

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



**MARKETING ORDER FOR
CALIFORNIA DRIED PLUMS
AS AMENDED**

Effective July 1, 1980
Incorporating Amendments Through August 1, 2009

Chronology Of Amendments To The Marketing Order For California Dried Plums

The following amendment was made effective February 5, 1982:

- *District representation for producers was modified.*

The following amendments were made effective January 1, 1983:

- *Added Treasurer as one of the required Board officers.*
- *Specified that officers must be selected from among the Board members.*

The following amendment was made effective February 1, 1984:

- *Clarified that the Board would collect the assessments instead of the Department.*

The following amendment was made effective May 7, 1986:

- *Allowed references to brands for programs in international markets.*

The following amendments were made effective June 15, 1987:

- *Raised the assessment rate cap from \$30/ton to \$50/ton.*
- *Specified that the incremental assessments over \$30/ton would be split evenly between producers and processors. It maintained the prior provision that assessments under \$30/ton were to be split 2/3 producer and 1/3 processor.*

The following amendment was made effective February 15, 1988:

- *Allowed preference voting by mail for independent producers.*

The following amendment was made effective February 12, 1990:

- *Modified district representation for producers.*

The following amendment was made effective July 1, 1992:

- *Changed the assessment rate cap from \$50/ton to the maximum allowed by the Marketing Act, i.e. 6.5% of the gross dollar value.*

The following amendment was made effective June 17, 1994:

- *Modified district representation for producers.*

The following amendment was made effective January 18, 2000:

- *Modified district representation for producers.*

The following amendments were made effective January 11, 2001:

- *Stated that "prunes" and "dried plums" mean the same thing and made corresponding changes throughout the document.*
- *Specified that the Board could conduct teleconference meetings.*
- *Clarified the meaning of "marketing research".*
- *Clarified that a continuation hearing needed to be conducted every five years.*

The following amendments were made effective August 1, 2005:

- *Added authority for mandatory incoming inspections and grade standards*
- *Added authority for voluntary tree removal program as a means to address an over-supply situation.*
- *Added authority for pest and disease control activities.*
- *Added authority for a processor advertising credit-back program.*
- *Added authority to require processor statistical reporting.*
- *Authorized a processor-only inspection assessment for years with mandatory incoming inspections.*
- *Modified assessment base from salable tons to total tons for years without mandatory incoming inspections.*
- *Reset the 5-year clock for the next regular continuation hearing.*

The following amendment was made effective June 1, 2006:

- *Modified alternate member provisions to provide for "floating alternates".*

The following amendment was made effective August 1, 2009:

- *Clarified the program's advertising and sales promotion authority so as to more clearly state that the CDPB has the ability to develop programs to prevent, modify or remove trade barriers as provided in Sections 58604 and 58604.5 of the Marketing Act.*

MARKETING ORDER FOR CALIFORNIA DRIED PLUMS, AS AMENDED

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS

1. "Act" means the California Marketing Act of 1937, as Amended, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of California.

2. "Department" means the Department of Food and Agriculture of the State of California.

3. "Person" means any individual, partnership, firm, corporation, company, association or any other business unit.

4. "Prunes or Dried Plums" means and includes all sun-dried or artificially dehydrated plums, of any type or variety, produced from plums grown in the State of California, except: (1) sulfur-bleached dried plums which are produced from yellow varieties of plums and are commonly known as silver dried plums; (2) plums which have not been dried or dehydrated to a point where they are capable of being stored un-refrigerated or without other artificial means of preservation, prior to packaging without deterioration or spoilage, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content dried plums," but this exception shall not apply if and when such plums are dried to the point that they are capable of being stored un-refrigerated or without other artificial means of preservation, without abnormal deterioration or spoilage.

The term "Prunes" when used anywhere in the balance of this Marketing Order also means "Dried Plums".

5. "Natural Condition Prunes" means dried plums which have not been processed.

6. "Processed Prunes" means dried plums which have been cleaned, or treated with water or steam, or other processes in the preparation of dried plums for marketing; provided, that dried plums shall not become processed dried plums at the time they are cleaned by a producer or a dehydrator in the course of preparing them for delivery to a producer, dehydrator, or processor.

7. "Process" means to receive, grade, pack, can, extract, preserve, grind, crush, or change the form of dried plums for the purpose of preparing dried plums for market or of marketing dried plums, or any other activities performed for the purpose of preparing dried plums for market or of marketing dried plums, but shall not include manufacturing from dried plums so changed in form, another and different product; provided, that this term shall not include; (1) the selling or delivering of dried plums by a producer or dehydrator to a producer, dehydrator, or processor within the State of California; (2) the receiving of dried plums by a producer or dehydrator from a producer or dehydrator; and (3) the buying, receiving, selling, or otherwise dealing by a person with dried plums which have already been processed within the meaning of this definition by another person.

8. "Processor" is any person who processes dried plums.

9. "Dehydrator" means any person who produces natural condition dried plums by drying or dehydrating plums by means of sun- drying or artificial heat.

10. "Producer" means any person engaged within the State of California in the business of producing, or causing to be produced for marketing, dried plums, as herein defined and shall include persons who purchase or acquire fresh plums for the purpose of preparing such plums for marketing as dried plums.

11. "Ton" means a short ton of 2,000 pounds.

12. "Size" means the number of dried plums contained in a pound or the classification of dried plums into their various count groups in accordance with the usual practice of the industry.

13. "Marketing Season" means the 12-month period beginning August 1 of any year and ending July 31 of the following year, except that the first marketing season hereunder shall begin on the effective date hereof and terminate on July 31 of the following year.

14. "Domestic" means the continental United States, Alaska, Canal Zone, Hawaii, Puerto Rico, Virgin Islands, and Canada.

15. "Board" means the California Prune Board or the California Dried Plum Board established pursuant to Article II hereof.

16. "Cooperative Marketing Association" means an association organized pursuant to, functioning under, and subject to the provisions of Chapter 1, Division 20, of the Food and Agricultural Code of California.

17. "Cooperative Producer" means a producer who markets his dried plums, as herein defined, primarily through a cooperative marketing association.

18. "Cooperative Processor" means a processor who purchases or acquires fresh plums primarily from cooperative producers for the purpose of preparing such plums for marketing as dried plums.

ARTICLE II

CALIFORNIA PRUNE BOARD/CALIFORNIA DRIED PLUM BOARD

Section A. ESTABLISHMENT

1. A board to assist the Department in the administration of this Order is hereby established (hereafter referred to as the Board) which shall consist of twenty-one (21) members, of whom fourteen (14) shall represent producers and seven (7) shall represent processors. There shall be up to eight (8) floating producer alternates and up to seven (7) floating processor alternates with the authority to act in the place and stead of any member within his/her classification.

2. Upon recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member who is neither a producer nor a handler to represent the Department or the public generally. The regular term of office of any public member or public alternate member shall be as close as possible to two (2) full years and shall terminate on May 31 of the year during which the terms of office expire of the producer and processor members and alternate members of the Board.

Section B. NOMINATION AND SELECTION OF MEMBERS AND ALTERNATES

1. General. The term of office of members and alternates shall be two (2) years ending on May 31 of the even-numbered years or until their successors have been appointed and have qualified. Selection of members of the Board and alternates shall be made by the Department, for the producer and processor groups from the nominations submitted for that purpose by the respective groups. In the event nominations are not submitted to the Department, the Department shall make such selection from the classes within each group and in the proportions set forth in Subsections 2 and 3 of this Section. Each producer member and alternate member of the Board shall be, during his/her term of office, a producer, and if such person also processed dried plums during the marketing season immediately preceding that for which he/she is selected, at least fifty-one percent (51%) of the dried plums so processed by him/her during such preceding marketing season must have been produced from plums grown by him/her. Each processor member and alternate member of the Board shall be either a processor of dried plums or an employee or agent of a processor of dried plums actually engaged in the processing of dried plums while he/she is such member or alternate member.

2. Producer Nominees

a. Allocation of Producer Nominees. There shall be a total of fourteen (14) producer members and up to eight (8) floating producer alternates selected from and representing two general types of producers; producers who are members of cooperative marketing associations (referred to as "cooperative producers") and producers other than "cooperative producers" (referred to as "independent producers"). The number of the producer members allocated for the cooperative producer group or for the independent producer group, as the case may be, shall be in the same proportion, as near as practicable, to the total of 14, as the tonnage of prunes processed by cooperative processors or independent processors as first processors during the crop year preceding the year in which nominations are made is to the total tonnage of prunes processed by all processors as first processors.

Prior to March 15 of each election year, the Board shall calculate the total tonnage of dried plums processed by independent processors as the first processors thereof, the total tonnage of dried plums processed by cooperative processors as the first processor thereof, and the total tonnage of dried plums processed by all processors as the first processors thereof, during the marketing season preceding such election year. With this information, the Board shall determine and announce, subject to the approval of the Department, the appropriate number of producer positions to be allocated for independent producers and the appropriate number of producer positions to be allocated for cooperative producers.

b. Independent Producers. For the purpose of obtaining nominations for producer members to represent independent producers, the Board shall, with the approval of the Department, divide the state into districts giving, insofar as practicable, equal representation to numbers of independent producers and production of prune tonnage by such producers. The number of districts shall be equal to the number of such producer members or seven (7), whichever is the lesser. Candidates for nomination by independent producers from the various districts shall be obtained at independent producer district meetings.

In the event that more than seven (7) independent producer members are to be nominated, the additional member(s) shall be nominated as producers at-large at the district meetings.

Prior to March 31 of each even-numbered year, the Department or Board shall cause a meeting or meetings of independent producers to be held in each of the districts for the purpose of receiving nominations for independent producer members representing districts, independent producer members at-large when needed, and floating independent producer alternate members of the Board. At such nomination meetings, each independent producer shall be entitled to make nominations of persons eligible to be appointed to the

respective independent producer positions of the Board. Each independent producer member of the Board representing a geographic district shall be during his/her term of office, an independent producer in the district from which he/she is appointed. Independent producer members at-large and floating independent alternates may be producers in any district.

Following the nomination meetings, the Department or Board shall conduct balloting by mail to obtain the preference of independent producers for nominees. Such balloting may be in conjunction with the voting procedure being used to fill positions available on the Federal Prune Marketing Committee. During the election conducted, each independent dried plum producer shall be entitled to cast only one (1) vote for a member nominee in any district in which he or she is a producer, one (1) vote for a producer member at-large when needed and one (1) vote for a floating alternate from any district. No producer shall vote for member in more than one (1) district. The current seven (7) districts are described as follows:

District No. 1. The counties of Glenn, Colusa, Yolo and Solano.

District No. 2. That portion of Sutter County north of a line extending along Franklin Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 3. That portion of Sutter County south of a line extending along Franklin Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 4. The Counties of Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama, and Trinity.

District No. 5. Butte County

District No. 6. Yuba County.

District No. 7. The Counties of Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare, and all other counties not included in districts 1, 2, 3, 4, 5, and 6.

c. Revision of Districts. Upon the recommendation of not less than seventy-five percent (75%) of the producer members and not less than seventy-five percent (75%) of the processor members of the Board and approval by the Department of Food and Agriculture such districts may be redefined in order to maintain equitable representation in accordance with changes in acreage, production, and number of growers.

d. Cooperative Producers. The number of producer nominee members to be nominated by each cooperative marketing association shall bear, as near as practicable, the same percentage as each cooperative marketing association's tonnage processed as the first processor thereof bears to the total tonnage processed by all cooperative marketing associations as first processor thereof during the marketing season preceding such election year. Prior to March 31 of each election year the cooperative marketing associations processing dried plums shall nominate to the Department on behalf of their members such number of producer nominees and up to four floating alternates. Cooperative marketing associations shall afford an opportunity to the individual producer members of such associations who have not authorized the association to act in their behalf with respect to this Marketing Order to nominate to the Department producer nominees for the number of members to represent cooperative marketing associations as determined in the foregoing manner. In selecting producer members and alternates of the Board to represent cooperative marketing associations, the Department shall give consideration both to the nominations made by cooperative marketing associations acting on behalf of their members who have authorized such

associations to act on their behalf and to nominations made by those members who have not authorized such action by such associations.

3. Processor Nominees

a. Allocation of Processor Nominees. There shall be a total of seven (7) processor members and up to seven (7) floating processor alternates from and representing two general types of processors; processors that are formed as cooperative marketing associations (referred to as “cooperative processors”) and processors other than “cooperative processors” (referred to as “independent processors”). The number of the processor members allocated for the cooperative processor group or the independent producer group, as the case may be, shall be in the same proportion, as near as practicable, to the total of seven (7), as the tonnage of prunes processed by the respective group of cooperative processors or independent processors during the crop year preceding the year in which nominations are made is to the total tonnage of prunes processed by all processors.

Prior to March 15 of each election year, the Board shall calculate the total tonnage of dried plums processed by independent processors as the first processors thereof, the total tonnage of dried plums processed by cooperative processors as the first processor thereof, and the total tonnage of dried plums processed by all processors as the first processors thereof, during the marketing season preceding such election year. With this information, the Board shall determine and announce, subject to the approval of the Department, the appropriate number of processor positions to be allocated for independent processors and the appropriate number of processor positions to be allocated for cooperative producers.

b. Independent Processors. The independent processor members and alternate members of the Board shall be allocated to each of the following processor classes which are to be determined according to the percentage of dried plum tonnage handled by all independent processors during the last completed marketing season: The two (2) largest independent processors shall each nominate from their respective organizations one (1) nominee as a processor member and one (1) as his/her alternate member; the next three (3) largest independent processors shall nominate from among their organizations one (1) nominee as a processor member and one (1) as his/her alternate member; all other independent processors shall nominate from their organizations one (1) nominee as a processor member and one (1) as his/her alternate member; provided, that if the Department determines that the number of processor member nominees and their respective alternates which shall be nominated by independent processor is less than four (4), the two (2) largest independent processors shall each nominate from their respective organizations one (1) nominee as a processor member and one (1) as his/her alternate member; all other independent processors shall nominate from their organizations one (1) nominee as a processor member and one (1) as his/her alternate member provided, further, that in no event shall the number of independent processor members and their respective alternates be less than three (3).

Independent processor alternates shall serve in the absence of their assigned member and may also serve as a floating alternate in the absence of any other absent independent processor member and their respective assigned alternate, provided authorization is granted by the other respective independent processor member. Prior to the beginning of their term of office independent processor members shall specify the priorities of floating alternates who could represent them in their absence and the absence of their assigned alternate.

Prior to March 31 of each election year, those independent processors entitled to have their own member and alternate shall submit nominations to the Department. Additionally, the Board or the Department shall conduct nomination meetings of the smaller classes of independent processors to obtain nominations of independent processor members and alternates as determined and announced for each class respectively. At such meetings, nominations shall be made by each class of independent processors on the basis of a majority

vote of all processor members of that class present and participating in the voting and on the further basis of one (1) vote for each processor in each class in each balloting for nomination of that class.

b. Cooperative Processors. The number of processor nominee members and their floating alternate members to be nominated by each cooperative marketing association, shall bear as near as practicable, the same percentage as each cooperative marketing association tonnage processed as the first processor thereof bears to the total tonnage processed by all cooperative marketing associations as first processor thereof during the marketing season preceding such election year. Floating processor alternates shall have the authority to vote for any cooperative processor member. Prior to March 31 of each election year, the cooperative marketing associations processing dried plums shall nominate to the Department such number of processor member nominees and floating alternates as the Department has determined and announced for cooperative marketing associations.

Section C. ALTERNATES

A floating alternate member of the Board shall act in the place and stead of any member of his classification (1) during his/her absence, and (2) in the event of his/her removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified. The Department shall select and appoint up to eight floating producer alternates and up to seven floating processor alternates and shall designate, with input from the respective classifications, the priorities for the floating alternates within each classification (first floating alternate, second floating alternate, etc.).

Section D. FAILURE TO NOMINATE

In the event nominations for any positions on the Board are not received within the prescribed periods, the Department may select such members or their alternates, without regard to nominations, but each such selection shall be on the basis prescribed herein.

Section E. ACCEPTANCE

Each person selected as a member or alternate member of the Board shall, prior to serving on the Board, qualify by filing with the Department a written acceptance after receiving notice of his selection.

Section F. VACANCIES

The Department through appointments may fill any vacancy occasioned by the death, removal, resignation, failure to qualify, or disqualification of any member or alternate member of the Board. In making any such appointments to fill vacant positions on the Board, the Department may take into consideration eligible persons remaining from the respective group nominated at the most recent nomination meeting. Thereafter, the Department may give consideration to any nominations made by the remaining Board membership; provided, however, that such nominees shall be appointed in accordance with the provisions of Section A and B.

Section G. VOTING PROCEDURE

Except as specifically provided in other provisions of this Marketing Order, any action of the Board to take effect shall conform with the following procedures: (1) Any advertising and sales promotion plan or major modification thereto developed by the Board pursuant to Article III hereof; any research project to be established pursuant to Article IV hereof or major modification thereof; and any budget or amended budget or assessment rate recommended by the Board pursuant to Article V hereof shall require approval by an affirmative vote of not less than 75% of the Board's members. This provision shall not affect any expenditures for trade promotion or research projects for which funds have been committed or budgeted

prior to the effective date of this Amended Marketing Order. Major and minor modifications to advertising and sales promotion plans or research projects shall be defined in operating rules and regulations established pursuant to Article VII hereof; (2) Board action on other matters including minor modifications to advertising or sales promotion or research projects shall be by a majority vote of members voting. A quorum for voting on such other matters shall consist of a majority of the member positions appointed. The Board may hold meetings by audio or video teleconference if convening at one location is difficult, subject to the requirements of Section 11123 of the Bagley Keene Open Meeting Act.

Section H. NOTICE OF MEETINGS

Except in case of emergency, a minimum of ten (10) days advance notice must be given with respect to any meeting of the Board. In case of an emergency, to be determined within the discretion of the Chairman of the Board, as much advance notice of a meeting as is practicable in the circumstances shall be given.

Section I. EXPENSES

The members of the Board, and their alternates when acting as members, shall receive their reasonably necessary expenses for performing their duties hereunder.

Section J. DUTIES OF THE BOARD

The Board shall have the following duties and powers:

1. To administer the provisions of this Marketing Order subject to the approval of the Department.
2. To recommend to the Department administrative rules and regulations relating to this Marketing Order.
3. To receive and report to the Department complaints of violations of this Marketing Order.
4. To recommend to the Department amendments to this Marketing Order.
5. To assist the Department in the assessment of members of the industry and in collection of funds to cover expenses incurred by the Board and the Department in the administration of this Marketing Order.
6. To assist the Department in the collection of such necessary information and data as the Department may deem necessary to the proper administration and enforcement of this Marketing Order and of the Act.
7. To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books and records shall at all times be subject to examination by the Department or its duly authorized representatives and to provide to the Department copies of the minutes of all meetings duly certified by an authorized officer of the Board.
8. The Board shall elect a Chairman, Vice-Chairman, Secretary, and Treasurer from among its members and shall adopt such rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary.
9. To receive, invest, borrow, and disburse funds pursuant to the provisions of Article 10 of the California Marketing Act.

10. To comply with all applicable conflict of interest laws.

11. To enter into contracts necessary to carry out the functions of the Board, including licensing agreements with appropriate parties.

Section K. AUTHORIZATION TO ENGAGE EMPLOYEES AND TO CONTRACT FOR SERVICES

Subject to the approval of the Department, the Board may employ necessary personnel, fix their compensation and terms of employment. The Board is authorized, subject to the approval of the Department, to enter into necessary contracts with agencies or persons qualified to perform any of the activities authorized in this Marketing Order.

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

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

ARTICLE III

ADVERTISING AND SALES PROMOTION

Section A. ADVERTISING AND SALES PROMOTION PLANS

1. The Board is hereby authorized to prepare and administer, subject to the approval of the Department, plans for promoting the sale of dried plums or dried plum products for the purpose of maintaining existing markets and creating new and larger markets for dried plums and dried plum products; provided, that such plans or programs make no false or unwarranted claims on behalf of dried plums or products thereof, nor disparage the quality, value, sale, or use of any other agricultural commodity.

a. Plans and programs for the domestic market shall not make reference to a particular private brand or trade name.

b. Plans and programs for international or foreign markets may include reference to private brands or trade names.

c. Advertising and sales promotion plans for international or foreign markets which utilize funds of the Board for advertising or promotion of private brands or trade names shall require that each individual commodity package label indicate the dried plums are of California origin, in English or other appropriate language.

d. Pursuant to Section 58889(b) of the Act the Board's advertising and sales promotion plans may provide a "credit-back" of processor assessment obligations for certain promotion expenditures incurred by processors in promoting their product. The parameters for a "credit-back" program are presented in the Financial Provisions Article of this marketing order.

2. Advertising and sales promotion plans conducted pursuant to this Marketing Order may also include any or all of the following activities.

a. Investigating any reasonable possibilities of increasing the market demands for California dried plums both in the domestic and foreign markets.

b. Assembling or disseminating factual information relating to marketing conditions for dried plums, as the Board may require, including information as to movement of dried plums to market, stocks on hand, or other data relating thereto.

c. Assembling or disseminating educational information designed to improve the quality of dried plums through improved methods of harvesting, handling, processing or merchandising practices.

d. Presenting facts to and negotiating with State, Federal or foreign governmental agencies on matters which affect the marketing of dried plums.

e. Developing programs to prevent, modify or remove trade barriers which obstruct the free flow of dried plums produced in this state to any market such as the allowance of reimbursement payments to handlers to offset commodity transportation or other costs to selected domestic and foreign markets as provided in Sections 58604 and 58604.5 of the Marketing Act. The provisions of any such program shall require approval by an affirmative vote of not less than 75% of the Board's members.

f. Any other appropriate activity consistent with the purposes and objectives of this Marketing Order.

3. In order to carry out the plans, programs, and presentations prescribed in this Section, the Board is authorized to enter into contracts with agencies or consultants qualified to render services in formulating, presenting and conducting such plans, programs or presentations.

ARTICLE IV

RESEARCH

Section A. MARKETING RESEARCH

The Board with the approval of the Department may conduct or arrange for any necessary and proper research studies or investigations relating to the marketing of dried plums. Marketing research may include consumer studies and trade surveys as well as health and nutrition research related to dried plums.

Section B. PRODUCTION AND PROCESSING RESEARCH

1. In addition to distribution research the Board, subject to the provisions of the Act, may undertake research relating to the production and processing of dried plums. Production research may include but shall not be limited to studies relating to cultural practices, harvesting methods and practices and the preparation of dried plums for entry into marketing channels. Processing research may include any research activity relating to the processing of dried plums and products thereof.

2. The Board, with the approval of the Department of Food and Agriculture, may carry on any other appropriate research activity relating to the production or processing of dried plums.

Section C. RELATION TO OTHER AUTHORIZED RESEARCH

Any research conducted pursuant to the provisions of this Marketing Order may be supplemented by and coordinated with distribution, production, or processing research authorized and carried out pursuant to the provisions of any State or Federal statutes authorizing such research work.

ARTICLE V

UNIFORM INSPECTION AND GRADING

Section A. MANDATORY INCOMING INSPECTIONS

1. If at least 75% of the Board members support mandatory incoming inspections for a given crop year, all dried plums grown in California for processing will be required to be inspected and certified by an authorized inspection agency in accordance with inspection rules and regulations recommended by the Board and approved by the Department.

2. In such instances, the Board, with the approval of the Department, will provide for inspection and certification by an established and experienced inspection agency or agencies or hire its own inspectors.

3. This section is not intended to authorize mandatory outgoing inspections on processed dried plums. Acquiring such authority would require a major amendment to this marketing order.

Section B. GRADING STANDARDS

1. With the support of at least 75% of the Board members, the Board may recommend and the Department may approve grading standards for natural condition dried plums such as quality, condition, size, and maturity.

2. In the absence of mandatory inspections, grading standards may be descriptive only and may not include minimum standards. If mandatory inspections are in place, grading standards may include minimum standards. Such minimum standards may be used as a means to divert poor or unhealthy dried plums from regular marketing channels, but may not be used as a form of supply control.

Section C. RULES AND REGULATIONS FOR INSPECTION AND GRADING

The Board may recommend rules and regulations as necessary to carry out the inspection and grading functions. Such regulations may include, but are not limited to, the following:

- a. Definitions for various product conditions and defects
- b. Methods and procedures of selecting samples of lots, loads, or containers of dried plums.
- c. Methods and procedures for determining various product conditions
- d. Regulations concerning the place of inspection and location of inspection stations.

ARTICLE VI

VOLUNTARY TREE REMOVAL PROGRAM

Section A. AUTHORIZATION FOR A VOLUNTARY TREE REMOVAL PROGRAM

Pursuant to Section 58882 of the Act, the Board may develop and administer, subject to approval of the Department, a voluntary tree removal program designed to bring California dried plum industry supply and demand into better balance. At the time that the Board wishes to actually utilize this authority, the Board must sufficiently demonstrate to the Department that an over-supply situation exists and that a voluntary tree removal program could effectively reduce the dried plum supply to the desired level. This provision authorizes no other means of addressing an over-supply condition.

Section B. PARAMETERS OF A VOLUNTARY TREE REMOVAL PROGRAM

1. A voluntary tree removal program must offer all California dried plum producers the opportunity to voluntarily remove California dried plum acreage from production on a fair and equitable basis in return for compensation. Producers cannot be compelled to remove their dried plum acreage under this authority.

2. The Board, subject to the Department's approval, may establish appropriate criteria to define what dried plum acreage is eligible for the tree removal program.

3. The costs for the tree removal program shall be paid for with voluntary industry contributions or other sources but not from Board assessment revenue unless supported by at least 75% of the Board members.

ARTICLE VII

PEST AND DISEASE CONTROL

Section A. DETECTION, CONTROL AND PREVENTION

Pursuant to Section 58895 of the Act, the Board may recommend and the Department may approve measures to assist in the prevention or reduction of losses in the California dried plum industry caused by predators, insects, diseases or parasite infestations. Such activities may include the establishment and operation of inspection, spraying, dusting, fumigating, or other control measures, including voluntary grower orchard removal, as permitted by law. This section pertains to, but is not limited to the management of abandoned orchards which may serve as a host for certain pests.

ARTICLE VIII

FINANCIAL PROVISIONS

Section A. BUDGET

Prior to the beginning of each marketing season and as may be necessary thereafter, the Board shall recommend to the Department a budget of estimated income, expenditures and reserves for carrying out authorized activities, administration and enforcement of this marketing order. Such budget shall include recommended assessments rates to defray the costs of the Board.

Section B. ASSESSMENTS IN YEARS WITH NO MANDATORY INSPECTIONS.

Prior to the beginning of each marketing season with no mandatory inspections, the Board shall recommend to the Department a general assessment rate to be split between producers and dehydrators and processors which is calculated to provide adequate funds to defray the proposed expenditures set forth in the budget recommended pursuant to Section A of this Article. This action shall require support by at least 75% of the Board's members. The general assessment rate which may be recommended by the Board for

producers and processors shall not exceed the maximum limits provided by the California Marketing Act, restated on a per ton basis, and applicable to the total tonnage of California dried plums delivered by producers and dehydrators to processors and received by processors from producers and dehydrators; provided, said general assessment rate shall be divided in its application upon producers, dehydrators and processors so that all or any portion of the first thirty dollars (\$30.00) per ton shall be levied two-thirds (2/3) upon producers and dehydrators and one-third (1/3) upon processors. Of the remainder of any general assessment rate up to the maximum provided above, the proportion levied upon producers and dehydrators shall be one-half (1/2) and the proportion levied upon processors shall be one-half (1/2).

Section C. ASSESSMENTS IN YEARS WITH MANDATORY INSPECTIONS.

1. Prior to the beginning of each marketing season with mandatory inspections, the Board shall recommend to the Department two assessment rates; an inspection assessment rate, established pursuant to guidelines in Section 2 below, upon processors which is calculated to provide adequate funds to defray the proposed inspection expenditures set forth in the budget recommended pursuant to Section A of this Article and a general assessment rate to be split between producers and dehydrators and processors which is calculated to provide adequate funds to defray the proposed non-inspection expenditures set forth in the budget recommended pursuant to Section A of this Article. This action shall require support by at least 75% of the Board's members. The combined assessment rates which may be recommended by the Board for producers and processors shall not exceed the limits provided by the California Marketing Act, restated on a per ton basis, and applicable to salable dried plums delivered by producers and dehydrators to processors and received by processors from producers and dehydrators; provided, said general assessment rate shall be divided in its application upon producers, dehydrators and processors so that all or any portion of the first thirty dollars (\$30.00) per ton shall be levied two-thirds (2/3) upon producers and dehydrators and one-third (1/3) upon processors. Of the remainder of any general assessment rate up to the maximum provided above, the proportion levied upon producers and dehydrators shall be one-half (1/2) and the proportion levied upon processors shall be one-half (1/2).

2. The Board shall have considerable flexibility in forming its recommendation regarding the inspection assessment rate(s), provided the recommendation is equitable to all processors. For example, in lieu of one inspection assessment rate, the Board may recommend a set of inspection rates dependent upon the degree of inspection required. The inspection rate(s) may be set on a per salable ton basis, a per hour basis, a per inspection basis or any other basis deemed to be equitable. Additionally, the Board may recommend a rate structure that provides reduced fees to those processors that maintain certified in-house inspection programs.

Section D. PROCESSOR "CREDIT-BACK PROGRAM"

1. The Board, with the approval of the Department, may provide for crediting a portion of a processor's direct expenditures for marketing activities that promote the sale of dried plums grown in California or products made from them. No processor shall receive credit for any allowable direct expenditures that would exceed his/her equitable pro-rated share of a given year's credit-back funds or the total of his/her processor assessment contribution to the Board's generic promotional activities. No credit will be given for producer assessment obligations.

2. In order for a processor to receive credit for his/her own marketing expenditures from his/her pro rate portion of processor assessment payments, the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted either in the form of a payment from the Board, or as an offset to the portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least three (3) weeks prior to the Board's quarterly assessment billings.

3. The processor assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the producer assessments, unless the processor(s) conduct and document activities at least three (3) weeks prior to the Board's quarterly assessment billing.

4. The Board shall grant credit-back for qualifying activities only to the processor who performed such activities and who filed a claim for credit-back in accordance with this section.

5. Credit-back shall be granted only for qualifying activities which are conducted and completed during the marketing season for which credit-back is requested. A statement of credit-back commitments outstanding as of the close of a marketing season must be submitted in full to the Board within 15 days after the close of that marketing season. Final claims pertaining to such commitments outstanding must be submitted within 60 days after the close of the marketing season. Processor assessment funds not returned to processors shall be carried over for use as generic funds the next marketing season.

6. For each \$1.00 in credit-back funds requested, processors shall be required to spend a specified amount that is more than \$1.00 on qualifying activities and present adequate documentation that such expenditures have occurred.

7. Credit-back shall be granted for those qualified marketing activities in a schedule agreed upon by 75% of the members of the Board.

8. Processors are urged to submit a written description of their planned marketing activities to the Board prior to the start of the crop year in order to obtain an advance eligibility determination.

9. A processor must file claims with the Board to obtain credit-back for promotional expenditures, including:

- (i) A description of the activity and when and where it was conducted;
- (ii) Copies of all invoices from suppliers or agencies;
- (iii) Copies of all canceled checks issued by the processor in payment of these invoices; and
- (iv) An actual sample, picture or other physical evidence of the activity.

10. Appeal. If a determination is made by the Board staff that a particular promotional activity is not eligible for credit-back because it does not meet the criteria specified herein, or for any other reason, the affected processor may request the Advertising Subcommittee to review the Board staff's decision. If the affected processor disagrees with the decision of the Advertising Subcommittee, the processor may request that the Board review the Subcommittee decision.

11. Credit-back Program Changes. Changes in the credit-back program provisions may be made as minor amendments with the approval of the Department.

Section E. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT BY THE DEPARTMENT

If the Department finds that said budgets and rates of assessment are proper and equitable and calculated to provide such reasonable amounts of money as may be necessary to carry out the provisions of this Marketing Order, as Amended, the Department may approve the same and fix the rate or rates of assessment upon all producers and dehydrators and all processors provided that in no event shall such rate or rates exceed the maximum amounts specified in the foregoing paragraphs of this Article.

Section F. APPLICATION OF ASSESSMENTS

1. The application of the general assessment will vary depending upon whether or not mandatory inspections are in place. In years without mandatory inspections, the general assessment shall be applied upon the total tonnage of dried plums delivered by producers and dehydrators to processors. In years with mandatory inspections, the general assessment shall be applied only upon the “salable tonnage” portion of dried plums delivered by producers and dehydrators to processors as “salable tonnage”.

2. The application of the inspection assessment will vary depending upon the fee structure established by the Board. It may either be on a “salable tonnage” basis or on a per inspection basis.

3. For the purposes of this Article "salable tonnage" may be defined in operating rules and regulations established pursuant to Article VII hereof and shall be in conformance with any order or regulation of the Federal Government or any other State Marketing Order regulating the processing or marketing of dried plums.

Section G. ADVANCE ASSESSMENT DEPOSITS

1. In order to provide funds to defray necessary expenses incurred by the Board and the Department prior to the receipt of sufficient monies from assessments fixed by the Department as authorized herein, the Board may recommend and the Department may require each processor to make advance assessment deposits. Such advance deposits for each processor shall be based upon the quantity of dried plums received by each processor for his/her account from producers and dehydrators during the preceding marketing season.

2. The advance deposit shall be computed at a rate per ton not to exceed twenty-five percent (25%) of the total established general assessment rate for producers and processors.

3. Advance deposits made may be adjusted monthly in accordance with the following: Regular assessments established on producers and dehydrators, and processors pursuant to Section B, C and D of this Article V shall be due and payable monthly covering dried plums delivered to and received by processors from producers and dehydrators each month; provided, that until the total advance deposit paid by each processor shall have been credited to such processor, monthly payments of the regular assessments due and payable by such processors may be reduced by an amount determined by applying the rate of the advance assessment deposit to the tonnage covered by such monthly payment. The advance assessment deposit of any processor which has not been completely adjusted at the time such processor has completed the receiving of dried plums for the marketing season, shall be adjusted promptly upon application to the Department and verification by the Department as to the accuracy of the amount due such processor. Any adjustments or adjustment payments made pursuant to this Subsection shall be subject to final adjustment on the basis of audits of processors' records made by the Department.

Section H. COLLECTION OF ASSESSMENTS

Any general assessment established and fixed by the Department shall be due and payable by the producer and dehydrator or processor assessed, but for the purpose of convenience the Board or the Department may collect both the producer's and the dehydrator's and the processor's general assessments from the processor, in which case the processor shall deduct the producer's or dehydrator's share of such general assessment from any monies owed by him to such producer or dehydrator. Any inspection assessment established and fixed by the Department shall be due and payable by the processor assessed.

ARTICLE IX

BOOKS, RECORDS AND REPORTS

Section A. BOOKS, RECORDS AND REPORTS

1. Any and all processors subject to the provisions of this Marketing Order shall maintain books, records and reports reflecting their operations under this Marketing Order and shall furnish to the Department or its duly authorized or designated representatives such information as may be, from time to time, requested by them relating to operations under this Marketing Order, and shall permit the inspection by said Department or its duly authorized or designated representatives of such portions of such books, records and reports as relate to operations under said Marketing order.

2. In years without mandatory inspections, the reports to be filed with the Board, other than total dried plum tonnage received by each processor from producers and dehydrators, shall be determined by a 75% vote of the members of the Board.

3. In years with mandatory inspections, the reports to be filed with the Board, other than total dried plum tonnage and "salable tonnage" received by each processor from producers and dehydrators shall be determined by a 75% vote of the members of the Board.

Section B. CONFIDENTIAL INFORMATION

Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same, or by court order.

ARTICLE X

OPERATING RULES AND REGULATIONS

Section A. ISSUANCE OF OPERATING RULES AND REGULATIONS

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

ARTICLE XI

APPEALS

Section A. APPEALS

Any producer or processor may petition the Department to review any order or decision of the Board. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL

Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of the Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any such petition and may review or revise in any manner whatsoever any order or decision upon which an appeal is taken.

ARTICLE XII AGENTS

Section A. AGENTS

The Department may designate and authorize any person or persons, including officers or employees of the Department of Food and Agriculture, to act as his/her agent or agents with respect to any provision of this Marketing Order.

ARTICLE XIII RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS

In any civil or criminal action or proceeding for violation of any Federal or State statutes or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Marketing Order and, in furtherance of the purposes and provisions of the Act, shall be a complete defense to such action or proceeding.

ARTICLE XIV SEPARABILITY

Section A. SEPARABILITY

If any section, sentence, clause, or part of this Marketing Order is for any reason held to be invalid, or the applicability thereof to any person, circumstance, or thing is held to be invalid, such decision shall not affect the remaining portions of this Marketing Order.

ARTICLE XV EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME AND TERMINATION

This Marketing Order shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act. In accordance with Section 59086 of the Act, the Department shall, at least once every five years, hold a hearing to determine whether the Marketing Order should remain in effect. Successful passage of a major amendment substitutes for a continuation hearing and resets the timing for the next required continuation hearing.

Section B. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT

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