

**STATE OF CALIFORNIA**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**MARKETING BRANCH**



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

Effective December 1, 1969  
Incorporating Amendments Made Effective through March 1, 2016

## Table of Contents

Summary of Past Amendments .....	1
ARTICLE I - DEFINITIONS .....	1
Section A. DEFINITION OF TERMS. ....	1
ARTICLE II - CALIFORNIA MILK PRODUCERS ADVISORY BOARD AND SUBCOMMITTEES .....	3
Section A. ESTABLISHMENT, MEMBERSHIP AND TERM OF OFFICE. ....	3
Section B. MODIFICATION OF DISTRICTS AND REPRESENTATION. ....	5
Section C. NOMINATION OF MEMBERS AND ALTERNATE MEMBERS OF THE BOARD. ....	5
Section D. APPOINTMENT OF MEMBERS AND ALTERNATE MEMBERS OF THE BOARD. ....	5
Section E. QUALIFICATION OF BOARD MEMBERS. ....	5
Section F. INTERIM FILLING OF VACANCIES. ....	6
Section G. ALTERNATE MEMBERS OF THE BOARD. ....	6
Section H. DUTIES AND POWERS OF THE BOARD. ....	6
Section I. EXPENSES OF MEMBERS OF THE BOARD. ....	7
Section J. COMMITTEES OF THE BOARD. ....	7
Section K. PROCEDURE FOR BOARD. ....	8
Section L. LIMITATION OF LIABILITY OF BOARD MEMBERS AND EMPLOYEES. ....	8
ARTICLE III - RESEARCH, EDUCATION, AND PROMOTION AND OFFICIAL BOARD BRAND TRADE NAME AND TRADE LABELS PROGRAMS .....	9
Section A. RESEARCH PROGRAMS. ....	9
Section B. EDUCATION PROGRAMS. ....	9
Section C. PROMOTION PROGRAMS. ....	9
Section D. OFFICIAL BOARD BRAND, TRADE NAME AND LABEL PROGRAMS. ....	10
Section E. AUTHORIZATION TO ENTER INTO CONTRACTS AND TO EMPLOY QUALIFIED PERSONNEL. ....	10
Section F. APPROVAL BY THE DEPARTMENT. ....	10
ARTICLE IV - FINANCIAL PROVISIONS .....	11
Section A. INITIAL ASSESSMENT RATE. ....	11
Section B. MODIFICATION OF ASSESSMENT RATE. ....	12
Section C. COLLECTION OF ASSESSMENTS. ....	12
Section D. PENALTIES FOR NON-PAYMENT OF ASSESSMENTS. ....	13
Section E. BUDGETS. ....	13
Section F. REFUNDS. ....	13
Section G. BONDS. ....	13

ARTICLE V - GENERAL PROVISIONS.....	14
Section A. ADMINISTRATIVE RULES AND REGULATIONS.....	14
Section B. COORDINATION WITH OTHER STATE OR FEDERAL PROGRAMS.....	14
ARTICLE VI - BOOKS AND RECORDS.....	14
Section A. BOOKS AND RECORDS.....	14
Section B. REPORTS TO THE BOARD.....	15
Section C. CONFIDENTIAL INFORMATION.....	15
Section D. IMMUNITY.....	15
ARTICLE VII - APPEALS .....	15
Section A. APPEALS.....	15
Section B. EFFECT OF APPEAL.....	15
ARTICLE VIII - RELATION TO OTHER LEGISLATION.....	16
Section A. ANTITRUST LAWS.....	16
ARTICLE IX - DURATION OF IMMUNITIES.....	16
Section A. DURATION.....	16
ARTICLE X - AGENTS.....	16
Section A. AGENTS.....	16
ARTICLE XI - DEROGATION.....	16
Section A. DEROGATION.....	16
ARTICLE XII - SEPARABILITY.....	17
Section A. SEPARABILITY.....	17
ARTICLE XIII - EFFECTIVE TIME AND TERMINATION .....	17
Section A. EFFECTIVE TIME.....	17
Section B. SUSPENSION OR TERMINATION.....	17
Section C. EFFECTIVE OF TERMINATION, SUSPENSION OR AMENDMENT.....	17

## *Summary of Past Amendments*

### *To the Marketing Order for Research, Education, And Promotion of Milk and Dairy Products in California*

<b>Date:</b>	<b>Amendment(s)</b>
October 1, 1971	<ul style="list-style-type: none"> <li>• Redefined the fiscal year so as to be on a calendar year basis.</li> <li>• Placed nomination meetings in the fall prior to October 31.</li> <li>• Redefined the term of office to better correspond with the new fiscal year definition.</li> </ul>
December 1, 1972	<ul style="list-style-type: none"> <li>• Modified district representation.</li> </ul>
April 17, 1975	<ul style="list-style-type: none"> <li>• Provided for public member position.</li> </ul>
December 1, 1977	<ul style="list-style-type: none"> <li>• Modified district representation.</li> </ul>
December 19, 1979	<ul style="list-style-type: none"> <li>• Expanded the size of the Executive Committee.</li> </ul>
December 1, 1981	<ul style="list-style-type: none"> <li>• Modified district representation</li> </ul>
July 9, 1984	<ul style="list-style-type: none"> <li>• Provided for a non-voting affiliate member to represent Nevada dairymen.</li> <li>• Provided for the permissive use of official board brand names and other distinctive designations.</li> <li>• Provided for a temporary cents/hundredweight assessment.</li> </ul>
April 1, 1986	<ul style="list-style-type: none"> <li>• Made the cents/hundredweight assessment a permanent option.</li> </ul>
December 1, 1986	<ul style="list-style-type: none"> <li>• Modified district representation</li> </ul>
January 1, 1987	<ul style="list-style-type: none"> <li>• Clarified board voting requirements for motions authorizing expenditure of funds.</li> </ul>
November 1, 1989	<ul style="list-style-type: none"> <li>• Modified district representation</li> </ul>
June 5, 1991	<ul style="list-style-type: none"> <li>• Provided for reserve alternate members</li> </ul>
August 1, 1996	<ul style="list-style-type: none"> <li>• Modified district representation</li> </ul>
February 1, 1998	<ul style="list-style-type: none"> <li>• Clarified procedures for collecting assessments on bulk milk leaving California.</li> </ul>
August 24, 1999	<ul style="list-style-type: none"> <li>• Authorized incidental brand advertising activities on a temporary basis through the year 2002</li> </ul>
January 15, 2002	<ul style="list-style-type: none"> <li>• Modified district representation.</li> <li>• Clarified procedures for filling board vacancies</li> </ul>
April 1, 2002	<ul style="list-style-type: none"> <li>• Further clarified procedures for filling board vacancies.</li> </ul>
October 1, 2002	<ul style="list-style-type: none"> <li>• Modified district representation</li> </ul>
November 15, 2002	<ul style="list-style-type: none"> <li>• Modified to reflect permanent Marketing Act amendment authorizing incidental mentions of brands.</li> </ul>
July 25, 2005	<ul style="list-style-type: none"> <li>• Increased representation from 1 to 2 members in District 10 and decreased representation from 3 to 2 members in District 12.</li> </ul>
March 11, 2012	<ul style="list-style-type: none"> <li>• Modified district representation.</li> <li>• Established term limits for board members and the chairman position.</li> </ul>
October 15, 2014	<ul style="list-style-type: none"> <li>• Modified district representation by merging Districts 12 and 13 into one consolidated district entitled District 11</li> </ul>
August 1, 2015	<ul style="list-style-type: none"> <li>• Changed the board member term start date from December 1 to March 1.</li> <li>• Made corresponding term start date change for public member.</li> <li>• Clarified when Executive Committee is selected.</li> <li>• Changed references about Executive Subcommittee to Executive Committee.</li> <li>• Moved Chair term limit provision from Duties and Powers section to Committees section</li> </ul>
March 1, 2016	<ul style="list-style-type: none"> <li>• Merged the Marketing Order for Manufacturing Milk with the Marketing Order for Market Milk to Create the Marketing Order for Research, Education, and Promotion of Milk and Dairy Products in California.</li> </ul>

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

### ARTICLE I - DEFINITIONS

#### SECTION A. DEFINITION OF TERMS.

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

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

11. “Producer-Handler” means any person who produces milk or milk fat and uses such production, or any part thereof, for processing. For the purposes of this Marketing Order, a producer-handler is a producer in any transaction which involves the delivery of unprocessed milk or milk fat produced by him or her to him or herself as a handler for processing, or to another handler for processing, and is a handler with respect to milk or milk fat produced by him or her, or received from another producer, and processed by him or her.

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

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

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

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

## **ARTICLE II - CALIFORNIA MILK PRODUCERS ADVISORY BOARD AND COMMITTEES**

### **Section A. ESTABLISHMENT, MEMBERSHIP AND TERM OF OFFICE.**

1. An industry advisory board to be known as the California Milk Producers Advisory Board has been established by the Department to assist in the administration of this Marketing Order. This Board shall be composed of twenty-five (25) members all of whom shall be producers or producer-handlers of milk, except for the public member as provided for in Article II, Section A, Subsection 6. There cannot be more than one producer vote on the Board from any one dairy production entity.

2. There shall be an alternate member, and a reserve alternate member, for each member of the Board, each of whom, with the exception of the alternate for the public member, shall be engaged in the production of milk and from the same district as the Board member for whom he or she serves as alternate.

3. Members of the Board and their alternates and reserve alternates shall be appointed by the Department from nominations received for that purpose.

4. The term of office of all members, alternate members, and reserve alternate members of the Board shall be for a period of three (3) years. Other than for the public member and alternate public member, said term shall be on a staggered basis with one-third (1/3) of the members, alternate members and reserve alternate members, appointed each year. With the exception of the public member and alternate member, the term of office of each member, alternate member, and reserve alternate member, shall commence on March 1 of any given year and continue to the last day of February of the third year thereafter, or until their successors have been duly appointed and qualified. The term of office of the public member and alternate public member shall commence as soon as appointed by the Department following nomination by the Board. Such nomination may be made at the first meeting of the Board held after March 1 of each third year, or as soon thereafter as possible. The term of office of the public member and alternate public member shall be for three years or until their successors have been duly appointed and qualified. Beginning with terms starting in 2012, no member or alternate shall serve more than four consecutive three-year terms in the same position. When the fourth term ends, the member or alternate who has termed out will not be eligible to run for the vacated position during the next nomination process.

5. Nominations and appointment of producer and producer-handler members, alternate members, and reserve alternate members of the Board shall be from the ten districts as described hereinafter.

District Number 1 - Shall be composed of the counties of Humboldt and Del Norte. Representation shall be one (1) milk producer or producer-handler, his or her alternate and reserve alternate.

District Number 3 - Shall be composed of the counties of Mendocino, Lake, Sonoma, Napa, Solano, and Marin. Representation shall be one (1) milk producer or producer-handler, his or her alternate and reserve alternate.

District Number 4 - Shall be composed of the counties of Trinity, Tehama, Shasta, Siskiyou, Modoc, Lassen, Glenn, Colusa, Butte, Sutter, Yuba, Plumas, Sierra, Nevada, and Placer. Representation shall be one (1) milk producer or producer-handler, his or her alternate and reserve alternate.

District Number 5 - Shall be composed of the counties of Contra Costa, Yolo, San Joaquin, Sacramento, Calaveras, Amador, El Dorado and Alpine. Representation shall be two (2) milk producers or producer-handlers, their alternates and reserve alternates. *[Amended March 1, 2016]*

District Number 6 - Shall be composed of the counties of Stanislaus, Merced, Tuolumne, Mariposa, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito, and Monterey. Representation shall be six (6) milk producers or producer-handlers, their alternates and reserve alternates.

District Number 7 - Shall be composed of Kings county. Representation shall be two (2) milk producers or producer-handlers, their alternates and reserve alternates.

District Number 8 - Shall be composed of the counties of Fresno and Madera. Representation shall be two (2) milk producers or producer-handlers, their alternates and reserve alternates.

District Number 9 - Shall be composed of the counties of Tulare, Inyo, and Mono. Representation shall be five (5) milk producers or producer-handlers, their alternates and reserve alternates.

District Number 10 - Shall be composed of the counties of Kern, San Luis Obispo, and Santa Barbara. Representation shall be two (2) milk producers or producer-handlers, their alternates and reserve alternates.

District Number 11 - Shall be composed of the counties of Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial. Representation shall be two (2) milk producers or producer-handlers, their alternates and reserve alternates.

6. No district may have more than 25 percent of the producer voting positions on the Board.

7. There may be a public member and alternate public member on the Board nominated and recommended by the Board for the Department's appointment from persons who are neither producers nor producer-handlers, as defined herein, to represent the public generally. Said recommendation shall be by majority vote of the total membership of the Board made at its first meeting held after March 1 of each third year, or as soon thereafter as possible.

8. Upon the recommendation of the Board, the Department may appoint one affiliate member to the Board to represent dairymen from the State of Nevada, provided that such a member shall not be considered in determination of a quorum nor shall he nor she have voting privileges on Board matters.



**Section B. MODIFICATION OF DISTRICTS AND REPRESENTATION.**

In the event of changes in the production of milk in the several districts and in order to maintain reasonably equitable representation upon the Board for all milk producers and producer-handlers, the Board may from time to time recommend to the Department, and the Department may approve modifications of districts or representation therefrom; provided, that any such modifications shall be coordinated with terms of office of members and their alternates so that nomination meetings may be held in the districts as modified and appointments made in accordance therewith. Any said modifications of districts of representation shall be a minor amendment as defined in the Act.

**Section C. NOMINATION OF MEMBERS AND ALTERNATE MEMBERS OF THE BOARD.**

1. Annually, and not later than November 30 of each year, the Department shall call and conduct meetings of milk producers and producer-handlers in each of the districts where there is or will be a vacancy for the purpose of receiving nominations of milk producers, their alternates and reserve alternates for appointment by the Department to fill any such vacancies occurring in the membership of said Board from each such district.

2. Insofar as practicable, at such meetings producers and producer-handlers shall nominate not less than three (3) persons for each member to be appointed to the Board from each district.

3. At such meetings the Board may assist milk producers and producer-handlers in each district to elect the membership of one or more local milk producers advisory committees for each district to assist with local activities, and the Board, regarding the operation of programs authorized under this Marketing Order.

4. The Board may make a recommendation to the Department for the appointment of a public member and alternate public member as provided for in Article II, Section A, Subsection 7.

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

1. From the nominations so received, the Department shall select and appoint a member, his or her alternate and reserve alternate to fill each of the vacancies occurring each year.

2. In appointing such members, alternate members and reserve alternate members of the Board, the Department shall give due consideration to the nominations made by producers or producer-handlers at the nomination meetings provided for in Section C hereof and the preferences indicated by the balloting at said meetings, and in the case of the public members, to the recommendations of the Board.

**Section E. QUALIFICATION OF BOARD MEMBERS.**

1. Each person appointed by the Department for membership or alternate membership on the Board shall be a producer or producer-handler of milk or shall be a public member representing

the public in general, and shall qualify also by filing with the Department a written acceptance and such other necessary papers as the Department may require.

#### **Section F. INTERIM FILLING OF VACANCIES.**

In the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, the assigned alternate shall act in the place and stead of the former member on an interim basis or the assigned reserve alternate member shall act in the place and stead of the former alternate member on an interim basis, until the next round of annual district meetings, at which time the Department will receive nominations for filling the vacancy directly from the affected district. When an alternate or a reserve alternate moves up to fill a vacancy on an interim basis, and when a vacancy occurs for a reserve alternate position, the Board may recommend to the Department the appointment of a qualified producer to fill the reserve alternate position on an interim basis until the next round of annual district meetings. In forming its recommendation to the Department, the Board may consider recommendations from the respective local district committee.

#### **Section G. ALTERNATE MEMBERS OF THE BOARD.**

An alternate member of the Board, shall, in the absence of the member for whom he or she is alternate, sit in the place and stead of such member. In the absence of both a member and his or her alternate, any alternate member from the same district as the absent member may sit in the place and stead of such member. Should a member and all alternate members from the same district that are not already representing an absent member be unable to attend a meeting, the reserve alternate for the absent member may sit in his or her stead. When an alternate or reserve alternate sits in the place and stead of a member he or she shall have all of the rights, powers, privileges, and immunities as the member. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act in the place and stead of the member until a successor has been appointed by the Department and has qualified.

#### **Section H. DUTIES AND POWERS OF THE BOARD.**

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

1. To administer the provisions of this Marketing Order.
2. To recommend to the Department annually, and more frequently as may be required, programs of research, education, and promotion of milk and dairy products and other food products as authorized herein.
3. To recommend to the Department administrative rules and regulations pertaining to the administration and enforcement of this Marketing Order.
4. To receive and report to the Department violations of this Marketing Order.
5. To recommend to the Department amendments to this Marketing Order.
6. To recommend to the Department annually budgets covering estimated income, administrative expenses of the Board and the Department, and the expenses to be incurred under proposed programs of research, education, and promotion.

7. To appoint a Manager and such employees as it may deem necessary to carry out its functions, to fix their salaries, and define their duties.

8. To keep minutes, books, and records which clearly reflect all of its acts and transactions, and which shall at all times be subject to examination by the Department or his/her duly authorized representatives, and to provide to the Department copies of the minutes of all meetings, duly certified by an authorized officer of the Board.

9. To elect a Chair, Vice Chair, Secretary, and Treasurer and such other officers as may be appropriate from the membership of the Board.

10. To adopt such other rules for the conduct of the business of the Board as the Board may deem advisable.

### **Section I. EXPENSES OF MEMBERS OF THE BOARD.**

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

### **Section J. COMMITTEES OF THE BOARD.**

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

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

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

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

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

**Section K. PROCEDURE FOR BOARD.**

1. A quorum shall consist of not less than thirteen (13) members. Except as provided in Numbers 2 and 3 of this Section, all actions of the Board shall be valid if approved by a majority vote of the total members of the Board.

2. No action taken relating to the expenditure of funds for any program of research, education, or promotion of milk shall be valid unless approved by a two-thirds (2/3) vote of the voting members present, or thirteen (13) votes, whichever is greater.

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

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

The members and alternate members of the Board, duly selected and appointed by the Department and while serving as members of the Board or of the Subcommittees established hereunder, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any producer, producer-handler, or handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members and alternate members of the Board shall be several and not joint and no member or alternate member shall be liable for the default of any other member or alternate member.

## **ARTICLE III - RESEARCH, EDUCATION AND PROMOTION PROGRAMS**

### **Section A. RESEARCH PROGRAMS.**

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

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

### **Section B. EDUCATION PROGRAMS.**

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

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

### **Section C. PROMOTION PROGRAMS.**

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

Pursuant to Subsection 58889 (c) which was incorporated into the Marketing Act via AB 1525 in 1998, made operative via a successful producer referendum in 1999 and amended via AB 1854 in 2002, the Board may develop advertising and sales promotion plans to allocate funds for promotions of cheese, ice cream, or butter products made with California milk, including promotions in which brand or trade names are used; provided, that the use is incidental to the

promotion of the California milk product and not in direct promotion of the brand or trade name; and provided further, that the allocation of funds is made available on a nondiscriminatory basis to all retailers and manufacturers of butter, ice cream, or cheese utilizing milk produced in California. Permissible private brand or trade name marketing promotions may include advertising, performance allowances, sales promotions, couponing subject to Section 61375 and in-store promotion programs and materials, and other marketing communication tools

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

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

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

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

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

**Section F. APPROVAL BY THE DEPARTMENT.**

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

## ARTICLE IV - FINANCIAL PROVISIONS

### Section A. INITIAL ASSESSMENT RATE.

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

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

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

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

5. If the assent procedure for milk producers and producer-handlers upon the question of increasing the assessment rate is held and if the Department finds that milk producers and producer-handlers have approved the proposed increase in assessment rate in such assent procedure, it may make the proposed increase effective upon milk producers and producer-handlers. If not, it shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect. *[The maximum assessment rate was increased to one percent (1%) as of July 1, 1971 by assent procedures.]*

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

7. Notwithstanding the provisions set forth in Article IV, Section A, Number 1 of this Order, the Board may recommend, and the Department may approve, a cents-per-hundredweight rate of assessment on milk produced and sold or delivered to a milk handler by milk producers, provided that the rate recommended by the Board does not exceed 10 cents per hundredweight. *[The CMAB adopted a cents/cwt. assessment in 1984 when the National Board implemented its 15 cents/cwt. assessment]*

**Section B. MODIFICATION OF ASSESSMENT RATE.**

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

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

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

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

5. If the assent procedure for milk producers and producer-handlers upon the question of increasing the assessment rate is held and if the Department finds that milk producers and producer-handlers have approved the proposed increase in assessment rate in such assent procedure, it may make the proposed increase effective upon milk producers and producer-handlers. If not, it shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect. *[The maximum assessment rate was increased to one percent (1%) as of July 1, 1971 by assent procedures.]*

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

**Section C. COLLECTION OF ASSESSMENTS.**

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

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

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



3. Producers and producer-handlers who convey bulk milk produced by them in this state to handlers and producer-handlers outside of this state shall certify to the receiving handlers and producer-handlers that they are participating in a qualified local program and shall require that the receiving handlers and producer-handlers pay, on behalf of the conveying producer or producer-handler, the assessment levied by this Marketing Order.

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

#### **Section D. PENALTIES FOR NON-PAYMENT OF ASSESSMENTS.**

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

#### **Section E. BUDGETS.**

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

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

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

#### **Section F. REFUNDS.**

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

#### **Section G. BONDS.**

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

## ARTICLE V - GENERAL PROVISIONS

### **Section A. ADMINISTRATIVE RULES AND REGULATIONS.**

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

### **Section B. COORDINATION WITH OTHER STATE OR FEDERAL PROGRAMS.**

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

## ARTICLE VI - BOOKS AND RECORDS

### **Section A. BOOKS AND RECORDS.**

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

**Section B. REPORTS TO THE BOARD.**

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

**Section C. CONFIDENTIAL INFORMATION.**

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

**Section D. IMMUNITY.**

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

**ARTICLE VII - APPEALS**

**Section A. APPEALS.**

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

**Section B. EFFECT OF APPEAL.**

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

## ARTICLE VIII - RELATION TO OTHER LEGISLATION

### **Section A. ANTITRUST LAWS.**

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

## ARTICLE IX - DURATION OF IMMUNITIES

### **Section A. DURATION.**

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

## ARTICLE X - AGENTS

### **Section A. AGENTS.**

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

## ARTICLE XI - DEROGATION

### **Section A. DEROGATION.**

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

## ARTICLE XII - SEPARABILITY

### **Section A. SEPARABILITY.**

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

## ARTICLE XIII - EFFECTIVE TIME AND TERMINATION

### **Section A. EFFECTIVE TIME.**

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

### **Section B. SUSPENSION OR TERMINATION.**

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

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

### **Section C. EFFECTIVE OF TERMINATION, SUSPENSION OR AMENDMENT.**

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