Management .....	23
One voice .....	27
<b>- P -</b>	
Penalties for noncompliance .....	A-3
PERS .....	2
Procedure for requesting legal opinions .....	3
Program effectiveness evaluation .....	29ff
Proprietary information .....	1, A-4

## CDFA Policies *for ... Commissions*

### INDEX

---

Protected information, defined .....	A-4
Public Affairs Office, CDFA .....	11, 12
Public Employment Retirement System .....	2
Public hearings .....	6
Notice .....	6
Testimony .....	6, A-9
Public records requests .....	4

#### - R -

Reauthorization .....	8, A-3
Records retention, contracts .....	25
Referenda .....	8
Referendum extension .....	8
Removal of commissioners .....	26
Reserves for commission operating expenses .....	21
Roster of board members .....	11

#### - S -

Secretary of Food and Agriculture	
Role in regulating marketing programs .....	ii, A-2
Standard clauses for inclusion in contracts	
Loans and lines of credit .....	23
Office/property lease termination .....	25
Standards for advertising/promotion content .....	2

#### - T -

Termination	
Commission .....	33-4, A-3
Office or property lease .....	25
Testimony at public hearings .....	6, A-9
Travel costs (government discounts) .....	20

#### - U -

Unsolicited ad ideas .....	3
----------------------------	---

#### - V -

Vacancy, Chief Executive .....	1, 32
Vehicle insurance .....	23
Voice mail .....	10
Voting	
Access to voter lists .....	7
Bloc voting .....	6
Confidentiality .....	7
Reauthorization .....	8, A-3
Release of voting information .....	8
Rights of delinquent assessment payers .....	26
Voter eligibility .....	6
Voter list certification form .....	A-10