

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA MARKETING ACT

Chapter 1 of Part 2, Division 21 of the
California Food and Agricultural Code

As amended effective January 1, 2017

CALIFORNIA MARKETING ACT

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CALIFORNIA MARKETING ACT

CHAPTER 1 OF PART 2, DIVISION 21 OF THE
CALIFORNIA FOOD AND AGRICULTURAL CODE

ARTICLE 1. Short Title and Definitions

58601. Title

This chapter shall be known as “The California Marketing Act of 1937.”

58602. Effect of Definitions

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

58603. Administrative Rules and Regulations

“Administrative rules and regulations” means rules and regulations that are applicable to a particular marketing order or agreement which are issued and made effective by the director pursuant to Article 18 (commencing with Section 59161) of this chapter.

58604. Advertising and Sales Promotion

“Advertising and sales promotion” means, in addition to its ordinarily accepted meaning, trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of any commodity to market and may include the presentation of facts to, and negotiations with, state, federal, or foreign governmental agencies on matters which affect the marketing of any commodity that is included in any marketing order or marketing agreement which is made effective pursuant to the provisions of this chapter.

58604.5. Advertising and Sales Promotion; Reimbursement Payments

“Advertising and sales promotion” also means, in addition to its ordinary accepted meaning, activities for the modification or removal of trade barriers that restrict the free flow of a commodity to market, including negotiation with federal and foreign governments, and the allowance of reimbursement payments to offset commodity transportation or other costs to selected domestic and foreign markets.

Domestic f.o.b. selling price shall not be used as a factor in determining qualifications for reimbursement payments unless the director determines that there is no feasible alternative for establishing these qualifications.

(Amended by Stats. 1990, Ch. 312, Sec. 1.)

58605. Commodity; Including Wine

“Commodity,” except as otherwise provided in Section 58747, means any agricultural, aquacultural, horticultural (including floricultural), vermicultural, viticultural (including wine) or vegetable product which is produced in this state, any fish or seafood, or any class, variety, or utilization of that product, either in its natural state or as processed by a processor or as processed by a producer for the purpose of marketing that product. It includes bees, honey, and milk as defined in Section 32511. It does not, however, include timber or any timber product.

The Legislature hereby declares that the addition of the phrase “(including wine)” in this section is made for the purpose of clarification only and shall not be construed or interpreted as an indication that wine is not a commodity as originally defined by Chapter 404, Statutes of 1937, and as heretofore amended. The Legislature further declares that at the time of the original enactment of the definition of the term “commodity” and at all times since, it intended that wine be, and wine was, included within the definition of the term. Every marketing order issued, signed, or declared effective prior to July 15, 1941, and every act of the director prior to such date which was performed pursuant to the provisions of this chapter and consistent with the declarations which are contained in this paragraph are hereby confirmed, ratified, and validated.

(Amended by Stats. 1995, Ch. 810, Sec. 22. Effective January 1, 1996.)

58606. Directly Affecting; Directly Regulating

“Directly affecting” or “directly affected” is synonymous with “directly regulating” and “directly regulated,” and means the direct application of regulations upon any person, including the requirement to pay assessments which are levied pursuant to any marketing order or marketing agreement which is issued by the director pursuant to this chapter. A requirement upon handlers to deduct and remit to the director assessments that are owed by producers under a marketing order or marketing agreement which is applicable upon producers only, does not, however, directly regulate such handlers.

58607. Distributing

“Distributing” means engaging in the business of a distributor as defined in Section 58608.

58608. Distributor

“Distributor” means any person that engages in the operation of selling, marketing, or distributing, in intrastate commerce any commodity which he has produced or purchased or acquired from a producer or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. It does not, however, include a retailer, except a retailer that purchases or acquires from, or handles on behalf of any producer, any commodity which was not previously subjected to regulation by the marketing order which covers such commodity.

58608.1. Education Program

“Educational program,” unless otherwise defined in this chapter, means a program established by the director pursuant to this chapter that provides for the planning and implementation of activities designed to inform the general public of the processes of producing agricultural commodities and designed to foster cooperation and understanding between urban and rural sectors of society.

(Added by Stats. 1991, Ch. 385, Sec. 1.)

58609. Fish

“Fish” means every form of fish, either salt water or fresh water fish, which is used for human consumption, except fish for canning, retorting, reduction, or use in an extraction process.

58610. General Rules and Regulations

“General rules and regulations” means rules and regulations, which are applicable to all marketing orders and marketing agreements and are issued and made effective by the director without prior notice and public hearing, to provide uniform methods and procedures to facilitate the administration and enforcement of all such marketing orders and marketing agreements. Such uniform methods and procedures may include but shall not be limited to any of the following:

(a) Methods and procedures which pertain to the receiving, depositing, and expenditure of moneys which are received from assessments collected pursuant to this chapter.

(b) The preparation, handling, and payment of claim schedules for the payment of bills, salaries, and other obligations.

(c) Establishing the maximum rates to be allowed for travel expenses of board members and board employees.

(d) The preparation, verification, and filing of evidence which relates to violations of marketing orders, agreements, and marketing regulations which are authorized pursuant to this chapter and other fiscal and administrative activities which the director finds are necessary to obtain reasonable uniformity, efficiency, and economy in the administration and enforcement of such marketing orders and agreements of this chapter.

58611. Handler

“Handler,” except with respect to fish and seafood, means any person that is engaged within this state as a distributor in the business of distributing any commodity in intrastate commerce, or any person that is engaged as a processor in the business of processing any commodity. With respect to fish and seafood, it means any person that is engaged in the business of the distribution or sale of fish or seafood to restaurants, or to retailers for resale to consumers, or to any other persons or concerns for resale or for sale direct to consumers.

58612. Handling

“Handling” means engaging in the business of a handler as defined in Section 58611.

58613. Major Amendments

“Major amendments” mean amendments to any marketing order or agreement which are made pursuant to Article 13 (commencing with Section 59021) of this chapter. It does not include a seasonal marketing regulation.

58614. Marketed by Producers

“Marketed by producers” means producer marketing, as defined by Section 58621.

58615. Marketing Order

“Marketing order” means an order which is issued by the director, pursuant to this chapter, which prescribes rules and regulations that govern the processing, distributing, or handling in any manner of any commodity within this state during any specified period.

58616. Minor Amendments

“Minor amendments” are amendments to any marketing order or agreement which are made effective by the director upon recommendation of the advisory board which is concerned, as specified in Article 14 (commencing with Section 59051) of this chapter, with or without prior notice and public hearing, which change or modify the language or the provisions of any such marketing order or agreement for the purpose of clarification, or the removal of conflicts of meaning without involving changes or modifications of language, or provisions which are classed as major amendments.

58617. Person

“Person” means an individual, firm, corporation, association, or any other business unit, and, for the purposes of this chapter, includes any state agency which engages in any of the commercial activities which are regulated pursuant to the provisions of this chapter.

58618. Processing

“Processing” means engaging in the business of a processor as defined in Section 58619.

58619. Processor

“Processor” means any person that is engaged within this state in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of any commodity for the purpose of preparing it for market or of marketing such commodity, or any other activities which are performed for the purpose of preparing it for market or of marketing such commodity. It does not, however, include a person that is engaged in manufacturing from any commodity, so changed in form, another and different product.

58620. Producer

“Producer” means any person that is engaged within this state in the business of producing, or causing to be produced for market, any commodity.

58621. Producer Marketing

“Producer marketing” means any or all operations which are performed by any producer in preparing for market. It includes selling, delivering, or disposing of for commercial purposes, to any handler any commodity which the producer has produced.

58622. Retailer

“Retailer” means any person that purchases or acquires any commodity for resale at retail to the general public for consumption off the premises. Such person is also included within the definition of distributor, to the extent that such person engages in the business of a distributor as defined in Section 58607.

58623. Seafood

“Seafood” means shellfish and every other form of animal or plant life which is taken from fresh or salt water and used for human consumption, except seafood which is used for canning, retorting, reduction, or used in an extraction process.

58624. Seasonal Marketing Regulations

“Seasonal marketing regulations” mean marketing regulations that are applicable to a particular marketing order or agreement which are made effective by the director pursuant to Article 19 (commencing with Section 59171) of this chapter.

ARTICLE 2. General Provisions

58651. Legislative Findings

It is hereby declared that the marketing of commodities in this state in excess of reasonable and normal market demands therefor; disorderly marketing of such commodities; improper preparation for market and lack of uniform grading and classification of commodities; unfair methods of competition in the marketing of commodities; and the inability of individual producers to maintain present markets or to develop new or larger markets for California-grown commodities, results in an unreasonable and unnecessary economic waste of the agricultural wealth of this state.

Such conditions and the accompanying waste jeopardize the future continued production of adequate supplies of food, fiber, and other products of the farm and of the soil for the people of this and other states, and prevent producers from obtaining a fair return from their labor, their farms, and the commodities which they produce.

As a consequence, the purchasing power of such producers has been in the past, and may continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations within the state. Producers are thereby prevented from maintaining a proper standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of other citizens of this state.

58652. Declaration of Policy

These conditions vitally concern the health, peace, safety, and general welfare of the people of this state. It is hereby declared to be the policy of this state to aid producers in preventing economic waste in the marketing of their commodities, to develop more efficient and equitable methods in the marketing of commodities and to aid producers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

58653. Public Interest; Police Power

The marketing of commodities within this state is hereby declared to be affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

58654. Purposes of Chapter

The purposes of this chapter are to do the following:

- (a) Enable producers of this state, with the aid of the state, to correlate more effectively the marketing of their commodities with market demands for those commodities.
- (b) Establish orderly marketing of commodities.
- (c) Provide for uniform grading and proper preparation of commodities for market.
- (d) Provide methods and means for the maintenance of present markets, or for the development of new or larger markets, for commodities that are grown within this state or for the prevention, modification, or elimination of trade barriers that obstruct the free flow of those commodities to market.
- (e) Eliminate or reduce economic waste in the marketing of commodities.
- (f) Restore and maintain adequate purchasing power for the producers of this state.
- (g) Inform the general public of the processes of producing agricultural commodities.
- (h) Foster cooperation and understanding between urban and rural sectors of society.

(Amended by Stats. 1991, Ch. 385, Sec. 2.)

58655. Compliance as Defense to Prosecution Under Other Acts

In any civil or criminal action or proceeding for violation of any of the following, proof that the act which is complained of was done in compliance with the provisions of this chapter or a marketing order which is issued pursuant to, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such action or proceeding:

- (a) The Cartwright Act, Chapter 2 (commencing with Section 16700), Part 2, Division 7 of the Business and Professions Code.
- (b) The Unfair Practices Act, Chapter 4 (commencing with Section 17000), Part 2, Division 7 of the Business and Professions Code.
- (c) The Fair Trade Act, Chapter 3 (commencing with Section 16900), Part 2, Division 7 of the Business and Professions Code.
- (d) Any rule of statutory or common law against monopolies or combinations in restraint of trade.

58657. Fish and Seafood Handlers

The provisions of this chapter regarding the marketing of commodities are applicable to fish and seafood and persons that handle, process, or distribute fish and seafood.

Any marketing order or agreement relating to fish and seafood shall affect handlers only. It may include only those provisions which are authorized by Sections 58889 and 58892, and any other provisions of this chapter necessary to carry out the purposes of Sections 58889 and 58892. Such provisions shall apply to all fish and seafood whether or not they are a product of this state.

(Amended by Stats. 1969, Ch. 702.)

58658. Severability

If any section, sentence, clause, or part of this chapter is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this chapter. The Legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part of this chapter despite the fact that one or more sections, sentences, clauses, or parts of this chapter is declared unconstitutional.

58659. Cause of Action; Effect of Suspension Amendment or Termination

The suspension, amendment, or termination of any marketing order or marketing agreement does not suspend or terminate any cause of action which has accrued under it, but such cause of action shall survive and exist the same as if such marketing order or agreement had not been suspended, amended, or terminated.

58660. Legislative Purpose; Prior Amendments

It is hereby declared, as a matter of legislative determination, that the amendments of the statutory predecessor of Sections 58651 to 58653, inclusive, (former Section 1300.10) which were made at the 1959 General Session are enacted in the exercise of the power of this state for the purpose of protecting and furthering the public health and welfare.

58661. Volume or Quantity

The term volume, or quantity, as used in this chapter, except Article 9 (commencing with Section 58881), may be in terms of gross dollar value if the director finds that such volume or quantity cannot be readily ascertained otherwise, or that gross dollar value is a more equitable measure of the commodity involved.

(Added by Stats. 1970, Ch. 1176.)

ARTICLE 3. Exceptions

58681. Carrier Operations

This chapter does not apply to any order, rule, or regulation which is issued, or is issuable, by the Public Utilities Commission or the Interstate Commerce Commission with respect to the operation of common carriers.

58682. Retailers

This chapter is not applicable to any retailer of any commodity except to the extent that such retailer also engages in the production, processing or distribution of any commodity.
(Amended by Stats. 1969, Ch. 702.)

ARTICLE 4. Administration

58711. Director's Administrative Powers

The director shall administer and enforce this chapter and may exercise any or all of the administrative powers which are conferred by Sections 11180 to 11191, inclusive, of the Government Code upon the head of a department of the state.

58712. Enforcement of Marketing Orders by Director

In order to effectuate the declared purposes of this chapter, the director may issue, administer, and enforce the provisions of any marketing order issued pursuant to this chapter which regulates producer marketing or the handling of any commodity within this state.

58713. Powers of the Director

The director may do all of the following:

(a) Confer and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders.

(b) Conduct joint hearings and issue joint or concurrent marketing orders for the purposes and within the standards which are set forth in this chapter.

(c) Exercise any administrative authority which is prescribed by this chapter to effect such uniformity of administration and regulation.

58714. Liability Insurance

The director may purchase general liability insurance for all marketing orders subject to the provisions of this chapter in an amount he or she determines as necessary. The cost of the insurance shall be paid by the affected marketing orders on a pro rata basis. The insurance policy shall name the director, in his or her official capacity, and all persons, collectively, that are subject to the marketing order as insured parties for claims made against the marketing order in its advisory capacity to the director or against the director regarding the activities of a marketing order. The director, after consultation with the Attorney General, may refer claims to the insurance carrier for appropriate action. In the alternative, the director may require that claims be handled in the manner otherwise specified in this chapter.

(Added by Stats. 1989, Ch. 383, Sec. 1.)

ARTICLE 5. Marketing Orders and Agreements

58741. Authority to Issue Producer Marketing Orders

Subject to the provisions, restrictions, and limitations which are imposed in this chapter, the director may issue marketing orders which regulate producer marketing, the processing, distributing, or handling in any manner of any commodity by any and all persons that are engaged in such producer marketing, processing, distributing, or handling of such commodity within this state.

58741.1. Educational Program, Establishment

Subject to Section 58993.1, the director may establish an educational program, as defined in Section 58608.1, directly affecting producers of all commodities produced in this state. If established, the educational program shall be created with all the powers, rights, and duties set forth in this chapter, except that it shall not be subject to Section 58749 or 58993.

(Added by Stats. 1991, Ch. 385, Sec. 3.)

58742. Authority to Issue Marketing Orders Covering Commodities Not Federally Regulated

The director may also, subject to the restriction and limitations which are contained in Article 7 (commencing with Section 58811) of this chapter, issue marketing orders which regulate the handling, processing, preparation for marketing, or marketing of any or all portions of any commodity which is produced in this state for which marketing regulatory powers are not being exercised by the federal government pursuant to the Marketing Agreement Act of 1937 (50 Stat. 249).

58743. Authority to Issue Intrastate Marketing Order Compatible with Federal Interstate Order

If the director finds that it tends to effectuate the declared purposes of this chapter within the standards which are prescribed in this chapter, the director may issue a marketing order, applicable to the marketing, within this state, of any commodity, which contains like terms, provisions, methods, and procedures as any license or order that regulates the marketing of such commodity in interstate or foreign commerce which is issued by the Secretary of Agriculture of the United States pursuant to the provisions of any law or laws of the United States.

In selecting the members of any board or other advisory agency under such marketing order, the director shall, insofar as practicable, utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel.

Any board, agency, or committee so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing order which is issued by the director pursuant to this section.

58744. Restricting Application of Order to Prescribed Marketing Area.

Any marketing order which is issued by the director pursuant to this chapter may be limited in its application by prescribing the marketing area or portion of the state in which it shall be effective. A marketing order shall not, however, be issued by the director unless it embraces all persons of a like class that are engaged in a specific and distinctive agricultural industry or trade within this state.

58745. Authority for Marketing Agreements

In order to effectuate the declared policy of this chapter, the director may also, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers, and others that are engaged in the handling of any commodity, which regulate the preparation for market and handling of such commodity. Such marketing agreements are binding upon the signatories to the agreements exclusively.

58746. Application to Marketing Agreements of Law Governing Marketing Orders; Exceptions

The purposes and provisions of the chapter which relate to marketing orders are applicable to marketing agreements except as follows:

(a) Section 58779, which requires the preparation of an official list of the names and addresses of all producers and the volume of the commodity which was produced or marketed by all the producers in the preceding marketing season and a list of the names and addresses of all handlers and the volume of the commodity which was handled by all the handlers, during the preceding marketing season, is not applicable to marketing agreements.

(b) Sections 58991 to 58998, inclusive, and Sections 59082 to 59086, inclusive, are not applicable to marketing agreements. Prior to the issuance of any marketing agreement, or amendment to it, the director shall, however, find, in addition to the findings which are set forth in Section 58813, that the marketing agreement, or any amendment to it, has been assented to by a sufficient number of signatories that handle a sufficient volume of the commodity which is affected to accomplish the objectives of the agreement or amendment and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration, and enforcement.

(c) Section 59233 is not applicable to marketing agreements.
(Amended by Stats. 1984, Ch. 706, Sec. 2.)

58747. Orders and Agreements Affecting Handlers Only

Notwithstanding the provisions of Section 58605, the director may issue and make effective marketing orders or marketing agreements that affect handlers only which include only the provisions which are authorized in Sections 58889, 58890, 58892, 58893, and 58894, or any of such provisions, but no others, as may be applicable to the commodity that is regulated which is handled within this state, without regard to whether or not such commodity is produced within this state.

58748. Authority to Prohibit Handling of Substandard Commodities

If producers or handlers of any commodity which is regulated by a marketing order or marketing agreement that is issued by the director pursuant to the provisions of this chapter are required to comply with minimum quality, condition, size, or maturity regulations, no person may, except as otherwise provided in such order or agreement, process, distribute, or otherwise handle any of such commodity from any source, whether produced within or without this state, which commodity does not meet such minimum requirements applicable upon producers or handlers of such commodity in this state. Such regulations do not, however, apply to any commodity which has been produced outside of this state and is in transit on the effective date of the regulations.

58749. Multi-Commodity Orders and Agreements; Rights and Privileges; Effect of Actions to Enjoin; Amend, Suspend or Terminate Orders or Agreements; Severability

The director may issue and make effective a marketing order or marketing agreement which applies to two or more commodities. The producers or handlers of each commodity encompassed by such marketing order or agreement shall have all rights and privileges contained in this chapter as though such producers or handlers were directly affected by a marketing order or agreement regulating only a single commodity. If the producers or handlers of one commodity who are directly affected by a marketing order or agreement which applies to two or more commodities act to enjoin, amend, suspend or terminate the provisions thereof to such commodity, the order or agreement shall not be enjoined, amended, suspended or terminated with respect to any other commodity regulated by such order or agreement unless the director finds such injunction, amendment, suspension, or termination respecting one commodity makes continuance of the order or agreement no longer feasible or it fails to attain the objectives of this chapter. Unless the director makes findings to the contrary, a marketing order or agreement applicable to more than one commodity is deemed to be severable with respect to each commodity encompassed by it and also severable as to each sentence, clause, or part as it applies to each commodity. There shall be a clear and concise definition or identification of each commodity regulated by such multiple commodity marketing order or agreement.

(Added by Stats. 1970, Ch. 496.)

58750. “Buy California” Program

(a) There is within the Department of Food and Agriculture a public and private collaboration known as the “Buy California Program.” The purposes of the program are to encourage consumer nutritional and food awareness and to foster purchases of high-quality California agricultural products.

(b) Pursuant to Section 58749, and in accordance with the provisions of this chapter, the secretary may issue and make effective a marketing agreement and be advised by those elements of the production agriculture and food processing industry willing to participate in the program via co-funding or in-kind contributions in a manner defined under the agreement.

(c) The department shall report to the Legislature on January 1, 2002, and each successive January 1 while this section is operative, regarding its expenditures, progress, and ongoing priorities with this program.

(d) The Buy California Account is created in the Food and Agriculture Fund and, notwithstanding Section 13340 of the Government Code, is continuously appropriated for purposes of this section.

(Added by Stats. 2001, Ch. 118, Sec. 3.5. Effective July 30, 2001.)

ARTICLE 6. Notice, Reports, and Hearings

58771. Notice of Hearing

If the director has reason to believe that the issuance of a marketing order, or amendments to an existing marketing order, will tend to effectuate the declared policy of this chapter with respect to any commodity, he shall, either upon his own motion or upon application of any producer or handler of such commodity, or any organization of such persons, give notice of not less than 30 days for a public hearing upon a proposed marketing order or such amendments to such existing marketing order. In an emergency situation requiring urgent action, the director may, upon citing the nature of the emergency in the notice, give less than 30 days' notice.

(Amended by Stats. 1976, Ch. 1222.)

58773. Mailing Copies of Notice of Hearing and Proposed Order

The director shall also mail a copy of such notice of hearing and a copy of such proposed marketing order, or proposed amendments, to every producer or handler of such commodity whose name and address appears upon lists of such persons, on file in the department that may be directly affected by the provisions of such proposed marketing order or such proposed amendments.

58774. Contents of Notice of Hearing

The notice of hearing shall set forth all of the following:

- (a) The date and place of the hearing.
- (b) The commodity and the area which are covered by the proposed marketing order or the proposed amendments.
- (c) A statement that the director will receive, at the hearing, testimony and evidence as to other necessary and relevant matters which are set forth in Article 7 (commencing with Section 58811).

(Amended by Stats. 1986, Ch. 319, Sec. 1.)

58775. Report by Handlers; Notice to File; Contents

To provide the director with accurate and reliable information, if that information is not then on file in the department, regarding the persons that may be directly affected by the provisions of any proposed marketing order for any commodity, the director shall, if he or she has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this chapter, or upon receipt of a written application for a hearing pursuant to Section 58771, notify all handlers of the commodity to file with the director, within 30 days from the last date of the notice, a report, properly certified, which shows all of the following:

(a) The correct name and address of such handler.

(b) The quantities of the commodity that are affected by the proposed marketing order which were handled by the handler in the marketing season next preceding the filing of the report or the current marketing season if the harvest and delivery of the commodity to handlers is complete.

(c) The correct name and address of every producer of the commodity, that may be directly affected by the proposed marketing order, from whom the handler received the commodity in the marketing season next preceding the filing of the report or the current marketing season if the harvest and delivery of the commodity to handlers is complete.

(d) The director may also require all handlers to report quantities of the commodity which were received by the handler from each producer in the marketing season next preceding the filing of the report or the current marketing season if the harvest and delivery of the commodity to handlers is complete.

(Amended by Stats. 1986, Ch. 677, Sec. 1.)

58777. Mailing Copies of Notice to Handlers

The director shall mail a copy of such notice to file such report to every handler of such commodity whose name and address appears upon the lists on file in the department, of handlers that may be directly affected by the provisions of such proposed marketing order.

(Amended by Stats. 1976, Ch. 1222.)

58778. Duty of Handlers to Report

Each handler of such commodity that may be directly affected by the provisions of such proposed marketing order shall file such verified report with the director within the time which is specified in Section 58775. Failure or refusal of any handler to file such report within the time which is specified does not invalidate any proceeding which is taken or marketing order which is issued pursuant to this chapter. The director shall proceed upon the basis of such information and reports as may otherwise be available.

58779. Preparation of Lists of Producers

From the reports which are filed and the information which is received or available to the director, including any proper corrections, the director shall prepare a list of the names and addresses of the producers and the volume of such commodity which was produced or marketed by all such producers and a list of the names and addresses of such handlers and the volume of such commodity which was handled by all such handlers, that are directly affected by the provisions of such proposed marketing order, or amendments to it, in the preceding marketing season. Such lists shall constitute complete and conclusive lists for use in any finding made by the director pursuant to the provisions of Article 12 (commencing with Section 58991) of this chapter and such findings are conclusive.

58780. Omission of Casual Sellers

In the preparation of the list of producers or handlers to be used in the formulation or amendment of any marketing order or marketing agreement, the director may omit from such list the name of any person that makes only casual sales of the product which is involved, or whose sales or marketings of such product are incidental to urban home ownership, or the result of activity other than a commercial farm or business venture. Any person that is excluded from such lists is not subject to the provisions, including the payment of any assessments, which are applicable upon producers, or handlers, as prescribed in any such marketing order or marketing agreement.

58781. Confidential Information

The information which is contained in the individual reports of handlers which are filed with the director pursuant to this article shall not be made public by the director in such form but the information which is contained in such reports may be prepared in combined form for use by the director, his agents, or other interested persons, in the formulation, administration, and enforcement of a marketing order, or may be made available pursuant to court order. Such information shall not be made available to anyone for private purposes.

58782. Public Hearing; Record

The hearing on a proposed marketing order or proposed amendments shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearing shall be made and maintained on file in the office of the director.

58783. Evidence at Hearing

At the hearing, the director shall receive, in addition to other necessary or relevant matters, evidence upon the matters which are set forth in Article 7 (commencing with Section 58811).
(Amended by Stats. 1986, Ch. 319, Sec. 2.)

58784. Evidence for Establishment of Official Producer or Handler Lists

At any public hearing which is held in connection with the formulation or amendment of a marketing order or marketing agreement, the director shall present testimony with respect to the procedure used to develop the official producer or handler list, as the case may be.

(Amended by Stats. 1986, Ch. 319, Sec. 3.)

58785. Evidence and Finding as to Time Required for Filing Assents

At each public hearing upon a marketing order or a major amendment to it, the director shall receive evidence relative to the period of time which may be necessarily required for the filing, checking, and tabulating of written assents which are prescribed in Article 12 (commencing with Section 58991) of this chapter. He shall also, at the conclusion of each such hearing, make a finding, based upon the evidence, with respect to the period of time which may be reasonably and necessarily required for such filing, checking, and tabulating. On the basis of such finding, the director shall fix and limit the period during which such assents may be received by him and shall be the period at the time of mailing of assent forms to producers and handlers that are affected. If, however, the director finds that an extension of such period is reasonably warranted, he may extend such period for receiving assents.

58786. Evidence as to Whether Favor Should be Determined by Written Assents or Referendum

At a public hearing which is held to consider a proposed marketing order or major amendments to an existing marketing order, the director shall also receive evidence from which the director can determine whether the assent, approval, or favor of the producers, handlers, or processors affected shall be determined by written assents or by referendum as prescribed in Article 12 (commencing with Section 58991).

(Amended by Stats. 1986, Ch. 677, Sec. 2.)

58787. Finding Whether Favor Should be Determined by Written Assents or Referendum

Upon the conclusion of the hearing, the director shall make a finding which is based upon the evidence received, whether assent, approval, or favor shall be determined by written assents or by referendum.

(Amended by Stats. 1986, Ch. 677, Sec. 3.)

58788. Referendum Procedure

If the director finds that a referendum shall be had, the director shall direct that a referendum be held in accordance with Sections 58991 to 58998, inclusive. If a referendum is conducted, the director is not required, with respect to the assent, approval, or favor, to make a finding pursuant to Section 58785 concerning, or to fix and limit, the period during which assents may be received by the director.

(Amended by Stats. 1986, Ch. 677, Sec. 4.)

ARTICLE 7. Findings

58811. Required Findings

After the notice and hearing which are required by Article 6 (commencing with Section 58771) of this chapter, and before issuing a marketing order or amendments to it for the written assent of producers or handlers which contain provisions for correlating the supply of the commodity which is affected with market demands for it by means of restrictions upon the total quantity of such commodity, or restrictions upon the total quantity of any grade, size, quality, or condition of it, which restrictions have the effect of limiting the total quantity of such commodity which may be marketed during any marketing season, if the restricted portion of such commodity might otherwise be marketed by producers in compliance with other laws of this state or of the United States or in compliance with established commercial practice during such marketing season, the director shall make all of the following findings with respect to such marketing order or amendments to it:

(a) Such provisions are necessary in order to effect a reasonable correlation of the supply of the commodity which is affected with market demands for the commodity and that such marketing order or amendments to it will tend to reestablish or maintain such level of prices for such commodity as will provide a purchasing power for such commodity which is adequate to maintain in the business of producing such commodity such number of producers as is required to provide such supply of the quantities and qualities of such commodity as is necessary to fulfill the normal requirements of consumers of the commodity.

(b) Such marketing order or amendments to it will tend to approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for such commodity.

(c) Such marketing order or amendments to it are in conformity with the provisions of this chapter and within the applicable limitations and restrictions which are set forth in this chapter and will tend to effectuate the declared purposes and policies of this chapter.

(d) Such marketing order or amendments to it will protect the interests of consumers of such commodity, by exercising the powers of this chapter only to such extent as is necessary to establish the equality of purchasing power which is described in subdivision (a) of this section.

58812. Consideration of Economic Factors

In making the findings with respect to any of the objectives which are set forth in Section 58811, the director shall, if any or all of the following economic factors are relevant, take into consideration any and all facts which are available to him with respect to all of the following:

(a) The quantity of such commodity which is available for distribution.

(b) The quantity of such commodity which is normally required by consumers.

- (c) The cost of producing such commodity as determined by available statistics and surveys.
- (d) The purchasing power of consumers as indicated by reports and indices.
- (e) The level of prices of other commodities which compete with, or are utilized as substitutes for, such commodity.
- (f) The level of prices of other commodities, services, and articles which farmers commonly buy.

58813. Required Findings for Order Not Restricting Quantity

If the marketing order or amendments to it contain provisions only for the purpose of regulating the flow of the commodity, or any grade, size, or condition of the commodity, to market without directly restricting the total quantity which may be marketed during the marketing season, or if the marketing order or amendments to it contain provisions only for the establishment of grade, size, quality, or condition specifications, or for uniform grading and inspection, or the elimination of unfair trade practices, or provisions for advertising or sales promotion, or for research, the director may issue such marketing order or amendments to it if he makes all of the following findings:

- (a) That such marketing order or amendments to it are reasonably calculated to attain the objectives which are sought in such marketing order.
- (b) That such marketing order or amendments to it are in conformity with the provisions of this chapter and within the applicable limitations and restrictions which are set forth in this chapter and will tend to effectuate the declared purposes and policies of this chapter.
- (c) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent which is necessary to attain such objectives.

In making any findings pursuant to this section, the director shall base his findings upon the facts, testimony, and evidence which is received at the public hearing together with any other relevant facts which are available to him from official publications or institutions of recognized standing.

58814. Marketing Orders Issued Prior to May 28, 1945

Any marketing order in effect on August 27, 1945, which was duly issued by the director pursuant to this chapter prior to May 28, 1945, and in effect on such date, shall continue in full force and effect and shall be conclusively presumed to be in conformity with the provisions of this article as amended.

ARTICLE 8. Advisory Boards and Committees

58841. Establishment; Appointment; Term

Any marketing order which is issued pursuant to this chapter shall provide for the establishment of an advisory board to assist the director in the administration of any marketing order. The members of the advisory board shall be appointed by the director and may hold office at the pleasure of the director. A marketing order may, however, provide for the appointment of members from nominations made by the producers and handlers and may also provide for the method of selecting such nominees.

58842. Composition

If the marketing order affects directly only producers of a particular commodity, the members of the advisory board shall be producers. If the marketing order affects directly only handlers of a particular commodity, the members of the advisory board shall be handlers.

If the marketing order affects directly both producers and handlers of a particular commodity the advisory board shall be composed of both producers and handlers. The number of producers or handlers upon any such advisory board shall be of such number of producers or handlers as the director finds is necessary to assist properly in the administration of such order.

58842.5. Raisin Marketing Orders or Agreements; Cooperative Bargaining Association Representatives

Any raisin marketing order or agreement involving producers operating under this chapter shall provide for, and the director shall appoint, a person to represent cooperative bargaining associations organized pursuant to Chapter 2 (commencing with Section 54401) of Division 20 from nominations made by the associations to the advisory board.

The person so appointed shall be a voting member of the advisory board.

(Added by Stats. 1982, Ch. 654, Sec. 1.)

58843. Representative of Department or Public

Upon the recommendation of the advisory board, the director may appoint one person who is neither a producer nor a handler to represent the department or the public generally.

58844. Expenses; Compensation

A member of an advisory board is entitled to actual expenses which are incurred while engaged in performing duties that are authorized by this chapter and, with the approval of the advisory board concerned, may receive compensation not to exceed fifty dollars (\$50) per day for each day spent in actual attendance at, or traveling to and from, meetings of the board or on special assignment for the board.

(Amended by Stats. 1986, Ch. 395, Sec. 1.)

58845. Powers

The director may authorize an advisory board to do all of the following:

(a) Enter into contracts or agreements.

(b) Employ necessary personnel, including attorneys engaged in the private practice of the law, and fix their compensation and terms of employment.

(c) Incur such expenses, to be paid from moneys which are collected as provided in Article 10 (commencing with Section 58921), as the director may deem necessary and proper to enable the advisory board properly to perform its duties as authorized by this chapter.

(d) Receive, invest, and disburse funds pursuant to the provisions of Article 10 (commencing with Section 58921).

(Amended by Stats. 1982, Ch. 641, Sec. 1.)

58846. Duties

The duties of an advisory board are administrative only and any such board may do only the following:

(a) Subject to the approval of the director, administer the marketing order.

(b) Recommend to the director administrative rules and regulations which relate to the marketing order.

(c) Receive and report to the director complaints of violations of the marketing order.

(d) Recommend to the director amendments to the marketing order.

(e) Assist the director in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the director in the administration of the marketing order.

(f) Assist the director in the collection of such necessary information and data as the director may deem necessary to the proper administration of this chapter.

58846.5. Annual Report to Industry Members; Contents.

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, the income and expenses, the fund balance, and a report of progress in achieving program goals, of such a marketing order, as prescribed by the director.

(Added by Stats. 1974, Ch. 906.)

58847. Relief from Individual Liability

The members or alternate members of any advisory board, including employees of the advisory board, are not responsible individually in any way whatsoever to any person for liability on any contract or agreement of the advisory board.

58848. Committees and Subcommittees

In addition to the advisory board, one or more special committees or subcommittees may be established to assist the advisory board in carrying out its duties and functions. Upon approval of the director, each advisory board may establish committees or subcommittees to carry out assigned duties and functions and designate the members or alternate members of the advisory board to serve upon such committees.

58849. Special Committees and Subcommittees

If the marketing order so authorizes, or upon the recommendation of the advisory board, the director may authorize the establishment of special committees or subcommittees of persons who are not members or alternate members of the board to perform specific duties and functions. The members and alternate members of any such special committee or subcommittee shall be appointed by the director.

58850. Invitations to Attend Meetings; Expenses

An advisory board may at any time invite any persons to their meetings to serve in an advisory capacity and the director may, if requested by the advisory board, pay necessary expenses to such persons at rates not to exceed those granted to advisory board members.

58851. Acts of Committees; Approval; Expenses

Any action of any committee, special committee, or subcommittee of the board is subject to final approval by the advisory board. Members and alternate members of any committee, special committee, or subcommittee, whether by appointment or approval of the director, are entitled to reimbursement for actual expenses which are incurred while acting in their authorized capacities.

58852. Producers and Handlers as Members of Advisory Boards; Duty to Serve Public Interest

It is hereby declared, as a matter of legislative determination, that the producers, or handlers, or both producers and handlers, appointed to any advisory board pursuant to this article are intended to represent and further the interest of a particular agricultural industry concerned, and that such representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to such advisory boards, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

(Added by Stats. 1976, Ch. 1428.)

58853. Teleconference Meetings; Notice; Teleconference Guidelines

(a) Notwithstanding Section 11123 of the Government Code, all of the following shall apply to a meeting held by teleconference under this chapter by an advisory board:

(1) A member of the advisory board participating by teleconference shall be listed in the minutes of the meeting and shall provide notice of his or her participation by teleconference at least 24 hours before the meeting.

(2) The advisory board shall designate a primary physical meeting location where participants may physically attend the meeting and participate. At least one member of the advisory board shall be in attendance at the primary physical meeting location.

(3) The teleconference phone number, and, if applicable, the Internet Web site or other information indicating how the public can access the meeting remotely, shall be included in the agenda, which shall be available to the public.

(b) Nothing in this section shall exempt the advisory board from providing information regarding the physical location of an advisory board meeting or any teleconference participation information, including the identity of an advisory board member who might be participating by teleconference.

(c) Prior to holding a meeting by teleconference pursuant to this section, the advisory board shall adopt teleconferencing guidelines to address issues that include, but are not limited to, cancellations as a result of technical difficulties, ensuring transparency, and public participation.
(Enacted by Stats. 2016, Ch. 451, Sec. 2)

ARTICLE 9. Terms of Marketing Orders

58881. Regulatory Provisions.

Except as otherwise provided in Sections 58657 and 58747, any marketing order which is issued by the director pursuant to this chapter may contain any or all of the provisions which are prescribed by this article for regulating, or providing methods for regulating producer marketing, or the handling, or any of the operations of processing or distributing by handlers, of any commodity within the state, but no others.

58882. Surplus; Stabilization Fund

A marketing order may contain provisions for determining the existence and extent of the surplus of any commodity, or of any grade, size, or quality of it, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers, processors, distributors, or other handlers that are affected.

Notwithstanding any other appropriate means of equalizing the burden of surplus control and its elimination as provided in this chapter, provision may be made for the creation of a stabilization fund to be used for purchasing or otherwise acquiring any portion of the surplus of any commodity either in fresh or processed form, except when processed in hermetically sealed containers, and for the diversion of such surplus quantity of such commodity which is so acquired into noncompetitive or byproducts uses or for disposing of such surplus in noncommercial channels. Money for such stabilization fund shall be provided by means of the establishment of an assessment rate for such purpose levied upon producers or handlers, or upon both producers and handlers. Such assessment rate shall be based upon the units in which such commodity is handled or marketed or upon any other uniform basis which the director determines to be reasonable and equitable. For convenience of collection, the director may collect any producer assessments from handlers of such commodity. Handlers paying such assessments for, and on behalf of, any producers may deduct such producer assessments from any money which is owed by such handlers to such producers.

58883. Limitation of Quantity; Exception

A marketing order may contain provisions for limiting the total quantity of any commodity, or of any grade, size, or quality of it, which may be marketed by producers, or processed, distributed, or otherwise handled within this state during any specified period by any and all persons that are engaged in such producer marketing, processing, distributing, or handling. Any such limitation shall be applied under a uniform rule which is applicable to all such persons so regulated. The total quantity of any such commodity which is so regulated and permitted to be marketed by producers, processed, distributed, or otherwise handled, shall not be less than the quantity which the director finds is reasonably necessary to supply the market demands of consumers of such commodity.

The marketing of green ripe olives is not, however, subject to any provisions of a marketing order which limits the total quantity of such commodity which may be marketed.

58884. Allotment of Quantity or Quality for Purchase

A marketing order may contain provisions for allotting the quantity of any commodity, or of any grade, size, or quality of it, which each handler may purchase or acquire from, or handle on behalf of, any and all producers of the commodity, within this state during any specified period under a uniform rule, which is applicable to all handlers that are so regulated based upon the amounts produced or sold by such producers in a prior period which the director finds to be representative, or upon the current season's production or sales of such producers, or both, to the end that the total quantity of such commodity, or of any grade, size, or quality of it, which is so purchased or handled within this state is apportioned equitably among the producers of the commodity.

58885. Allotment of Quantity or Quality for Processing or Distribution

A marketing order may contain provisions for allotting the quantity of any commodity, or of any grade, size, or quality of it, which each handler may process, distribute, or handle within this state under a uniform rule, which is applicable to all handlers that are so regulated, which is based upon the quantities of such commodity, or of any grade, size, or quality of it, of the current season's crop which each such handler has available for such processing, distribution, or handling, or upon the quantities of such commodity, or of any grade, size, or quality of it, which is so processed, distributed, or handled by each such handler in a prior period which the director finds to be representative, or based upon both, to the end that the total quantity of such commodity, or any grade, size, or quality of it, processed, distributed, or handled within this state during any specified period is equitably apportioned among all such handlers of the commodity.

58886. Regulation of Period for Processing

A marketing order may contain provisions which regulate the period during which any commodity, or any grade, size, or quality of such commodity, may be processed, distributed, or otherwise marketed within this state by any and all persons that are engaged in such processing, distributing, or marketing within this state. The total quantity of such commodity which is so regulated and permitted to be processed, distributed, or otherwise marketed during such period, shall not, however, be less than the quantity which the director finds is necessary to reasonably supply the needs of consumers of such commodity.

58887. Surplus Stabilization or Byproduct Pools

A marketing order may contain provisions for the establishment of surplus, stabilization, or byproduct pools for any commodity, or of any grade, size, quality, or condition of it, and providing for the sale of the commodity in any such pool and for the equitable distribution among the persons that are participating in the pool of the net returns which are derived from the sale of such commodity. The marketing of green ripe olives is not, however, subject to any provisions of a marketing order which relate to the establishment and operation of surplus pools.

If the marketing order authorizes the establishment of any such pool, the advisory board may receive such commodity from each producer or handler and handle it according to the grade, size, quality, or condition of the commodity and account to each producer or handler that is participating in the pool upon a pro rata basis for the net proceeds derived from the sale of the commodity.

The contents of any surplus pool shall not be marketed by the advisory board in any form which would compete directly with that portion of the commodity which is marketed in regular channels of trade. However, any portion of any surplus pool may be transferred by the advisory board upon any gratuitous basis to charitable organizations and other similar agencies under proper safeguards to insure that none of such commodity shall compete directly with the unrestricted portion of such commodity.

The advisory board may dispose of the contents of a stabilization pool in the regular marketing channels in such manner and at such times as it deems advisable, consistent with the maintenance of stabilized marketing conditions for such commodity. The advisory board may dispose of the contents of any byproduct pool only for byproducts or for other similar purposes under proper safeguards to prevent such portion of the commodity so disposed of from directly competing with that part of the commodity which is marketed in the usual form or in the regular channels of trade.

If the marketing order authorizes the establishment of a surplus, stabilization, or byproduct pool, the advisory board may do any of the following:

(a) Arrange for and operate any necessary facilities for the storing, financing, grading, packing, servicing, processing, preparing for market, selling, and disposing of the contents of any pools which are provided for in this chapter. The board shall not, however, engage in commercial warehousing.

(b) Pledge all of the commodity in any such pools with banks or other lending agencies for the purpose of obtaining loans upon it. The board shall have title, for the purpose of financing and handling, to all of the commodity in any such pools.

(c) Create, by a uniform assessment upon producers, or upon some other uniform and equitable basis, maintain, and disburse an equalization fund to be used for the removal of any inequalities between producers or handlers that are participating in any pool which result from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to byproducts, relief, or other noncompetitive purposes pursuant to the provisions of the marketing order.

58888. Grading Standards; Uniform Inspection and Grading

A marketing order may contain provisions which establish, or provide for the establishment, with respect to any commodity, either as delivered by producers to handlers or processors, or as handled, processed, or otherwise prepared for market, or as marketed by producers, handlers, or processors, both of the following:

(a) Grading standards of quality, condition, size, maturity, or pack, which standards may include minimum standards. The standards so established shall not, however, be established below any minimum standards which are prescribed by law for such commodity.

(b) Uniform inspection and grading of such commodity in accordance with the standards which are so established.

58889. Advertising and Sales Promotion

(a) A marketing order may contain provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for any commodity that is grown in this state, or for the prevention, modification, or removal of trade barriers that obstruct the free flow of any commodity to market. The secretary may prepare, issue, administer, and enforce plans for promoting the sale of any commodity.

(b) Any plan shall be directed toward increasing the sale of the commodity without reference to any private brand or trade name that is used by any handler with respect to the commodity regulated by the marketing order, except the use of wine if other than private brands or private trade names are unavailable, and except that marketing orders that provide for the advertising and sales promotion of raisins, prunes, and walnuts may allow those plans to credit the pro rata assessment obligations of a handler with all or any portion of that handler's direct expenditures for the marketing promotion that may include private brand or trade name advertising performance allowances, sales promotions, couponing, and in-store promotion programs and materials.

(c) (1) Notwithstanding any provision of this section, any marketing order for fluid milk may contain in its advertising and sales promotion plan provisions 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, but only if the use is incidental to the promotion of the California milk product and not in direct promotion of the brand or trade name, and if 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.

(2) For purposes of this subdivision, "butter" means the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents.

(3) This subdivision shall not become operative unless approved as set forth in subdivision (c) of Section 58993.

(d) No advertising or sales promotion program shall be issued by the secretary that makes use of false or unwarranted claims in behalf of any product, or disparages the quality, value, sale, or use of any other commodity.

(Amended (as amended by Stats. 1998, Ch. 912, Sec. 1) by Stats. 2002, Ch. 157, Sec. 1. Effective January 1, 2003.)

58889.1. Private Brands or Trade Names; Promotion

Notwithstanding Section 58889, any marketing order for processed fruits, nuts, or vegetables may contain in its advertising and sales promotion plan provisions to allocate funds to promote private brands or trade names.

(Added by Stats. 1983, Ch. 809, Sec. 1.)

58889.3. Marketing Order; Foreign Markets; Contents

Notwithstanding subdivision (b) of Section 58889, effective immediately, a marketing order may contain provisions for the establishment of plans for advertising and sales promotion, including any private brand or trade name, to maintain present international foreign markets or to create new or larger international foreign markets for any commodity which is grown in this state, provided that effective January 1, 1978, such advertising and sales promotion plans require that each individual commodity package label indicate the commodity is of California origin in English or other appropriate language.

(Amended by Stats. 1978, Ch. 309.)

58890. Unfair Trade Practices

A marketing order may contain provisions which relate to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law, applicable to the processing, distribution, or handling of any commodity within this state, the director may include in any marketing order which is issued provisions that are designed to correct any trade practice which affects the processing, distributing, or handling of any commodity within this state which the director finds, after a hearing upon the marketing order in which all interested persons are given an opportunity to be heard, is unfair and detrimental to the effectuation of the declared purposes of this chapter.

58891. Production Adjustment Benefits

A marketing order may contain provisions for the application for, review, certification, and equitable payment of, production adjustment benefits to growers from funds which are collected for such purpose on a uniform basis from all commercial growers of any commodity in the state, for which production adjustment payments are made. Such funds may be supplemented by funds, if any, which are received from federal, state, or other agencies for such purpose.

(Amended by Stats. 1970, Ch. 1275.)

58892. Research Studies; Hearing; Finding; Referendum; Trust Account for Funding Programs; Selection of Programs; Programs for Developing and Testing New Products

(a) A marketing order may contain provisions for carrying on research studies in the production, processing, or distribution of any commodity and for the expenditure of moneys for these purposes. Prior to the implementation of a research program authorized by this section that will extend beyond the next reapproval date of the marketing order pursuant to Section 59086, the director shall call a public hearing pursuant to Article 6 (commencing with Section 58771) to receive testimony regarding support for the research program by persons directly affected by the marketing order. After the hearing, the director shall find and determine, based upon the evidence received, whether or not to conduct a referendum pursuant to subdivision (c) of Section 58993 prior to approval of the proposed research program in order to evaluate with greater certainty the support for the program by the persons directly affected by the marketing order.

(b) In carrying out this section, an advisory board may, subject to the approval of the director, establish a trust account to fund research programs on an ongoing basis. These programs may extend beyond the termination date of the marketing order. For any program designed to last more than one year, funding shall be provided for from the trust account during the initial year.

(c) In any research in production or processing which is carried on pursuant to this section, the Vice President for Agricultural Sciences of the University of California and the advisory board which is provided for in Article 8 (commencing with Section 58841) shall cooperate in selecting the research program which is to be carried on from time to time. Insofar as practicable, the programs shall be carried out by the University of California, but if the vice president and the advisory board determine that the university has no facilities for a particular program, or that some other research agency has better facilities for it, the program may be carried out by any other research agency which is selected by the vice president and the advisory board.

(d) In carrying out this section, an advisory board may carry out research programs for the purpose of developing and testing new products in selected markets. The proposed programs shall be submitted to the director for his or her approval prior to the expenditure of funds for the program. The proposal submitted shall include, among other things, a description of the new products, the test market to be utilized, and the duration of the program.

(Amended by Stats. 1984, Ch. 425, Sec. 1. Effective July 12, 1984.)

58892.1. Research Studies; Product Qualities

A marketing order may contain provisions for 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 agricultural products.

(Added by Stats. 1969, Ch. 217.)

58892.2. Determination of Compliance

No marketing order for milk shall be issued by the director unless he finds that such marketing order does not conflict with the provisions of Chapter 2 (commencing with Section 61801) or Chapter 3 (commencing with Section 62700) of Part 3 of Division 21.

(Added by Stats. 1969, Ch. 217.)

58893. Quality Improvement Educational Program

A marketing order may contain provisions which establish, or provide authority for establishing, for any commodity, either as such commodity is produced or is delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers, an educational program which is designed to acquaint producers, handlers, consumers or other interested persons with quality improvement and nutritional values, including sanitation practices, procedures, or methods as applied to such commodity.

(Amended by Stats. 1969, Ch. 217.)

58894. Official Board Brand, Trade Name or Label

A marketing order may contain provisions which establish, or provide authority for establishing, and for regulating the permissive use of an official board brand, trade name, or label, or other distinctive designation of grade, quality, or condition, except the grade or quality designations in effect pursuant to state or federal grade standards, for any commodity, other than wine, either as such commodity is produced or is delivered by producers to handlers, or as handled or otherwise prepared for market, or marketed by producers or handlers. As provided in Section 59236, the permissive use of any such official board brand, trade name, or label or other distinctive designation of quality shall be limited to producers and handlers of the commodity that are participating in the marketing agreement or order, and that are in compliance with its provisions and with any regulation, or rule and regulation, which is adopted under it. Any official 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.

58895. Prevention and Control of Insects, Predators, Diseases; Advisory Board Recommendations

A marketing order may contain provisions to detect, control, prevent damage by or to eradicate insects, predators, diseases, or parasites with respect to any commodity or group of commodities. The advisory board may recommend and the director may approve measures to assist in the prevention or reduction of losses to crops or livestock caused by predators, insects, disease or parasite infestations, including the establishment and operation of detection, inspection, spraying, dusting, fumigating or other control measures.

For the purposes of this section, (1) assessments established pursuant to Article 10 (commencing with Section 58921) of this chapter may include an assessment for nonbearing acreage as well as bearing acreage of the commodity affected by such predators, insects, disease, or parasite, and (2) the director may use both the bearing and nonbearing acreage of such commodity as a measure of production for assent or referendum purposes in relation to such assessments.

As used in this section, "nonbearing acreage" means acreage planted to produce the particular commodity covered by the marketing order during the marketing season on which no quantity of the product is produced for marketing or is anticipated will be produced for market during such marketing season.

(Amended by Stats. 1971, Ch. 1059.)

58896. Weather and Commodity Production Information..

A marketing order may contain provisions for the gathering and dissemination of weather data to producers of any commodity, and to any persons providing services relating to production of a commodity, when the data is necessary to aid in any manner in the production or harvesting of that commodity.

(Added by Stats. 1984, Ch. 939, Sec. 1. Effective September 7, 1984.)

58897. Indemnity Trust Fund; Livestock Product Losses

To address catastrophic events, a marketing order may contain provisions for the establishment and operation of an indemnity trust fund to cover livestock and livestock product losses due to disease, natural disaster, or accidents.

(Added by Stats. 1999, Ch. 609, Sec. 8. Effective January 1, 2000.)

ARTICLE 10. Assessments and Funds

58921. Levy and Collection; Sufficiency

Except as otherwise provided in Section 58926, each marketing order which is issued pursuant to this chapter shall provide for the levying and collection of assessments in sufficient amounts to defray the necessary expenses which are incurred by the director in the formulation, issuance, administration, and enforcement of the marketing order. If the marketing order authorizes the carrying out of advertising and sales promotion plans, it shall also provide for the levying and collection of assessments in sufficient amounts to defray the expenses of such activities. No assessment for advertising or sales promotion activities shall, however, be levied under any marketing order with respect to the marketing and handling of green ripe olives except that green ripe olives may be assessed for their proportionate share of administrative costs.

58922. Maximum Rate

Each marketing order shall indicate the maximum rate of any assessment which may be collected and the proportion, if any, of each assessment which is payable by each producer and handler that is directly regulated or affected by such marketing order.

58923. Budgets.

The advisory board which is appointed by the director to assist him in administering each marketing order shall recommend to the director, from time to time, budgets to cover necessary expenses, and budgets to cover the expenses of carrying out sales promotion plans if such plans are authorized in the marketing order, and the assessment rates which are necessary to provide sufficient funds. If the director finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray the expenses which may be incurred, he may approve such budget and rate of assessment and order that each producer and handler so assessed shall pay to the director, at such times and in such installments as the director may prescribe, an assessment which is based upon the units in which such commodity is marketed, or upon any other uniform basis which the director determines to be reasonable and equitable.

58924. Limitation on Amount; Expenses

The amount of the assessment for necessary expenses shall not, however, exceed the following:

(a) In the case of producers, $2\frac{1}{2}$ percent of the gross dollar volume of sales of the commodity which is affected by all such producers regulated by such marketing order.

(b) In the case of processors, distributors, or other handlers, $2\frac{1}{2}$ percent of the gross dollar volume of purchases of the commodity which is affected by the marketing order from producers or of the gross dollar volume of sales of the commodity which is affected by the marketing order and handled by all such processors, distributors, or other handlers that are regulated by such marketing order during the marketing season during which such marketing order is effective.

58925. Limitation on Amount; Advertising and Promotion

Any assessment rate which is established for assessments to defray the expenses of advertising and sales promotion plans shall be in an amount which does not exceed 4 percent of the gross dollar volume of sales by all producers or by all processors, distributors, or other handlers of such commodity which is regulated by such marketing order during the marketing season during which such marketing order is effective.

58926. Advertising and Promotion; Single Assessment

In lieu of the assessments to defray the costs of formulation, issuance, administration, and enforcement and advertising or sales promotion provided for in Section 58921, if the marketing order contains provisions for advertising or sales promotion as authorized in this chapter, the director may approve and fix an assessment for producers and an assessment for handlers as the case may be, not exceeding $6\frac{1}{2}$ percent of the gross dollar volume of sales of such commodity by all producers, or by all processors, distributors, or other handlers of such commodity regulated by such marketing order during the marketing season during which such marketing order is effective. The method and manner of assessment and collection of such assessment, and the limitations and restrictions applicable thereupon, shall conform in all respects with the provisions of this article regarding assessments for advertising and sales promotion, except as to the maximum amount of such assessment.

(Amended by Stats. 1976, Ch. 1222.)

58927. Apportionment of Single Assessment

If the director approves and fixes a single assessment, the advisory board shall recommend and the director may approve the proportions of such assessment which may be expended to defray the costs of formulation, issuance, administration, and enforcement of the marketing order and that which may be expended for such advertising or sales promotion program. The proportion of such assessment which may be allocated in such manner to defray the cost of such administrative activities for such marketing order shall not, however, exceed the maximum amount which is authorized in Section 58924.

58928. Borrowing Money

If any advisory board of any marketing order has reason to believe that the administration of a marketing order will be facilitated or the attainment of the purposes and objectives of the marketing order will be promoted thereby, the advisory board may borrow money with or without interest to carry out any provision of any marketing order which is authorized by this chapter, and may hypothecate anticipated assessment collections that are applicable to such respective provisions.

58929. Assessment as Personal Debt; Action to Collect

Any assessment which is levied as provided in this article, in such specified amount as may be determined by the director pursuant to this chapter, is a personal debt of every person so assessed and shall be due and payable to the director if payment is called for by the director. If any such person fails to pay any such assessment upon the date which is determined by the director, the director may file a complaint against such person in a state court of competent jurisdiction for the collection of the assessment.

58930. Added Amount to Cover Collection Costs: Penalty

If any producer or handler that is duly assessed pursuant to the provisions of this chapter fails to pay to the director the amount so assessed on or before the date which is specified by the director, the director may add to such unpaid assessment an amount not exceeding 10 percent of such unpaid assessment to defray the cost of enforcing the collection of such unpaid assessment. In addition to such payment for the cost of enforcing such collection, any such producer or handler shall pay to the director a penalty of 5 percent for each 30 days of the unpaid balance for each 30 days the assessment is unpaid, prorated over the days unpaid, commencing 30 days after notice has been given to such producer or handler of his failure to pay the assessment on the date required, unless the director determines, to his satisfaction, that such failure to pay is due to reasonable cause beyond the producer's or handler's control. Such penalty shall not exceed 50 percent of the total amount of the assessment due.

(Amended by Stats. 1977, Ch. 783.)

58931. Advance Deposit

The director may require the persons that are assessed to deposit with him in advance the following amounts:

(a) An amount for necessary expenses.

(b) An amount which shall not exceed 25 percent of the assessment to cover the costs of advertising or sales promotion plans which are incurred prior to the receipt of sufficient funds from the assessment for such purpose.

58932. Advance Deposit: Amount

The amount of any deposit which is required by the director pursuant to Section 58931 shall be based upon the estimated number of units to be marketed or handled by the person that is assessed, or upon any other uniform basis which the director determines is reasonable and equitable. Such basis shall be applicable during the marketing season during which such marketing order is effective.

58933. Advance Deposit; Adjustment.

At any time after the funds which are credited to the administrative account, or the advertising or sales promotion account, of the marketing order are sufficient to so warrant, or at the close of the marketing season, the sums deposited by any person shall be adjusted to the amount which is properly chargeable against such person pursuant to the assessment which was authorized.

58934. Contributions

In lieu of requiring advance deposits, or in order generally to provide funds for defraying administrative or advertising and sales promotion expenses until such time as sufficient moneys are collected for such purpose from the payment of the assessments which are established pursuant to this article, the director may receive and disburse for such expense purposes contributions which are made by producers, processors, distributors, or other handlers. Neither the advisory board nor the director is responsible for the repayment of such contributions. If, however, collections from the payment of established assessments credited to the respective marketing order accounts are sufficient to so warrant, the board shall recommend and the director shall authorize, the repayment of contributions, or authorize the application of such contributions to the assessment obligations of persons that made such contributions.

58934.5. Defraying Expenditures Authorized by Marketing Order; Receipt and Disbursement of Contributions

In order to provide funds for defraying expenditures authorized by the marketing order, the director or any advisory board may also receive and disburse contributions that are made by persons other than those directly affected by the marketing order.

(Added by Stats. 1992, Ch. 210, Sec. 1. Effective January 1, 1993.)

58935. Collection of Producer Assessments from Handlers; Accounting

For the convenience of making collections of any producer assessments which are established pursuant to this article, the director may collect such assessments from the handlers of the commodity which is being regulated. Any handler that pays any such assessments for and on behalf of any producer may deduct such producer assessments from any money which is owed by such handler to such producer. Any marketing order may require a handler to deduct producer assessments from any money which is owed by such handler to such producer. Such producer assessment deductions are hereby declared to be trust funds held by the handler for the purposes of the marketing order concerned and shall be remitted timely, with assessment reports, to the director.

(Amended by Stats. 1976, Ch. 1222.)

58936. Rules and Regulations

The director may adopt rules and regulations with respect to the assessment and collection of funds pursuant to this article.

(Amended by Stats. 1984, Ch. 425, Sec. 2. Effective July 12, 1984.)

58937. Disposition of Funds Collected; Audits

(a) Any money that is collected by the director pursuant to this chapter shall be deposited in a bank or other depository that is approved by the Director of Finance, allocated to each marketing order under which it is collected. Except as provided in Section 58941, these funds shall be disbursed by the director or the advisory board only for the necessary expenses that are incurred by the advisory board and that are approved by the director with respect to each marketing order. Allowable expenses include expenses generated by the auditing requirement imposed by subdivision (b).

Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations that are prescribed by the director. The expenditure of these funds is exempt from the provisions of Section 925.6 of the Government Code.

(b) All such expenditures by the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public accountant.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

A copy of the audit shall be delivered within 30 days after the completion of the audit to the Governor, the director, and the Controller.

(Amended by Stats. 2000, Ch. 1055, Sec. 18. Effective September 30, 2000.)

58938. Refunds

The director may, at the close of each fiscal period which is used by the advisory board for budgetary purposes, refund any money which remains in such fund that is allocable to any particular commodity which is affected by a marketing order or, upon recommendation of the advisory board and with the approval of the director, all or a portion of such money may be carried over into the next succeeding fiscal period if the director finds that such money is required to defray subsequent expenses under the marketing order.

Any refund made pursuant to this section shall be on a pro rata basis made to persons from whom, or on whose behalf, the assessments being refunded were collected. Upon termination by the director of any marketing order, any remaining balances which are not required by the director to defray the expenses of such marketing order, shall be returned by the director upon a pro rata basis, to all persons from whom, or on whose behalf, such assessments were collected unless the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons. If the director makes such a finding, he may use the moneys in such fund to defray the expenses which are incurred by him in the formulation, issuance, administration, or enforcement of any subsequent marketing order.

(Amended by Stats. 1971, Ch. 1059.)

58938.5. Milk Marketing Orders; Refund of Assessments on Certain Shipments

(a) Assessments paid on milk pursuant to the requirements of a market milk marketing order or a manufacturing milk marketing order established under this chapter shall be refunded to producers who meet the following criteria:

(1) The producer shipped milk to a processor during the months of June or July 1986.

(2) The producer was not paid, or received only partial payment, for the milk shipped.

(3) The producer has agreed to repay the refunded assessments to the affected programs if, at a subsequent date, the producer is paid for the milk.

(b) The producer shall receive a full refund of the amount assessed for milk shipped and for which no payment was received. If partial payment was received, the producer shall receive a refund of assessments paid on milk for which payment was not received.

(c) In lieu of payment to the producer, the refund shall be paid to an entity which markets milk or otherwise acts on behalf of a producer who would otherwise qualify for the refund under subdivision (a), if that entity demonstrates to the satisfaction of the director that it paid the assessments for the producer.

(d) If a producer, or an entity referred to in subdivision (c), subsequently receives full or partial payment for milk for which assessments have been refunded, the producer or entity, as the case may be, shall repay the assessments in an amount proportionate to the portion of milk for which payment has been received.

(e) Refunds shall not be made pursuant to this section if the refund would cause a producer to incur an additional assessment obligation to the National Milk Promotion Program.

(f) The director shall adopt procedures for refunding assessments in accordance with this section. The procedures shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1987, Ch. 1048, Sec. 7.)

58939. Investment of Funds

Any money which is deposited pursuant to this article, which the director determines is available for investment, may be invested or reinvested by the Treasurer or an advisory board in any of the securities which are described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, or placed in a depository as provided in Chapter 4 (commencing with Section 16500) of Part 2 of Division 4 of Title 2 of the Government Code, and handled in the same manner as money in the State Treasury.

Any increment which is received from the investment or reinvestment or deposit, if made by the Treasurer, shall be remitted to the advisory board whose funds were invested, reinvested, or deposited, and shall be deposited and disbursed as provided in Sections 58937 and 58938. The Treasurer may deduct from the remittance an amount equal to the reasonable costs incurred in carrying out this section or may bill the advisory board for the costs, and the advisory board shall pay the costs from money which is collected for it pursuant to this chapter.

(Amended by Stats. 1983, Ch. 417, Sec. 3.)

58940. Unclaimed Funds

Any check or warrant which is drawn against the funds of any marketing order which remains unclaimed or uncashed for a period of six months from the date of issuance shall be canceled and the money retained for disbursement to the original payee or claimant upon satisfactory identification for a period of one year from the time the check or warrant is canceled. The money so retained, if not claimed within the period of one year, shall be credited to the then currently operating marketing order for the commodity under which the funds so retained were collected. If there is no marketing order then in effective operation for the commodity, the funds shall be credited to the unexpended balance, if any, of the last previous marketing order for the commodity. If there is no marketing order then in current operation, or no balance exists from any previous marketing order to which the funds may be credited, the funds so retained may be expended by the director for the benefit of any marketing order established under the provision of this chapter.

(Amended by Stats. 1971, Ch. 1059.)

58941. Department Charges Against Budget

Notwithstanding the provisions of Article 3 (commencing with Section 241), Chapter 2, Division 1 of this code, each marketing order or agreement shall be charged the amounts which are computed by the director as required to reasonably provide for services to be rendered to such marketing orders by the department. Such amounts are subject to approval by the advisory board which is concerned, shall be included in each budget which is recommended to and approved by the director pursuant to Sections 58923 and 58924, and shall be withdrawn as required by the director and expended only for the necessary expenses which are incurred by the director in the administration of this chapter.

(Amended by Stats. 1970, Ch. 284.)

ARTICLE 11. Deposits by Applicants for Marketing Order

58961. Authority to Require; Amount; Disbursement

Prior to the issuance of any marketing order by the director pursuant to this chapter, the director may require the applicants for the issuance of the marketing order to deposit with him such amount as he may deem necessary to defray the expenses of preparing and making effective such marketing order. Such funds shall be received, deposited, and disbursed by the director in accordance with the provisions which are set forth in Article 10 (commencing with Section 58921) of this chapter.

58962. Reimbursement of Applicant

The director may reimburse the applicant, from any funds for necessary expenses which he has received pursuant to Article 10 (commencing with Section 58921) of this chapter, for any of the following:

- (a) Any amount deposited with the director by applicant pursuant to Section 58961.
- (b) For any necessary expenses which are incurred by the applicant in preparing and in obtaining approval of the marketing order, upon receipt of a verified statement of such expenses which is approved by the director.

ARTICLE 12. Assent to Marketing Orders

58991. Handlers

A marketing order or major amendment to it, which directly affects handlers, that is issued pursuant to this chapter, shall not become effective unless and until the director finds one of the following has occurred:

(a) It has been assented to in writing by not less than 65 percent of the handlers that are engaged, within the area specified in the marketing order or amendment to it, in the handling of the commodity which is regulated by the marketing order.

(b) It has been assented to in writing by handlers that handle not less than 65 percent of the volume of the commodity which is regulated by the marketing order.

(c) It has been approved by handlers in a referendum among handlers that are directly affected. The director may make the finding pursuant to this subdivision if the valid votes cast in the referendum represent not less than 40 percent of the total number of handlers of the commodity of record with the department, and if the handlers that cast ballots in the referendum in favor of the marketing order or amendment to it represent not less than 65 percent of the total number of handlers that cast ballots in the referendum and handled not less than 51 percent of the total quantity of the commodity which was marketed in the next preceding marketing season, or the current marketing season if the harvest and delivery of the commodity to handlers is complete, by all of the handlers that cast ballots in the referendum, or if the handlers that cast ballots in the referendum in favor of the marketing order or amendment represent not less than 51 percent of the total number of handlers that cast ballots in the referendum and handled not less than 65 percent of the total quantity of the commodity which was handled in the next preceding marketing season, or the current marketing season if the harvest and delivery of the commodity to handlers is complete, by all of the handlers who cast ballots in the referendum. The quantity of the commodity handled by the handler may be stated on the referendum ballot returned by each handler or may be obtained by requiring handlers to report that volume pursuant to Section 58775.

(Repealed and added by Stats. 1986, Ch. 677, Sec. 6.)

58992. Processors

Any marketing order or major amendment to it which directly affects processors that are engaged in the operation of canning of fresh fruits or vegetables or canning or packing of dried fruits shall not be made effective by the director unless and until the director finds one of the following has occurred:

(a) The marketing order or amendment to it has been assented to in writing by the processors that are engaged in the marketing activity which is regulated by the marketing order or amendment to it that processed not less than 65 percent of the volume of the commodity which is processed within the area defined in the marketing order or amendment to it and by 65 percent of the number of the processors that are engaged in the marketing activity which is regulated by the marketing order or amendment to it.

(b) It has been approved by processors in a referendum among processors that are directly affected. The director may make the finding pursuant to this subdivision if the valid votes cast in the referendum represent not less than 40 percent of the total number of processors of the commodity of record with the department, and if the processors that cast ballots in the referendum in favor of the marketing order or amendment to it represent not less than 65 percent of the total number of processors that cast ballots in the referendum and processed not less than 51 percent of the total quantity of the commodity which was marketed in the next preceding marketing season, or the current marketing season if the harvest and delivery of the commodity to processors is complete, by all of the processors that cast ballots in the referendum, or if the processors that cast ballots in the referendum in favor of the marketing order or amendment represent not less than 51 percent of the total number of processors that cast ballots in the referendum and processed not less than 65 percent of the total quantity of the commodity which was marketed in the next preceding marketing season or the current marketing season if the harvest and delivery of the commodity to processors is complete, by all of the processors who cast ballots in the referendum. The quantity of the commodity processed by the processor may be stated on the referendum ballot returned by each processor or may be obtained by requiring processors to report that volume pursuant to Section 58775.

(Repealed and added by Stats. 1986, Ch. 677, Sec. 8.)

58993. Producers or Producer Marketing

No marketing order or major amendment to it, which directly affects producers or producer marketing, that is issued pursuant to this chapter, shall be made effective by the director unless and until the director finds one or more of the following has occurred:

(a) It has been assented to in writing by not less than 65 percent of the producers that are engaged, within the area specified in the marketing order or amendment to it, in the production for market, or engaged in the producer marketing, of not less than 51 percent of the commodity which is specified in the marketing order or the amendment to the marketing order in commercial quantities.

(b) It has been assented to in writing by producers that produce not less than 65 percent of the volume of the commodity and by 51 percent of the total number of producers that are so engaged.

(c) It has been approved by producers in a referendum among producers that are directly affected. The director may make the finding if the valid votes cast in the referendum represent not less than 40 percent of the total number of producers of the commodity of record with the department, and if the producers that cast ballots in the referendum in favor of the marketing order or amendment to it represent not less than 65 percent of the total number of producers that cast ballots in the referendum and marketed not less than 51 percent of the total quantity of the commodity which was marketed in the next preceding marketing season, or the current marketing season if the harvest and delivery of the commodity to handlers is complete, by all of the producers that cast ballots in the referendum or if the producers that cast ballots in the referendum in favor of the marketing order or amendment represent not less than 51 percent of the total number of producers that cast ballots in the referendum and marketed not less than 65 percent of the total quantity of the commodity which was marketed in the next preceding marketing season, or the current marketing season if the harvest and delivery of the commodity to handlers is complete, by

all of the producers who cast ballots in the referendum. The quantity of the commodity delivered by the producer may be stated on the referendum ballot returned by each producer or may be obtained by requiring handlers to report that volume pursuant to Section 58775.

(Amended by Stats. 1986, Ch. 677, Sec. 9.)

58994. Use of Written Assents or Referendum

If any marketing order or any major amendment to any marketing order is issued by the director for the approval of producers, handlers, or processors, the director shall determine whether the approval shall be by written assents or by referendum.

(Amended by Stats. 1986, Ch. 677, Sec. 10.)

58995. Referendum Period; Tabulation of Ballots

If the director determines that it should be by referendum, the director shall establish a referendum period not to exceed 30 days. If the director determines that the referendum period so established does not provide sufficient time for the balloting, the director may extend the referendum period not more than 15 additional days. At the close of the referendum period, the director shall count and tabulate the ballots filed during the referendum period.

(Amended by Stats. 1986, Ch. 677, Sec. 11.)

58996. Referendum; Sufficient Vote; Making Order or Amendment Effective

If from the tabulation the director finds that the number of producers that voted in the referendum and that the number of producers that voted in favor of the marketing order or amendment to the marketing order are sufficient for him to make the finding that producers that are directly affected have approved the marketing order or amendment, the director may make the marketing order or amendment to the marketing order effective.

58997. Referendum; Insufficient Vote

If the director finds from the tabulation of such referendum that the number of producers that voted in favor of such marketing order or amendment to the marketing order is not sufficient for him to make the finding that producers that are directly affected have approved the marketing order or amendment to it, he shall not make the marketing order or amendment effective.

58998. Additional Procedures

The director may prescribe such additional procedures as may be necessary to conduct the referendum.

58999. Referendum; Counting Vote of Nonprofit Agricultural Cooperative Marketing Associations

In finding whether the marketing order or major amendment to it is assented to in writing or approved or favored by producers pursuant to the provisions of this chapter, the director shall consider the approval of any nonprofit agricultural cooperative marketing association, which is authorized by its members so to assent, as being the assent, approval, or favor of the producers that are members of, or stockholders in, that nonprofit agricultural cooperative marketing association.

(Amended by Stats. 1986, Ch. 677, Sec. 12.)

59000. Producer Who Sells Growing Crop

Any producer that sells a growing crop to be harvested and marketed by another person is entitled to assent to, or vote in a referendum, if both of the following requirements are complied with:

(a) At the time of sale of such growing crop the producer retains the exclusive right so to assent or to so vote.

(b) The quantity of such growing crop can be determined to the satisfaction of the director.

ARTICLE 13. Major Amendments

59021. Procedures

In making effective major amendments to a marketing order, the director shall follow the same procedures which are prescribed in this chapter for the institution of a marketing order.

59022. Scope of Major Amendment

For the purposes of this chapter, a major amendment to a marketing order shall include, but not be limited to, any amendment which is specified in Sections 59023 to 59035, inclusive.

59023. Surplus

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for any of the following:

- (a) Determining the existence and extent of the surplus of any commodity, or of any grade, size, or quality of it.
- (b) Providing for the control and disposition of such surplus and for equalizing the burden of such surplus elimination.
- (c) The establishment of a stabilization fund for equalizing surplus obligations.

59024. Limitations of Quantity

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for limiting the total quantity of any commodity, or of any grade, size, or quality of it, which may be prepared for market or marketed within this state.

59025. Allotments; Handler's Acquisitions

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for allotting the quantity of any commodity, or of any grade, size, or quality of it, which any handler may purchase or acquire from or handle on behalf of any and all producers of such commodity within this state.

59026. Allotments for Processing, Distribution or Handling

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for allotting the quantity of any commodity, or of any grade, size, or quality of it, which any handler may process, distribute, or handle within this state.

59027. Limitation of Period for Processing, Distribution or Marketing

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for regulating the period during which any commodity, or any grade, size, or quality of such commodity, may be processed, distributed, or otherwise marketed within this state.

59028. Surplus, Stabilization or Byproduct Pools

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for the establishment of surplus, stabilization, or byproduct pools for any commodity, or of any grade, size, quality, or condition of it.

59029. Uniform Grading and Inspection; Grading Standards

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for the establishment of uniform grading and inspection of any commodity and the establishment of grading standards of quality, condition, size, or pack of such commodity.

59030. Advertising and Sales Promotion

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for the establishment of plans for advertising and sales promotion of any commodity.

59031. Unfair Trade Practices

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority to prohibit unfair trade practices.

59032. Production Adjustment Requirements and Benefit Payments

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for the establishment of production adjustment requirements and benefit payments which relate to them.

59033. Research

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority for carrying out research studies in the production, processing, or distribution of any commodity.

59034. Increase in Assessment Rate

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority to increase an assessment rate beyond the maximum rate which is authorized by the marketing order then in effect.

59035. Enlargement of Scope of Order

An amendment is a major amendment if it adds to, or deletes from, a marketing order authority to extend the application of the provisions of any marketing order to portions or uses of a commodity not previously subject to such provisions or to restrict or extend the application of such provisions upon the producers or handlers of such portions or uses of any such commodity.

59036. Minor Amendments

Modification of any provision of any marketing order in effect for the purpose of clarifying the meaning or application of such provision or modifying administrative procedures for carrying out such provision is not a major amendment of such marketing order.

59037. Seasonal Marketing Regulations

The exercise by the director of any regulatory authority which is authorized in a marketing order or marketing agreement is not a major amendment, but is a seasonal marketing regulation.

ARTICLE 14. Minor Amendments**59051. Recommendation**

The director may make minor amendments to any marketing order upon the recommendation of not less than 75 percent of the producer members or handler members of the advisory board, or not less than 75 percent of each group if both are represented upon the advisory board.

59052. Hearing

The director may require a public hearing upon minor amendments if in his opinion the substance of such minor amendments so warrant. The director is not, however, required to submit minor amendments for written assents or referendum approval.

ARTICLE 15. Termination or Suspension

59081. Hearing; Finding of Ineffectiveness

The director shall suspend or terminate any marketing order, if he finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 (commencing with Section 58771) of this chapter, that such marketing order is contrary to, or does not tend to effectuate, the declared purposes or provisions of this chapter within the standards and subject to the limitations and restrictions which are imposed in this chapter.

59082. Request of Producers or Handlers; Notice of Intent to Initiate Petition

The director shall terminate any marketing order if he finds that the termination of the marketing order is requested in writing, within a 90-day period, by at least 51 percent of the producers that are directly affected that produce at least 51 percent of the volume of the product, or by at least 51 percent of the handlers that are directly affected that handle at least 51 percent of the volume of the product.

The person or persons originating such a written request shall file a written notice with the director in such a manner that the date such a request is initiated can be readily ascertained. Any such person may withdraw his name from such a written request until the time the request is presented to the director.

A request to terminate a marketing order shall be submitted to the director by a petition signed by not less than the number of producers or handlers which produce or handle the volume of products specified in this section. The signatures to the petition need not all be appended to one sheet of paper. Each person signing the petition shall add to his signature his place of business, giving street and number. If no street and number exist, then a designation of the place of business shall be given which will enable the location to be readily ascertained.

Before circulating a petition to terminate a marketing order, its proponents shall notify the director of their intent to do so in order to ascertain the beginning date of the 90-day period.

After such notification to the director, the petition may be circulated among the producers or handlers affected. The petition shall bear a copy of the notice of intention. Signatures shall be secured within the time limit specified in this section. Any person may withdraw his name from a petition to terminate any marketing order until the time the petition is presented to the director. *(Amended by Stats. 1976, Ch. 644.)*

59083. Requests for Submission for Reapproval: Hearing; Notice of Intention; Filing; Petition

If at least 25 percent of the producers that are directly affected that produce at least 25 percent of the product and at least 25 percent of the handlers that are directly affected that handle at least 25 percent of the product request, within a 90-day period, that such marketing order be submitted to reapproval, the director shall hold a hearing on the question of the reapproval of such marketing order, and whether such reapproval shall be by assent or referendum.

If the director finds after the hearing that a substantial question exists as to whether such marketing order is contrary to, or does not effectuate the declared purposes or provisions of, this chapter within the standards and subject to the limitations and restrictions which are imposed in this chapter, such marketing order shall be submitted for the reapproval of those producers and handlers that are directly affected, as provided in this article, within 120 days of the receipt of the original request.

The person or persons originating such a request shall file a written notice with the director in such a manner that the date such a request is initiated can be readily ascertained. Persons may withdraw their names from such a request until the time the request is presented to the director.

A request to hold a public hearing on a marketing order shall be submitted to the director by a petition signed by not less than the number of producers or handlers which produce or handle the volume of products specified in this section. The signatures to the petition need not all be appended to one sheet of paper. Each person signing the petition shall add to his signature his place of business, giving street and number. If no street and number exist, then a designation of the place of business shall be given which will enable the location to be readily ascertained.

Before circulating a petition to hold a public hearing on a marketing order, its proponents shall notify the director of their intent to do so in order to ascertain the beginning date of the 90-day period.

After such notification to the director, the petition may be circulated among the producers or handlers affected. The petition shall bear a copy of the notice of intention. Signatures shall be secured within the time limit specified in this section. Any person may withdraw his name from a petition to hold a public hearing on any marketing order until the time the petition is presented to the director.

(Amended by Stats. 1976, Ch. 644.)

59084. Finding Against Reapproval; Reapproval

If the director finds that the marketing order is not reapproved, he shall declare such order terminated. An order shall be considered reapproved if it has been assented to or favored at a referendum in the same manner as is required for a new marketing order.

59085. Procedure on Finding of Substantial Opposition

At any time the director finds that a substantial number of persons that are directly affected by an order are in opposition to it, he shall hold a hearing on the question of the termination, suspension, amendment, or reapproval of such order, and shall, not more than 60 days after such hearing, terminate, suspend, or submit for amendment or reapproval such order, or make a finding that there is not sufficient opposition to the order to warrant any action.

59086. Time for Submission for Reapproval; Hearings; Extension of Term Deemed Reapproval

A marketing order shall not be submitted for reapproval until one year after the original enactment, or within one year of any prior approval. However, if no provision is made in any marketing order for reapproval or for termination in less than five years, the director shall at least once each five years hold a hearing, duly noticed and held in accordance with the provisions of this chapter. If the director finds after the hearing that a substantial question exists as to whether such marketing order is contrary to, or does not effectuate the declared purposes or provisions of this chapter within the standards and subject to the limitations and restrictions which are imposed in this chapter, such marketing order shall be submitted for reapproval. The vote for reapproval shall be the same as used for original approval of a marketing order. The director shall determine whether such approval shall be by assent or referendum. An amendment to a marketing order which extends the term thereof shall be deemed a reapproval of the marketing order. A marketing order which within five years prior to the effective date of this act has been amended to fix or extend its term shall be deemed to have been duly reapproved.

(Amended by Stats. 1967, Ch. 1372.)

59087. Inoperative Order or Agreement; Notice of Intent; Posting and Publication

(a) The director may terminate, without a public hearing, any marketing order or marketing agreement which has been inoperative for three consecutive marketing seasons after giving notice of intent to terminate such marketing order or marketing agreement pursuant to subdivision (b) of this section.

(b) The notice shall be posted on a public bulletin board which the director shall maintain in his office. Termination shall not become effective until five days after the date of such posting. The director shall also issue at the time of such posting, a public notice to newspapers of general and statewide circulation concerning his intention to terminate such marketing order or marketing agreement.

(Amended by Stats. 1976, Ch. 644.)

59088. Effective Date of Suspension or Termination

No suspension or termination of any marketing order or marketing agreement pursuant to this article shall become effective until the expiration of the marketing season then current.

ARTICLE 16. Publication of Notice**59111. Places of Posting and Publication; Effective Date of Order; Mailing Copies**

Upon the issuance of any order which makes effective a marketing order or marketing agreement, or any suspension, amendment, or termination of a marketing order or marketing agreement, a notice of the issuance shall be posted on a public bulletin board which the director shall maintain in his office. A marketing order or marketing agreement, or any suspension, amendment, or termination of it, shall not become effective until five days after the date of such posting. The director shall also mail a copy of the notice to every person that is directly affected by the terms of such marketing order or marketing agreement, suspension, amendment, or termination, whose name and address is on file in the office of the director, and to every person that files in the office of the director a written request for such notice.

This section does not apply to the termination of any marketing order or marketing agreement under Section 59087.

(Amended by Stats. 1979, Ch. 871.)

ARTICLE 17. General Rules and Regulations**59141. Establishment**

The director may establish such general rules and regulations for uniform application to all marketing orders and marketing agreements which are issued pursuant to this chapter as may be necessary to facilitate the administration and enforcement of such marketing orders and agreements.

59142. Posting of Time of Taking Effect; Notice

The provisions of Article 16 (commencing with Section 59111) of this chapter relative to posting and time of taking effect are applicable to any general rule and regulation which is established pursuant to this article and applicable to marketing orders generally. Such notice shall be mailed to the advisory board for each marketing order or marketing agreement which is in active operation.

(Amended by Stats. 1979, Ch. 871.)

ARTICLE 18. Administrative Rules and Regulations

59161. Recommendation; Establishment

Upon recommendation of the advisory board which is concerned, the director may, without prior notice and hearing, establish administrative rules and regulations for each marketing order or marketing agreement which is issued and made effective as may be necessary to facilitate the administration and enforcement of each such order or agreement.

59162. Scope

Such rules and regulations may include, but shall not be limited to, any of the following:

(a) Methods and procedures for the purpose of explaining or clarifying the provisions of such marketing order or agreement.

(b) Prescribing reporting forms and procedures to be followed by producers and handlers that are directly affected by such marketing order or agreement.

(c) Providing information to producers and handlers that are subject to such marketing order or agreement.

(d) Other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations under it and thereby assist in obtaining cooperation and compliance.

59163. Posting; Mailing and Effective Date

The provisions of Article 16 (commencing with Section 59111) of this chapter relative to posting, mailing of notice, and time of taking effect are applicable to any such administrative rules and regulations.

(Amended by Stats. 1979, Ch. 871.)

ARTICLE 19. Seasonal Marketing Regulations

59171. Recommendation; Establishment; Requirements

Upon recommendation of the advisory board which is concerned, the director may, without prior notice to, and public hearing for, the producers or handlers of the commodity which is directly affected, issue and make effective seasonal marketing regulations or modifications of such regulations if all of the following requirements are complied with:

(a) The marketing order, or agreement concerned provides for the issuance or modification of such seasonal marketing regulations without requiring such prior notice and public hearing and sets forth the limits within which such seasonal marketing regulations may be made effective or subsequently modified by the director.

(b) The director finds that such seasonal marketing regulations or modifications of them are reasonable and proper and a practical means of carrying out the marketing provisions which are authorized in such marketing order or agreement and will tend to effectuate the declared purposes and policies of the chapter with respect to such commodity.

59172. Application; Purpose

Seasonal marketing regulations shall be applicable to a particular marketing order or agreement for the purpose of carrying into effect by administrative order, the marketing regulatory authorizations and provisions of such marketing order or agreement as such authorizations or provisions may be applicable to, or required by, changing economic or marketing conditions and requirements, from time to time, during each marketing season in which such marketing order or agreement may operate.

59173. Restrictions

Seasonal marketing regulations shall not extend beyond the marketing regulatory authorizations which are specified in the marketing order or agreement concerned, or modify or change the language of such marketing order or marketing agreement by adding to, or subtracting from, such marketing order or agreement any of the marketing regulatory authorizations which are classed in Article 13 (commencing with Section 59021) of this chapter as major amendments, or modify the language of any marketing order or agreement for the purpose of clarification as provided in Article 14 (commencing with Section 59051) of this chapter for minor amendments.

59174. Notice

Notice of the issuance and the effective date of any such seasonal marketing regulations, or modifications of them, shall be given by the director to all producers and handlers that are directly affected by any such regulations in the manner and within the time which is specified in the applicable marketing order or agreement, or as specified in the administrative rules and regulations which are made effective for such marketing order or agreement pursuant to Article 18 (commencing with Section 59161) of this article.

59175. Recognition of Changing Conditions

It is recognized that, with respect to some commodities, marketing, weather, and other conditions may change so rapidly as to require changes in seasonal marketing regulations from week to week or oftener.

59176. Liberal Interpretation

It is intended that the provisions of this article be interpreted liberally so that the director may carry out the marketing regulations and procedures authorized in this article in a practical and effective manner.

ARTICLE 20. Records**59201. Maintenance; Inspection; Information**

The director may require any and all processors or distributors, that are subject to the provisions of any marketing order which is issued pursuant to this chapter, to maintain books and records which reflect their operations under such marketing order, and to furnish him with such information as may be from time to time requested by him which relates to operations under such marketing order, and to permit the inspection by the director of such portions of such books and records as relate to operations under such marketing order.

59202. Confidential Information

Information which is obtained by any person pursuant to this article is confidential and shall not be disclosed to any other person except to a person with like right to obtain the information, or any attorney who is employed to give legal advice upon it, or by court order.

59203. Hearings; Subpoenas

For the purpose of carrying out the purposes of this article, the director may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind.

59204. Self Incrimination

A person shall not be excused from attending and testifying, or from producing documentary evidence, before the director in obedience to the subpoena of the director on the ground, or for the reason, that the testimony or evidence, documentary, or otherwise, which is required of him may tend to incriminate him or subject him to a penalty or forfeiture. A natural person shall not, however, be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the director in obedience to a subpoena which is issued by him.

A natural person so testifying is not, however, exempt from prosecution and punishment for perjury committed in so testifying.

ARTICLE 21. Actions and Penalties

59231. Limitation of Actions

Any action for any penalty or other remedy which is prescribed under any provision of this chapter shall be commenced within three years from the date of the alleged violation.

(Amended by Stats. 1976, Ch. 1222.)

59232. Application of Article

The penalties, remedies, procedures, and actions which are prescribed by this article apply in instances of any violation or complaint of any violation of any provision of this chapter, any marketing order, or any regulation, or rule and regulation, which is issued by the director pursuant to this chapter or pursuant to any marketing order which is issued under this chapter.

59233. Offense; Punishment

Every person that violates any provision of this chapter or any provision of any marketing order which is duly issued by the director pursuant to this chapter, is guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000), or by imprisonment of not less than 10 days nor more than six months, or by both such fine and imprisonment. Each violation during any day constitutes a separate offense.

(Amended by Stats. 1983, Ch. 1092, Sec. 126. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

59234. Civil Penalty

Any person that violates this chapter or any marketing order which is duly issued by the director and in effect pursuant to this chapter, or violates any rule or regulation which is issued by the director pursuant to this chapter or the marketing order, is liable civilly in an amount of not more than two thousand five hundred dollars (\$2,500) for each and every violation. Each violation during any day is a separate offense.

(Amended by Stats. 1990, Ch. 500, Sec. 1.)

59234.5. Assessment Payment; Deficiency Determination; Notice; Limitations; Redeterminations; Failure to Pay; Certificate; Judgment; Filings; Lien; Execution; Judicial Review

(a) When the director makes a determination that a marketing program assessment payment due pursuant to this chapter is deficient as to the payment due, the director may determine the amount of the deficiency, including any applicable penalty, as provided in this section. After giving notice that a deficiency determination is proposed and an opportunity to file a report or provide supplemental information is provided, the director may make one or more deficiency determinations of the amount due for any reporting period based on information in the director's possession. When a business is discontinued, a deficiency determination may be made at any time thereafter as to liability arising out of the operation of that business.

The director shall give notice of the proposed deficiency determination and the notice of deficiency determination by placing the notice thereof in a sealed envelope with postage paid addressed to the person affected as it appears in the records of the marketing order or as otherwise available to the director. The giving of notice is complete at the time of deposit in the United States mail. In lieu of mailing, a notice may be served personally by delivering it to the person to be served.

Except in the case of fraud or failure to file a required return, a notice of a deficiency determination shall be given within four years of the accrual of the deficiency.

(b) The person against whom a deficiency determination is made may petition the director for redetermination within 30 days after the serving of the notice of deficiency determination. If a petition is not filed within 30 days, the deficiency determination shall become final.

A petition for redetermination shall be in writing, state the specific grounds upon which it is based, and be supported by applicable records and declarations under penalty of perjury that the information supporting the petition is accurate and complete. If a petition for redetermination is duly filed, the director shall reconsider the deficiency determination and may grant a hearing thereon. The director shall, as soon as practicable, make an order on redetermination, which shall become final 30 days after service of notice of the order of redetermination upon the petitioner. The notice of the order shall be served in the same manner as the notice of the original deficiency determination.

(c) If any amount required to be paid pursuant to a deficiency determination or redetermination is not paid within the time specified in the notice thereof, the director may, within four years thereafter, file in the Superior Court for the County of Sacramento, or the superior court of any other county, a certificate specifying the amount required to be paid, the name and address of the person liable as it appears on the records of the director, and a request that judgment be entered against the person in that amount 30 days after the filing. Notice of the filing shall be given in the same manner as for the notice of deficiency determination. The court shall enter a judgment in conformance with the director's certificate 30 days after its filing, unless a petition for judicial review has been filed within the 30-day period.

An abstract of the judgment, or a copy thereof, may be filed with the county recorder of any county. From the time of filing of the judgment, the amount of the judgment constitutes a lien upon all of the property in the county owned by the judgment debtor. The lien has the force, effect, and priority of a judgment lien and shall continue for 10 years from the date of the judgment, unless

sooner released or otherwise discharged. The lien imposed by this section is not valid insofar as personal property is concerned against a purchaser for value without actual knowledge of the lien.

Execution shall issue upon the judgment upon request of the director in the same manner as execution may issue upon other judgments, and sales shall be held under execution as prescribed in the Code of Civil Procedure.

(d) The person named in a notice of deficiency determination or redetermination may, within 30 days of the notice of filing with the superior court, file an action for judicial review thereof, as provided in subdivision (c), in the Superior Court for the County of Sacramento or, with the director's consent, the superior court of any other county where the Attorney General maintains an office. As a condition of staying entry of judgment or granting other relief, the court shall require the filing of a corporate surety bond with the director in the amount of the deficiency stated in the certificate. In any court proceeding, the certificate of the director determining the deficiency shall be prima facie evidence of the fee and the amount due and unpaid.

(e) The provisions of this section are supplemental to any other procedures for collection and imposition of fees and penalties provided by this chapter.

In lieu of proceeding pursuant to this section, the director may file a complaint for collection of unpaid assessments as provided by law.

(Added by Stats. 1985, Ch. 565, Sec. 1.)

59235. Knowingly Exceeding Quota; Forfeiture

In addition to such civil penalty, any person that knowingly exceeds any quota or allotment or marketable percentage fixed for him under any marketing order, regulation, or rule and regulation, issued by the director pursuant to such marketing order, shall forfeit to this state a sum equal to the current market value of such excess (or three times such amount, in the discretion of the court) which forfeiture may be recoverable in a civil suit which is brought in the name of this state. Any money which is recovered pursuant to this section shall be deposited in accordance with Section 58937.

59236 Unauthorized Use of Emblem, Label or Certificate to Designate Grade, Quality or Condition

If the use by a producer or handler of a particular emblem, label, certificate, or other distinctive designation of grade, quality, or condition, except the grade or other quality designations then in effect pursuant to state or federal grade standards, is made contingent upon compliance with certain production or handling regulations which are authorized by the provisions of a marketing order or agreement which is issued and made effective pursuant to this chapter, it is unlawful and a violation of this chapter for any person, that is not participating in, and complying with, such order, agreement, or regulations to use such designation of grade, quality, or condition.

59237. False Reports

It is a violation of this chapter for any person to willfully render or furnish a false or fraudulent report, statement, or record which is required by the director pursuant to any provision of this chapter, or any marketing order which is effective pursuant to this chapter.

59238. Handler Withholding List of Producers

It is a violation of this chapter for any person that is engaged in the handling or processing of any commodity, or in the wholesale or retail trade of the commodity, to fail or refuse to furnish to the director or his duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any commodity which is regulated by a marketing order that is issued and in effect pursuant to this chapter, and the quantity of such commodity which is so received.

59239. Receiving, Handling or Processing Commodity Marketed in Violation of Order

It is a violation of this chapter for any handler to receive, handle, or have in his possession any commodity which is regulated by a marketing order or marketing agreement which is issued pursuant to this chapter, that the handler knows is being marketed by the producer of the commodity without complying with, or in violation of any provision of such marketing order or agreement.

59240. Procedure by Director

The director on his own motion may, or shall upon complaint of any interested party which charges any violation of any provision of this chapter or any provision of any marketing order, regulation, or rule and regulation, which is issued by the director and effective pursuant to this chapter, do one of the following:

(a) Refer the matter directly to the Attorney General or any district attorney for the institution of legal proceedings upon the matter.

(b) If he deems it necessary or advisable, immediately call an administrative hearing to consider the charges which are set forth in such verified complaint.

59241. Proceedings by Attorney General or District Attorney

If the matter is referred directly by the director to the Attorney General or any district attorney, such officer shall thereupon bring an appropriate action in a court of competent jurisdiction in this state, if, after examination of the complaint and evidence he believes that a violation has occurred.

59242. Administrative Hearing; Service of Notice

If an administrative hearing is called by the director, the director shall cause a copy of such complaint, together with a notice of the time and place of hearing of such complaint, to be served personally or by mail upon every person that is named as a respondent in such verified complaint. Such service shall be made at least 10 days before the hearing.

59243. Place of Hearing

The hearing shall be held at one of the following places which is selected by the director:

- (a) The city or place in which the principal place of business of the respondent is situated.
- (b) The city or place in which the violation complained of is alleged to have occurred.
- (c) In the nearest office of the department.

59244. Hearing; Findings; Dismissal; Notice to Parties

At the time and place which is designated for such administrative hearing, the director shall hear the parties to the complaint and shall enter in his office at Sacramento, his findings which are based upon the facts that are established at such hearing. If from the testimony and evidence which is adduced at the administrative hearing the director finds that no violation has occurred, he shall forthwith dismiss such complaint and notify the parties to such complaint.

59245. Finding of Violation; Notice; Cease and Desist Order; Reference to Attorney General or District Attorney

If the director finds from the administrative hearing that a violation has occurred, he shall so enter his findings and notify the parties to such complaint. The director may refer the matter to the Attorney General for the institution of legal proceedings or he may notify such parties to cease and desist from further violation.

Upon their refusal or failure to comply, or if he finds that the facts or circumstances warrant immediate prosecution, he shall file a complaint with the Attorney General or any district attorney which requests that such officer commence any action which is authorized in this chapter against such respondent in a court of competent jurisdiction as set forth in this article.

59246. Action for Criminal Penalties; Venue

The Attorney General, or any district attorney, shall upon complaint by the director or any other person, or may, upon his own initiative, if, after examination of the complaint and evidence he believes a violation has occurred, bring an action for criminal penalties in the name of the people of this state in any court of competent jurisdiction in this state against any person violating any provision of this chapter or any marketing order which is duly issued by the director and effective pursuant to this chapter.

59247. Action for Civil Penalties; Injunction

The Attorney General shall upon complaint by the director or may, upon his own initiative, if, after examination of the complaint and evidence he believes a violation to have occurred, bring an action in the name of the people of this state in the superior court of this state for civil penalties or for injunctive relief, including specific performance of any obligation which is imposed by any marketing order, regulation, or rule and regulation, which is issued pursuant to this chapter, against any person violating any provision of this chapter or of any marketing order, regulation, or rule and regulation, which is duly issued by the director pursuant to this chapter.

59248. Injunction; Specific Performance

If it appears to the court upon any application for a temporary restraining order, or upon the hearing of any order to show cause why a preliminary injunction should not be issued, or upon the hearing of any motion for a preliminary injunction, or if the court shall find, in any such action, that any defendant is violating, or has violated, any provision of this chapter, any marketing order, or any regulation, or rule and regulation, duly issued by the director pursuant to this chapter, the court shall enjoin the defendant from committing further violations, and may compel specific performance of any obligation imposed by a marketing order, or any regulation which is issued by the director pursuant to this chapter.

59249. Costs

In any suit brought by the Attorney General to enforce any provision of this chapter, any marketing order which is issued by the director and effective pursuant to this chapter, or any regulation, or rule and regulation, which is issued by the director pursuant to the provisions of any marketing order, the judgment, if in favor of the state, shall provide that the defendant pay to the director the costs which were incurred by the director and by the advisory board concerned with the administration of such marketing order in the prosecution of such action. Any money which is recovered shall be deposited in accordance with Section 58937.

59250. Venue

Any such action may be commenced either in the county where defendant resides, or where any act or omission, or part of the act or omission, which is complained of occurred.

59251. Remedies Concurrent and Alternative

The penalties and remedies which are prescribed in this article with respect to any violation mentioned in this article are concurrent and alternative, and neither singly nor combined are exclusive, and either singly or combined are cumulative with any and all other civil, criminal, or administrative rights, remedies, forfeitures, or penalties which are provided or allowed by law with respect to any such violation.

59252. Unintentional Marketing in Excess of Quota; Payment of Market Value of Excess

In lieu of other procedures which are provided in this article, the director may, if he finds that any person has exceeded any quota, allotment, or marketable percentage which is fixed for him pursuant to any marketing order issued by the director pursuant to this chapter, and if the director further finds that such person did not intend to violate such quota, allotment, or marketable percentage, make demand on such person to pay to the director an amount equal to the market value of the quantity marketed in excess of such quota, allotment, or percentage.

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Such market value shall be only the cost of acquisition to the person that is concerned and does not include the value of services or commodities which are added subsequent to acquisition. Payment of such amount shall preclude any further enforcement action in connection with such transaction. If such person refuses to pay, or fails to pay, the amount which is demanded, the director shall thereupon proceed in accordance with the other provisions of this article. Any money which is recovered pursuant to this section shall be deposited in accordance with Section 58937.

ARTICLE 22. Inspection and Abatement

59281. Application of Article

This article applies to any lot of any commodity which is regulated by a marketing order or marketing agreement wherever, or in whose possession, such lot may be in the marketing channels within this state.

59282. Inspector's Right of Entry

Any authorized inspector, or other authorized person, who is discharging his duties in the checking of compliance with the provisions of any marketing order which is made effective pursuant to this chapter may enter and inspect any premises, enclosure, building, or conveyance where he has reason to believe any commodity which is subject to a marketing order is produced, stored, being prepared for market, or marketed, and inspect, or cause to be inspected, such representative samples of the commodity as may be necessary to determine whether or not any lot of such commodity is in compliance with applicable regulations, or rules and regulations, of any marketing order which is made effective pursuant to any provision of this chapter.

59283. Holding Suspected Lot

Except as otherwise provided in this article, any authorized inspector, or other authorized person, in the discharge of his duties, if he has reason to believe that a lot of any commodity subject to a marketing order or marketing agreement which is issued pursuant to this chapter is not in compliance with the requirements of such marketing order or agreement, or of marketing regulations, or rules and regulations, which are issued pursuant to it, as to quality, condition, size, maturity, pack, labeling, or markings, may hold such lot for a reasonable period of time sufficient to enable such officer to ascertain by an authorized inspection whether such lot complies with such marketing requirements, but in any event not to exceed 24 hours in the case of perishables, or 72 hours in the case of nonperishables.

59284. Warning Tag

Following inspection, such inspector or other authorized person may affix to any lot which is determined to be in noncompliance, an official notice, warning tag, or other appropriate marking which warns that the lot is held and states the reasons why it is held. It is unlawful for any person, except an authorized inspector or enforcing officer, to detach, alter, deface, or destroy any such official notice, warning tag, or marking so affixed to any such lot, or to remove or dispose of such lot in any manner or under conditions other than as prescribed in such notice of noncompliance except upon written permission of an authorized enforcing officer or by order of a court of competent jurisdiction.

59285. Service of Notice of Noncompliance

The director, or the authorized person by whom such lot is being held, shall serve the person in possession of the lot with a notice of noncompliance. Such notice shall be served in person or by mail to the last known address of such person that is in possession. The person in possession shall notify the owner of the lot, or every other person that has an interest in it, of the serving of such notice of noncompliance.

59286. Contents of Notice of Noncompliance

The notice of noncompliance shall include all of the following:

- (a) A description of the lot.
- (b) The place where, and the reasons for which, the lot is held.
- (c) A citation of the applicable marketing order or agreement or marketing regulation, or rule and regulation, and any section of it upon which the notice of noncompliance is based.

59287. Time for Reconditioning or Correction of Deficiencies; Release; Diversion; Destruction

The owner of the lot shall have, in the case of a perishable commodity not to exceed 48 hours, and in the case of a nonperishable commodity not to exceed 72 hours, from the time of serving such notice of noncompliance for reconditioning or for the correction of the deficiencies which are noted in the notice of noncompliance. If such lot is reconditioned or the deficiencies are corrected the enforcing officer shall remove the warning tags or markings and release the lot for marketing or may, with the consent of the owner of such lot, divert the lot to other lawful uses or destroy it.

59288. Procedure on Failure to Recondition or Correct Deficiencies

If the owner of the lot fails or refuses to give such consent, or if the lot has not been reconditioned or the deficiencies otherwise corrected so as to bring it into compliance within the time which is specified in the notice, the enforcing officer shall proceed as provided in Section 59289.

59289. Petition to Divert or Destroy

(a) The enforcing officer may file a verified petition in superior court requesting permission to divert the lot to any other available lawful use or to destroy the lot. The verified petition shall show all of the following:

- (1) The condition of the lot.
- (2) That the lot is situated within the territorial jurisdiction of the court in which the petition is being filed.
- (3) That the lot is held, and that the notice of noncompliance has been served as provided in Section 59285.

- (4) That the lot has not been reconditioned as required.
- (5) The name and address of the owner and the person in possession of the lot.
- (6) That the owner has refused permission to divert or to destroy the lot.

(b) A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.

(Amended by Stats. 2007, Ch. 43, Sec. 15. Effective January 1, 2008.)

59290. Order to Show Cause; Reconditioning or Correction of Deficiencies; Answer

Upon the filing of the verified petition, the court may issue an order to show cause returnable in five days after service upon the owner why the lot shall not be reconditioned or the deficiencies corrected, or why the lot shall not be diverted to other lawful uses or destroyed.

The owner of the lot may, prior to the date when the order to show cause is returnable, either recondition or correct the deficiencies in the lot so as to bring it into compliance, or may file at or before the hearing on the order an answer with the court stating why the lot should not be reconditioned or the deficiencies corrected so as to bring it into compliance, or showing why it should not be diverted to other lawful uses or destroyed.

59291. Judgment; Options Available to Court

If at the expiration of the five-day period the owner of the lot has failed or refused to recondition or to correct the deficiencies so as to bring the lot into compliance, the court may enter judgment ordering that the lot be reconditioned, diverted to any other lawful use, destroyed in the manner which is directed by the court, relabeled, denatured or otherwise processed, sold, or released upon such conditions as the court in its discretion may impose. The lot may not, however, be sold or released into the regular channels of trade.

59292. Proceeds of Judicial Sale

In the event of sale of any lot by order of court, the costs of storage, handling, and reconditioning or disposal shall be deducted from the proceeds of sale and the balance, if any, paid into court for the account of the owner of any such lot.

59293. Disposal; Application of Penalty Provisions

Disposal of any lot or portion of any lot pursuant to the provisions of this article, whether such disposal be by arrangement with an enforcement officer or by court order, does not waive any of the penalty provisions of this chapter.