

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



**MARKETING ORDER
FOR DRIED FIGS**

Incorporating Amendments Through August 1, 2002

MARKETING ORDER FOR DRIED FIGS

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Marketing Order:

1. "Act" means the California Marketing Act of 1937, being Chapter 1, Part 2, Division 21, of the Food and Agricultural Code.
2. "Department" means the Department of Food and Agriculture of the State of California.
3. "Person" means any individual, firm, corporation, company, association or any other business unit.
4. "Dried Figs" means figs from which the greater part of their natural moisture has been removed by sun-drying or dehydration.
5. "Dried Figs in Natural Form" and "Natural Condition Dried Figs" are synonymous and mean dried figs which have not been prepared for market to the extent necessary to meet the conditions or requirements for processed dried figs.
6. "Processed Dried Figs," and "Processed Dried Fig Products" are synonymous and mean dried figs which have been subjected to any processing treatment performed by a processor as defined herein.
7. "Producer" is synonymous with "Grower" and means any person engaged in the business of producing or causing to be produced, natural condition dried figs as herein defined and for the purpose of this Marketing Order shall also include any person who buys or receives figs, dried or otherwise, for the purpose of drying, curing, sorting, or preparing natural condition dried figs for entry into the primary channel of distribution.
8. "Handler" unless the context indicates otherwise, means either a distributor or a processor as such terms are defined as follows:
 - a. "Distributor" is any person engaged in the operation of selling, marketing, or distributing in intrastate commerce natural condition dried figs which he or she has produced, or purchased, or acquired from a producer, or which he or she is marketing on behalf of a producer whether as owner, agent, employee, broker, or otherwise. The term "Distributor" shall not include persons:
 - (1) Engaged as a retailer or a wholesaler, except such retailer or wholesaler who purchases or acquires from, or handles on behalf of any producer, natural condition dried figs not theretofore subjected to the regulations of this Marketing Order.
 - (2) Engaged in handling dried figs produced by such person on orchards owned or operated by such person, and who retails such figs in processed or natural condition form on said person's premises, which are also his/her producing premises; provided that, when deemed necessary to prevent abuse, the Board may, with the approval of the Department, modify or amend this provision;
 - (3) Engaged as a producer in the transfer of natural condition figs from one producer to another without performing any of the functions of a processor;

(4) Engaged in the delivery of natural condition dried figs to a processor under rules and regulations and within any area established by the Board.

b. "Processor" except as hereinafter provided, means any person engaged within the State of California in the operation of receiving dried figs in their natural form and handling, cleaning, bleaching with any chemical substance other than sulphites, sorting, packing, slicing, crushing, shredding or grinding dried figs for the purpose of preparing them for market for human consumption in the form of dried figs, sliced figs or fig paste, or engaged within the State of California in the manufacturing of dried figs into another and different product, or any person engaged within the State of California in any other activity relating to dried figs and performed for the same purpose. The term processor shall not include persons:

(1) Engaged in further processing processed dried figs which have previously been inspected and certificated as processed dried figs pursuant to the provisions of this Marketing Order;

(2) Engaged in manufacturing from dried figs, by-products thereof which are not used for human consumption;

(3) Engaged in converting dried figs into distilled spirits.

9. "Lot" or "Lot of Figs," except as otherwise provided in Section B, Article IV of this Marketing Order, means the quantity of dried figs contained in a single delivery by a producer as defined herein, to a processor as defined herein, but shall not exceed the total quantity established by the Advisory Board as the maximum amount for a lot.

10. "Defective Figs," "Sliced Figs," "Passable Figs," "Marketable Figs," "Marketable Sliced Figs," "Gross Sample," "Test Sample," "Insect Head Count," "Lot," and "Unit" of figs as may be used and referred to in this Marketing Order, shall be defined and set forth in rules and regulations recommended by the Board and approved by the Department.

11. "Grade Standards for Dried Figs in Their Natural Form" means the minimum standards for dried figs in their natural form as may be established pursuant to the provisions of Article III and IV of this Marketing Order.

12. "Grade Standards for Processed Dried Figs" means the minimum standards for processed dried figs as may be established pursuant to the provisions of Articles III and IV of this Marketing Order.

13. "California Fig Advisory Board" "Advisory Board" and "Board" are synonymous and mean the industry board established pursuant to the provisions of Article II of this Marketing Order.

(Amended 12/01/86)

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

15. "Marketing Season" or "Fiscal Period" means a twelve (12) month period beginning August 1, of any year and extending through July 31, of the following year.

ARTICLE II

CALIFORNIA FIG ADVISORY BOARD

Section A. ESTABLISHMENT AND MEMBERSHIP.

1. An Advisory Board to be known as the California Fig Advisory Board is hereby established to assist the Department in the administration of this Order; five (5) members of said Board shall be producers and five (5) members shall be processors. Said ten (10) members are hereby authorized to nominate and recommend for appointment an eleventh member and alternate member of the Board who shall be neither a producer nor a processor to represent the public generally. (Amended 12/01/86)

2. There shall be an alternate member for each processor member of the Board and two at-large producer alternate members. (Amended 8/1/02)

3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.

4. The term of office of producer members and alternate members of the Board shall begin on the first day of June of even numbered years and continue for two (2) years and until their successors have been selected, appointed and have qualified. The term of office for processor members and alternate members shall begin on the first day of June of each year and continue for one (1) year and until their successors have been selected, appointed and have qualified. (Amended 4/17/2000)

5. Producer representation on the Board shall be made without regard to districts, but insofar as may be practicable shall be representative of producers generally. (Amended 6/27/91)

6. A producer member or alternate on the Advisory Board shall be an individual, partner, or employee of a producer who has a financial interest in producing, or causing to be produced, dried figs for market. (Amended 6/27/91 and 8/1/02)

7. Processor representation on the Board shall be made without regard to districts, but insofar as may be practicable shall be representative of processors generally.

8. Ex-Officio Members. Each year the Board may recommend and the Department may approve the participation of Ex-Officio members in any or all deliberations of the Advisory Board; provided, that such participants shall not be counted in determining the presence of a quorum nor may they participate in the voting. (Amended 8/13/84)

Section B. INITIAL ADVISORY BOARD.

1. The initial Advisory Board shall serve from the effective date of this Marketing Order through May 31, 1954, and until their successors have been appointed and have qualified.

2. Except for the eleventh member, nomination of persons eligible to serve on the initial Advisory Board shall be received at the public hearing held on this Marketing Order.

3. The Department shall appoint the initial members and their alternates in accordance with districts and classifications as set forth in Section A of this Article.

Section C. NOMINATION FOR BOARD MEMBERSHIP.

1. Producer Members.

a. Prior to May 1 in even numbered years, the Department shall initiate nomination procedures, for the purpose of receiving nomination for producer members and alternate members of the Advisory Board. (Amended 6/27/91 and 4/17/2000)

b. Nominations shall be conducted solely by mail. The Department shall provide each producer with a form for submitting nominations. Nominations shall be received during the time specified by the Department.

c. Unless circumstances do not permit, producers shall nominate not less than three (3) persons for each producer member to be appointed to the Board. Any person nominated as a producer member of the Advisory Board shall, before he or she shall be deemed to be qualified to be appointed as a producer member, file with the Department a certification that the major portion of his or her income or interest in the dried fig industry is in the production of dried figs.

d. Once producer nominations have been received, the Department shall submit the names of those persons nominated to a vote by mail to determine producer preference for representation on the Advisory Board. Each producer shall be limited to voting for only two nominees when completing the ballot. (Amended 6/27/91)

2. Processor Members.

a. The Department shall cause to be held each year prior to May 1, a meeting or meetings of processors affected by this Marketing Order for the purpose of obtaining nominations of persons to serve as processor members and alternate members of the Advisory Board.

b. At the nomination meetings processors shall nominate not less than two (2) persons for each processor member to be appointed to the Board. The processor nominee shall be primarily engaged in performing the functions of a processor as defined in this Order.

Section D. APPOINTMENT OF MEMBERS OF THE BOARD.

1. After conducting a producer preference vote, the Department shall select and appoint five (5) producer members and two (2) producer alternates (a first at-large alternate and a second at-large alternate) in accordance with the provisions of Subsection 5 of Section A of this Article. (Amended 8/1/02)

2. From the processor nominations received, the Department shall select and appoint the five (5) processor members and their respective alternates according to Subsection 6 of Section A of this Article.

3. In the event an eleventh member and alternate member are nominated, as provided in Section A (1) of this Article, the Department may appoint such persons as the eleventh member and alternate member of the Board.

Section E. FAILURE TO NOMINATE. In the event nominations are not made pursuant to Section C of this Article, the Department may appoint the members of the Advisory Board and their respective alternates without regard to nominations.

Section F. QUALIFICATION. Any person selected by the Department as a member or alternate member of the Advisory Board shall qualify by filing a written acceptance, Oath of Allegiance, Declaration of Citizenship, and other required forms with the Department within such filing period as may be established by the Department.

Section G. ALTERNATE MEMBERS.

1. An alternate processor member of the Advisory Board, shall, in the absence of the processor member for whom he or she is an alternate, sit in the place and stead of such member. When an alternate sits in the place and stead of a processor member, such alternate shall have all the rights, privileges, and powers of such member. In the event of the death, removal, resignation or disqualification of a processor member, his/her alternate shall act in his/her place and stead until a successor of such processor member is selected and has qualified. (Amended 8/1/02)

2. An at-large producer alternate of the Advisory Board, shall sit in the place and stead of an absent producer member. When an at-large alternate producer sits in the place and stead of a producer member, such alternate shall have all the rights, privileges, and powers of such member. In the event of the death, removal, resignation or disqualification of a producer member, an at-large producer alternate shall act in his/her place and stead until a successor of such producer member is selected and has qualified. The first at-large alternate shall have priority over the second at-large alternate in serving. (Amended 8/1/02)

Section H. VACANCIES. The Department, through appointments, may fill vacancies occasioned by the death, removal, resignation, failure to qualify or disqualification of any member or alternate member of the Advisory Board. In making such appointments, the Department may take into consideration eligible persons remaining from those nominated during the most recent nomination process, and may give consideration to any nominations made by the remaining membership of the Board. (Amended 6/27/91)

Section I. ORGANIZATION AND PROCEDURES.

1. The Board shall select a chairman and vice-chairman from its membership and shall adopt necessary rules for the conduct of its functions hereunder.

2. Not less than seven (7) members including alternate members acting in stead of members shall constitute a quorum of the Board.

3. No action shall be taken by the Board unless a quorum is present, and a concurring vote of not less than three (3) producer members and three (3) processor members or alternate members acting in the stead of the members shall be required to validate any Board actions.

Section J. EXPENSES OF BOARD MEMBERS.

Members of the Fig Advisory Board shall serve without compensation, but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

Section K. DUTIES AND POWERS OF THE BOARD. The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

1. To employ a manager who shall also act as secretary, to define his duties, fix his/her compensation and terms of employment, and to incur such other expenses as are deemed necessary and proper to enable the Board to perform its duties.

2. To recommend to the Department amendments to this Marketing Order at any time the Board deems the same advisable.

3. To perform all duties devolving upon it under this Marketing Order or by law, and to do anything necessary hereto or consistent therewith.

4. To recommend to the Department administrative rules and regulations relating to this Marketing Order.

5. To assist the Department in the assessment of producers and handlers and in the collection of funds to cover expenses incurred by the Department in the administration of this Marketing Order.
6. To administer this Marketing Order, and to do all things necessary and proper in connection therewith.
7. To keep minute books and records which will clearly reflect all of its acts and transactions and which minute books and records shall at any time be subject to the examination of the Department.
8. To prepare a budget covering the anticipated expenses of the Board and to submit same to the Department.
9. To assist the Department in the collection of such information and data as the Department may deem necessary to the proper administration of this Marketing Order.
10. To receive complaints of, and to investigate and report to the Department, any violations of this Marketing Order.

Section L. LIMITATION OF LIABILITY OF MEMBERS. The members of the Dried Fig Advisory Board, including employees of such Board, shall not be held responsible individually in any way whatsoever to any producer or handler or any other person for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of the Board shall be several and not joint and no member shall be liable for the default of any other member.

ARTICLE III

MARKETING POLICY AND REGULATIONS

Section A. INVESTIGATION OF ECONOMIC AND MARKETING CONDITIONS.

1. Each marketing season that the provisions of Article V are in effect, prior to the harvesting of figs, the Board shall investigate, or cause to be investigated, the economic and marketing conditions affecting dried figs. Such investigation shall include, insofar as is practicable to do so, as many of the following factors as may be applicable:
 - a. The estimated tonnage of dried figs from preceding crop years held by processors;
 - b. The estimated tonnage of dried figs from preceding crop years held by producers;
 - c. The estimated production of figs in current crop year;
 - d. An appraisal of the quality and size of figs of the crop to be produced in such crop year;
 - e. The estimated tonnage of figs marketed in recent crop years in domestic commerce, segregated by uses;
 - f. The current prices being received for figs by producers, and processors;
 - g. The trend and level of consumer income;

h. The estimated probable market requirements for figs in such crop year in domestic commerce, segregated by uses;

i. Such other factors as may have a bearing on the marketing of figs.

2. Upon completion of such investigation, the Board shall prepare a report to the Department setting forth the facts with respect to such supply and demand and other marketing factors affecting the marketing of figs.

Section B. MARKETING POLICY AND REGULATIONS.

1. Upon the basis of facts and information contained in said report, the Board shall set forth a marketing policy for the season and make recommendations consistent with said policy as to the regulatory provisions contained in this Marketing Order that are to be invoked. Such recommendations shall be in accordance with the applicable provisions hereinafter set forth.

ARTICLE IV

GRADE STANDARDS, INSPECTION AND CERTIFICATION

Section A. ESTABLISHMENT OF GRADE STANDARDS. In carrying out the provisions of this Marketing Order, and to facilitate the administration and enforcement thereof, the Board, subject to the approval of the Department, may establish grading terms, grades, and test standards for natural condition and processed dried figs; provided, however, that such grading terms, grades and test standards so established shall be based upon the applicable standards and terms set forth in official documents of the Food and Drug Administration, or may be based upon other Federal or State documents applicable to standards for dried figs; and provided, further, that no regulations established pursuant to this Article be less restrictive than applicable requirements for dried figs or dried fig products under Federal or State statutes.

Section B. INSPECTION AND CERTIFICATION OF DRIED FIGS IN THEIR NATURAL FORM.

1. At the time of delivery by a producer to a processor, or at any time designated by the Board, an inspection sample shall be drawn from each lot of dried figs by a duly authorized sampler, inspector, or authorized employee of the Board in a manner prescribed by the Board. In the event that the figs in any portion of a lot are substantially different in appearance, condition, or quality from the appearance, condition, or quality of the balance of the figs in the lot, such portion may be set apart and considered as a separate lot, and be sampled and inspected separately. Broken lots, or lots created by such setting apart, shall be handled in accordance with procedures prescribed by the Board.

Section C. INSPECTION AND CERTIFICATION OF PROCESSED DRIED FIGS.

1. Inspection and Certification. All dried figs or sliced figs being prepared for market in the form of dried figs, sliced figs, fig paste, or other fig products for human consumption as provided herein, shall be made available by the processor thereof to the Board or its agent for inspection and certification. The Board shall be authorized and empowered, subject to the approval of the Department, to establish and apply appropriate methods of inspection to insure that any regulations in effect will be uniformly applied. Dried figs or sliced figs which meet the requirements for marketable figs or marketable sliced figs shall be held under identification marks prescribed by the Board. Only units which bear such identification marks shall be further processed, packed, or otherwise prepared for market, and such further processing, packing or other preparation for market shall be performed under the supervision of the inspection agency or inspectors designated by the Board. Only units which have been inspected, processed, packed or otherwise prepared for market as herein required shall be certificated. Only dried figs or sliced figs which have been certificated

for fig paste, or other dried fig products manufactured from dried figs or sliced figs which have been certificated shall be prepared for market or marketed; provided, however, that the Board may exempt from the foregoing requirements, under such safeguards as the Board prescribes, units of dried figs or sliced figs being prepared for export beyond the jurisdiction of the United States, (excepting the Dominion of Canada) as authorized in Section 26569 of the Health and Safety Code of the State of California.

2. Transfers. Any processor may sell or transfer to any processor or transfer to another processing plant owned, controlled, or operated by him for processing dried figs without inspection or certification provided that such transfer is made in accordance with rules and regulations applicable thereto.

3. Units Failing to Meet Inspection Requirements. Any dried figs or sliced figs which fail to meet inspection requirements shall be held under identification marks as prescribed by the Board and may be released to the processor for rehandling, performed under the supervision of the inspection agency in accordance with such operating rules and regulations as may be prescribed by the Board.

Section D. INSPECTION AGENCY. The Board is authorized to make suitable arrangements for inspection and certification by an established and experienced dried fig inspection agency or the Board, with the approval of the Department, and may employ its own inspectors. In the event the Board employs its own inspectors, such inspectors shall first be qualified by the Department of Food and Agriculture as being competent to perform such inspection service. Each processor shall arrange with the designated inspection agency or the Board, for inspection and certification as may be required pursuant to this Marketing Order, and any operating rules and regulations established pursuant thereto.

Section E. METHOD OF SAMPLING. Samples shall be drawn from lots or units in a manner prescribed by the Board which will insure that such samples are reasonably representative of the lots or units from which they were drawn.

Section F. METHOD OF INSPECTION. The Board is authorized and empowered, subject to the approval of the Department, to establish and prescribe methods for inspecting, classifying and certifying dried figs, the same to be set forth in the rules and regulations.

Section G. EVIDENCE OF COMPLIANCE. The Board shall, with the approval of the Department, arrange for the issuance of inspection certificates or such other evidence of compliance as the Board deems necessary and proper to insure compliance with, and the enforcement of, any marketing regulation or operating rules issued and made effective by the Department pursuant to the provisions of this Marketing Order.

Section H. INITIAL OPERATING RULES AND REGULATIONS APPLICABLE TO GRADE STANDARDS, INSPECTION AND CERTIFICATION. Beginning with the effective date of this Marketing Order and portions of any operating rules and regulations in effect as of May 1, 1953, and established pursuant to the provisions of the Marketing program for Figs, as Amended, and the Marketing Order for Dried Figs and Dried Fig Products, as Amended, which are applicable to grade standards, inspection and certification, and which are authorized by this Marketing order, shall remain in full force and effect until such time as the Board, with the approval of the Department, shall amend, change or establish a new set of rules and regulations pursuant to the provisions of this Marketing Order.

ARTICLE V

STABILIZATION POOL

Section A. ESTABLISHMENT OF STABILIZATION POOL. In carrying out the provisions of this Marketing Order and to facilitate the administration and enforcement thereof, the Board may establish and maintain a stabilization pool for figs.

Section B. AUTHORIZATION TO RECEIVE AND SET ASIDE. The Board is authorized to receive from each producer and to set aside for delivery into a stabilization pool that quantity of any size, grade or variety of each producer's marketable dried figs in natural form which has been determined to be in excess of the market demand for dried figs for human consumption in normal marketing channels. Such quantity shall be consistent with the maintenance of stabilized marketing conditions and said quantity shall thereupon become the property of the Board and shall be delivered to the stabilization pool in accordance with procedures established by the Board.

Section C. TITLE TO AND DISPOSAL OF STABILIZATION TONNAGE. The Board shall have title to all figs delivered to the stabilization pool and shall make suitable arrangements for handling, storing, financing and disposing of such tonnage. The Board is authorized to make offerings of stabilization pool tonnage to processors from time to time for normal commercial purposes consistent with the maintenance of stabilized marketing conditions. If the Board determines on or after June 15th of any marketing season that any portion of the stabilization pool tonnage is not needed for normal marketing requirements, the Board may recommend that such tonnage or a portion thereof be designated as surplus tonnage. Any tonnage designated as surplus tonnage shall not be disposed of for marketing in any form that will compete directly with dried figs marketed in normal marketing channels.

Section D. DISTRIBUTION OF FUNDS IN THE STABILIZATION POOL. When the Board deems it practicable, it shall after making payment of, or making proper provision for all proper expenses of the stabilization pool, make distribution of the monies remaining to all persons who have been credited with deliveries to the stabilization pool. Each such person shall receive as nearly as possible for figs of the same grade, size, or variety so credited to him/her, the same amount per ton as all other such persons; except that before, or in making any such distribution, the Board may make such credits or charges to any such person as will in its judgment and so far as practical, equitably adjust for variations in transportation and other costs incident to the delivery and handling of such figs.

Section E. BENEFIT PAYMENTS. Subject to the approval of the Department, the Board may enter into agreements with the Department of the United States Department of Agriculture or any association or organization operating under authority of the Department of Agriculture, or any State or Federal Government agency for the diversion of stabilization pool figs, and to obtain in consideration for such surplus figs (in addition to any other compensation payable therefore) payments of benefit or subsidy funds to producers or processors who made deliveries to the stabilization pool and otherwise complied with the requirements of the contracting agencies.

ARTICLE VI

SUBSTANDARD POOL

Section A. ESTABLISHMENT OF SUBSTANDARD POOL. In carrying out this Marketing Order, and to facilitate the administration and enforcement thereof, the Board may establish and maintain a substandard pool for figs.

Section B. AUTHORIZATION TO RECEIVE. The Advisory Board is authorized to receive from each producer or processor for delivery into a substandard pool that quantity of dried figs which fails to qualify for delivery as merchantable figs under grade, quality or size regulations established in the Marketing Order, or under standardization laws, or other laws of the State, or of the United States, and may receive any lot or unit tendered to the substandard pool pursuant to Subsection 2 of Section C of this Article.

Section C. DELIVERY TO THE POOL.

1. All lots or units of figs which have been sampled and inspected in the manner prescribed by the Advisory Board, and which as a result of such sampling and inspection have been classified as substandard, shall thereupon become the property of the Advisory Board and shall be delivered to the substandard pool; provided, that the Board may release any such lots to the producers or processors who delivered the same under such safeguards as may be prescribed by the Advisory Board.

2. Any quantity of figs which any producer or processor elects to deliver to the substandard pool, or any quantity of figs considered by the producer or processor to be substandard without benefit of authorized sampling and inspection, or any figs which for any reason are not marketed for normal marketing purposes shall be delivered to the substandard pool; provided, that the Board may permit the retention of all or any part of such quantity of figs by the producer thereof for such use and under safeguards as may be prescribed by the Board.

Section D. TITLE TO AND DISPOSAL OF SUBSTANDARD TONNAGE. The Board shall have title to all figs delivered to the substandard pool and shall make suitable arrangements for disposing of the same into marketing channels not directly competitive with merchantable figs. Sales of substandard pool figs shall be in accordance with a policy, which, in the judgment of the Board, will be to the greatest benefit and in the best interests of the fig industry, and proper safeguards shall be established to carry out said policy.

Section E. BENEFIT PAYMENTS. Subject to the approval of the Department, the Board may enter into agreements with the Department of the United States Department of Agriculture or any association or organization operating under the authority of the Department of Agriculture, or any State or Federal Government agency for the diversion of substandard pool figs, and to obtain in consideration for such substandard figs (in addition to any other compensation payable therefore) payments of benefit or subsidy funds to producers or processors who made deliveries to the substandard pool and otherwise complied with the requirements of the contracting agencies.

Section F. DISTRIBUTION OF FUNDS IN THE SUBSTANDARD POOL. At the beginning of each season, the Advisory Board, with the approval of the Department, may provide for one or more substandard pools during the calendar year and may establish delivery dates for each such pool; provided, however, that each such pool must be paid out separately as indicated by sales and expenses of operation chargeable against each such pool. When the Board deems it practicable, it shall after making payment of, or making proper provision for, all proper expenses of the substandard pool make distribution of the monies remaining to all persons who have a beneficial interest therein. Each such person shall receive as nearly as possible for figs of the same grade, size or variety so credited to him, the same amount per ton as all other such persons, except, that the Board may make such credits or charges to claimants as will, in its judgment and so far as practical, equitably adjust for variations in transportation and other costs incident to the delivery and handling of such figs.

ARTICLE VII

UNFAIR TRADE PRACTICES

Section A. ESTABLISHMENT.

1. The Board shall have authority to investigate any trade practices affecting the processing,

distributing, or handling of dried figs, and may make recommendations to the Department for the control and prohibition of any trade practices which the Board deems to be unfair and detrimental to the effectuation of the declared purposes of the Act.

2. Upon the completion of such investigation or survey, the Board shall prepare a report to the Department setting forth the facts ascertained with respect to any such trade practices affecting dried figs, and including any recommendations for the control or elimination of any unfair practices.

3. Upon the basis of the facts and information derived from such survey, the Department may call a public hearing pursuant to the provisions of Section 58890 of the Act. At such public hearing the Department shall receive testimony and evidence from all interested persons with regard to such trade practices and the regulations under consideration for the control and elimination of any unfair practices. If after considering the facts and information submitted by the Board, and after consideration of the testimony received at such public hearing, the Department finds that any such trade practices complained of are in fact unfair practices and detrimental to the effectuation of the declared purposes of the Act and of this Marketing Order, the Department shall issue appropriate regulations prohibiting the use of such unfair practices in the sale and distribution of dried figs. Thereafter it shall be an unfair practice and a violation of the provisions of this Marketing Order, and of the Act for any producer or handler to use such unfair practice in the purchase and sale, and distribution of dried figs.

ARTICLE VIII

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 and programs for promoting the sale of dried figs or dried fig products for the purpose of maintaining existing markets and creating new and larger markets for figs. Pursuant to Section 58889.1 of the Act, such plans may contain provisions to allocate funds to promote private brands or trade names. Such plans or programs shall not make use of false or unwarranted claims on behalf of dried figs or dried fig products thereof, nor disparage the quality, value, sale or use of any other agricultural commodity.
(Amended 7/1/92)

2. In addition to the advertising and sales promotion plans and programs authorized in Paragraph 1 hereof, the Board is authorized to carry on, but is not restricted to any or all of the following activities:

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

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

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

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

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

conducting such plans, programs or presentations.

Section B. OFFICIAL BOARD BRAND, TRADE NAME AND LABEL PROGRAMS. Pursuant to the provisions of Section 58894 of the Food and Agricultural Code, the Board is authorized to establish and to regulate the permissive use of official Board brands, trade names and labels and distinctive designations of grade, quality or condition, except the grade or quality designations in effect pursuant to State or Federal grade standards, for any product in which dried figs are used. Any official Board brand or trade name which is established pursuant to this Section shall not be construed as a private brand or trade name with respect to Section 58889 of the Code. (Amended 12/01/86)

ARTICLE IX

RESEARCH

Section A. AUTHORIZATION FOR MARKETING RESEARCH AND SURVEY. The Advisory Board, subject to the approval of the Department, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing research and marketing survey studies relating to the marketing of dried figs, and to expend monies for such purposes.

Section B. AUTHORIZATION FOR PRODUCTION OR PROCESSING RESEARCH AND SURVEYS. Pursuant to the provisions of Section 58892 of the Act the Advisory Board is hereby authorized to carry on or cause to be carried on any necessary and proper production or processing research programs and survey studies relating to the production or processing of dried figs and to expend monies for such purposes.

ARTICLE X

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATION OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD.

1. Recommendation. At the beginning of each marketing season hereunder and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated expenditures and reserves for the administration of this Marketing Order, including advertising and promotional activities, research and survey work, and for the enforcement of this Marketing Order.

2. Administration, Advertising, Sales Promotion, and Research Activities. In order to provide funds to carry out the budget or budgets of estimated expenditures for administration, advertising, sales promotion, and research activities, the Board shall recommend a rate or rates of assessment to be levied equally upon dried fig producers and upon dried fig handlers upon an equitable basis; provided, however, that such rates or the sum of such rates of assessment shall not exceed the maximum rates which may be levied against producers for such purposes or the maximum rates which may be levied against handlers for such purposes as set forth in Sections 58924, 58925, and 58926 of the Act. (Amended 2/10/87)

Section B. APPROVAL OF BUDGET AND FIXING OF RATES OF ASSESSMENT BY THE DEPARTMENT.

1. If the Department finds that said budget or budgets and rate or rates of assessments recommended by the Board are proper and equitable and within the limitations set forth in Section A of this Article and are calculated to provide such amounts of money as may be necessary to properly carry out the provisions of this Marketing Order, the Department may approve said budget or budgets and fix such separate rates or

combined rate of assessment.

2. In the event a combined rate of assessment is established, the Board may recommend and the Department may approve the proportions of such combined assessment rate which may be used for each of the principal functions to be carried out for said marketing season; provided, however, that such proportionate rates of assessment shall not exceed the maximum percentage for administrative purposes and for advertising and sales promotion purposes as set forth in Section 58926 of the Act.

Section C. COLLECTION OF ASSESSMENTS.

1. Each handler subject to this Order shall be liable for his proportionate share of any assessments recommended by the Board and fixed by the Department upon all dried figs acquired by him/her, and each producer subject to this Order shall be liable for his/her proportionate share of the assessments on all dried figs delivered by him/her to a handler. For the convenience of making collections, the handler shall remit the handler's share and the producer's share of any such assessment by the Department and shall deduct the amount of the producer's share from any amounts owed by such handler to such producer. (Amended 2/1/83)

2. Any dried figs received by a handler which he or she has produced as a producer shall be subject to both the producer and handler assessments.

3. Handlers shall file such reports as may be specified by the Department to serve as a basis for the collection of assessments. (Amended 2/1/83)

4. Any assessment levied herein shall constitute a personal debt by every person so assessed, and shall be due and payable in such a manner and at such times as the Department may prescribe.

5. In the event of failure of any person or persons to pay any assessments payable hereunder, the Department may file a complaint against such person or persons in a State Court of competent jurisdiction for the collection thereof pursuant to the provisions of Section 58930 of the Act. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such unpaid assessment.

Section D. ADVANCE ASSESSMENT DEPOSITS.

1. In order to provide funds to defray expenses prior to the receipt of sufficient monies from assessments levied as authorized herein, the Board may recommend and the Department may require each handler to make advance assessment deposits. Such advance deposits for each handler shall be based upon the estimated quantity of dried figs to be acquired from producers during the ensuing marketing season.

2. Advance deposits computed at a rate recommended by the Board, but not to exceed twenty-five percent (25%) of the estimated total assessments, shall be made within such period of time and in such manner as the Department may prescribe.

3. As soon as practicable, the advance deposits made shall be uniformly adjusted to the amount which is chargeable against each respective handler on the basis of the actual quantity of dried figs received by a specified date or at the close of the season.

Section E. DISPOSITION OF FUNDS.

1. Any monies collected pursuant to the provisions of this Article shall be deposited in accordance with the provisions of the Act, and shall be allocated to this Marketing Order and disbursed only for the necessary expenses incurred or approved by the Department with respect to this Marketing Order. Said disbursements or expenditures of money so deposited shall be made under rules and regulations prescribed

by the Department.

2. Upon the termination of this Marketing Order by the Department, any and all monies remaining and not required to defray expenses incurred under this Marketing Order shall be returned in accordance with the provisions of Section 58938 of the Act. Amended 2/1/83.

Section F. BONDS. The Department will require that any and all persons handling substantial funds collected pursuant to the provisions of this Marketing Order shall execute and deliver to the Department a bond in such amount as the Department may designate, with surety thereon satisfactory to the Department, conditioned upon the faithful performance of the duties of such person pursuant to the provisions of this Marketing Order. The cost of bonds required pursuant to this Marketing Order shall be paid from funds collected pursuant to the provisions of this Marketing Order. (Amended 2/1/83.)

ARTICLE XI

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all processors, subject to the provisions of this Marketing Order, shall maintain books and records reflecting their operations under this Marketing Order, and shall furnish to the Department or its duly authorized or designated 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 the Department or its duly authorized or designated representatives of such portions of such books and records as relate to operations under said Marketing Order.

Section B. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him/her to any other person save to a person with like right to obtain the same or any attorney employed by the Department or the Advisory Board to give legal advice thereupon, or by court order.

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

ARTICLE XII

APPEALS

Section A. APPEALS. Any producer or processor regulated by this Marketing Order may petition the Department to review any order or decision of the Advisory Board. Any such petition must be filed in writing setting forth the facts upon which it is based.

ARTICLE XIII

GENERAL PROVISIONS

Section A. DEPARTMENT'S APPROVAL OF ACTIONS OF THE BOARD. The exercise of any of the powers granted to the Board under this Marketing Order shall be subject to the approval of the Department of Agriculture.

Section B. AGENTS OF THE DEPARTMENT. The Department may designate and authorize any person or persons to act as its agent or agents with respect to any provision of this Marketing Order.

Section C. RIGHT OF ENTRY. Any authorized inspector, or other authorized person, discharging his/her duties in the checking of compliance with the provisions of the Marketing Order may enter and inspect any premises, enclosure, building or conveyance where he or she has reason to believe natural condition dried figs, or processed dried figs are produced, stored, being prepared for market, or marketed, and may inspect or cause to be inspected such representative samples of any dried figs or dried fig products as may be necessary to determine whether or not any lot or unit of dried figs is in compliance with applicable provisions of the Marketing Order.

Section D. ADMINISTRATIVE RULES AND REGULATIONS.

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

2. Upon issuing administrative rules and regulations pursuant to this Marketing Order, the Department shall post a notice of issuance and effective date on a public bulletin board to be maintained by the Department. No administrative rules and regulations shall become effective until five days after the date of such posting. The Department shall also mail a copy of such notice and of such administrative rules and regulations to all persons directly affected by this Marketing Order.

Section E. COORDINATION WITH OTHER STATE OR FEDERAL MARKETING PROGRAMS. Insofar as may be practicable, the administration of this Marketing Order may be coordinated with any other marketing program, marketing agreement, or marketing order that may be made effective for dried figs under either State or Federal statutes.

Section F. RELATION TO ANTITRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, Section 1673 of the Civil Code or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Marketing Order and, in furtherance of the purposes and provisions of this Act, shall be a complete defense to such action or proceeding.

Section G. COMPLIANCE WITH APPLICABLE PROVISIONS. No producer and no handler shall prepare for market any dried figs in noncompliance with the applicable provisions of this Marketing Order, and any rules or regulations established pursuant thereto.

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

Section B. TERMINATION. The Department shall suspend or terminate this Marketing Order or any provisions thereof whenever he or she finds that the same does not tend to effectuate the declared purposes of the Act within the standards and subject to the limitations and restrictions of said Act; provided, that such suspension or termination shall not be effective until the expiration of the then current marketing season. If the Department finds that the termination of this Marketing Order is requested in writing by producers or processors pursuant to the provisions of the Act, the Department shall, if it finds such Marketing Order then obstructs or does not tend to carry out the declared policy of the Act, terminate or suspend for a specified period, this Marketing Order or any provision thereof.

Section C. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT. Unless otherwise expressly provided in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of this Marketing Order shall either (a) affect, waive, or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any other provision 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 amendment, suspension, or termination; or (c) affect or impair any rights or remedies of the Department or of any person with respect to such violations.