

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



MARKETING ORDER FOR
CALIFORNIA DRIED PRUNES, AS AMENDED

Effective July 1, 1980
Incorporating Amendments Through January 11, 2001

MARKETING ORDER FOR CALIFORNIA DRIED PRUNES, 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 prunes which are produced from yellow varieties of plums and are commonly known as silver prunes; (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 prunes," 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".
(Amended 1/11/2001)

5. "Natural Condition Prunes" means prunes which have not been processed.
6. "Processed Prunes" means prunes which have been cleaned, or treated with water or steam, or other processes in the preparation of prunes for marketing; provided, that prunes shall not become processed prunes 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 prunes for the purpose of preparing prunes for market or of marketing prunes, or any other activities performed for the purpose of preparing prunes for market or of marketing prunes, but shall not include manufacturing from prunes so changed in form, another and different product; provided, that this term shall not include; (1) the selling or delivering of prunes by a producer or dehydrator to a producer, dehydrator, or processor within the State of California; (2) the receiving of prunes by a producer or dehydrator from a producer or dehydrator; and (3) the buying, receiving, selling, or otherwise dealing by a person with prunes which have already been processed within the meaning of this definition by another person.
8. "Processor" is any person who processes prunes.

9. "Dehydrator" means any person who produces natural condition prunes 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, prunes, as herein defined and shall include persons who purchase or acquire fresh plums for the purpose of preparing such plums for marketing as dried prunes.

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

12. "Size" means the number of prunes contained in a pound or the classification of prunes 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. (Amended 1/11/2001)

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 prunes, 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 prunes.

ARTICLE II

CALIFORNIA PRUNE BOARD/CALIFORNIA DRIED PLUM BOARD

Section A. ESTABLISHMENT.

1. An advisory 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, with an alternate member for each such member, of whom with their respective alternates, fourteen (14) shall represent producers and seven (7) shall represent processors.

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 member or respective alternate member appointed pursuant to this Subsection 2 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 their respective 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 their respective 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 in the district from which he/she is appointed, and if such person also processed prunes during the marketing season immediately preceding that for which he/she is selected, at least fifty-one percent (51%) of the prunes so processed by him/her during such preceding marketing season must have been produced from plums grown by him/her; provided, that, producer-at-large members and their alternates, if they otherwise meet the foregoing eligibility requirements, may be producers in any districts. Each processor member and alternate member of the Board shall be either a processor of prunes or an employee or agent of a processor of prunes actually engaged in the processing of prunes while he/she is such member or alternate member.

2. Producer Nominees.

a. Independent Producers. One (1) nominee for member on the Board and one (1) nominee for an alternate member shall be nominated to the Department by the plurality vote in which only producers who are not members of a cooperative marketing association shall participate in each of the seven (7) districts in the State of California which are hereinafter described. 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 seven districts for the purpose of receiving nominations for independent producer members and alternate members of the Board. At such nomination meetings, each independent producer shall be entitled to make nominations of persons eligible to be appointed as independent producer members or alternate members of the Board. Following the nomination meetings, the Department or Board shall conduct balloting by mail to obtain the preference of 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. At the election conducted, each prune producer shall be entitled to cast only one (1) vote for member nominee and one (1) vote for alternate member nominee in any district in which he or she is a producer. No producer shall vote in more than one (1) district. The seven (7) districts are described as follows: (Amended 2/15/88).

District No. 1. The counties of Glenn, Colusa, Yolo and Solano. (Amended 01/12/2000)

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. (Amended 01/12/2000)

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. (Amended 01/12/2000)

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. (Amended 6/17/1994)

District No. 5. Butte County (Amended 01/12/2000)

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.
(Amended 01/12/2000)

b. 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.

c. Cooperative Producers. Prior to March 1 of each election year, the Board shall report to the Department the total tonnage of prunes processed by all processors as the first processors thereof and the total tonnage of prunes processed by cooperative marketing associations as the first processors thereof during the marketing season preceding such election year. Prior to March 15 of each election year, the Department shall determine and announce the number of producer member nominees and producer alternate member nominees which shall be nominated by cooperative marketing associations processing prunes on behalf of their members. Such number of nominees shall bear, as far as practicable, the same percentage compared to the total fourteen (14) producer members and their alternates as the prune tonnage processed by cooperative marketing associations as the first processors thereof bears to the total tonnage processed by all processors as the first processors thereof during the marketing season preceding such election year. The number of producer nominee members and their respective alternate 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 prunes shall nominate to the Department on behalf of their members such number of producer nominees and their respective 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 and alternates 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.

d. Producers at Large. The number of nominees and their respective alternates then required to make up the total of fourteen (14) producer member nominees and their alternates shall be nominated to the Department by the seven (7) independent producer nominees nominated for members on the Board pursuant to the provisions of this Section. Such nominations shall be made prior to April 15 and shall be by majority vote.

3. Processor Nominees. Nominations for the seven (7) processor members of the Board and their respective alternates shall be made in accordance with the provisions of this paragraph. Prior to March 15 of each election year, the Department shall determine and announce the number of processor member nominees and processor alternate member nominees which shall be nominated by cooperative marketing associations processing prunes, on the same relative tonnage basis as his/her determination of the number of cooperative producer nominees, as set forth in Paragraph C of Subsection 2 of this Section C, and at that time he/she shall determine and announce, for those processors who are not cooperative marketing associations (referred to below in this Section as independent processors), the number of processor member nominees and processor alternate member nominees to be nominated by independent processors.

a. 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 prune 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; provided, further, that in no event shall the number of independent processor members and their respective alternates be less than three (3).

b. Cooperative Processors. The number of processor nominee members and their respective 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.

c. General. Prior to March 31 of each election year, the cooperative marketing associations processing prunes shall nominate to the Department such number of processor member nominees and their respective alternates as the Department has determined and announced for cooperative marketing associations. Prior to March 31 at a meeting called for that purpose by the Department each class of independent processors shall nominate the number of processor member nominees and their respective alternates as determined and announced by the Department for each class respectively. At such meeting nominations shall be made by each class of independent processors and nominees of that class 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.

Section C. ALTERNATES.

An alternate for a member of the Board shall act in the place and stead of such member (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.

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 seventeen (17) members of the Board. 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. (Amended 1/11/2001)

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. (Amended 1/11/2001)

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, Department, 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. (Amended 1/1/1983)
9. To receive, invest, borrow, and disburse funds pursuant to the provisions of Article 10 of the California Marketing Act. (Amended 1/11/2001)
10. To Comply with all applicable conflict of interest laws. (Amended 1/11/2001)
11. To enter into contracts necessary to carry out the functions of the Board, including licensing agreements with appropriate parties. (Amended 1/11/2001)

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

Subject to the approval of the Department, the Advisory 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 Advisory 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 prunes or prune products for the purpose of maintaining existing markets and creating new and larger markets for prunes and prune products; provided, that such plans or programs make no false or unwarranted claims on behalf of prunes 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 prunes are of California origin, in English or other appropriate language. (Amended 5/7/86)

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 prunes both in the domestic and foreign markets.

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

c. Assembling or disseminating educational information designed to improve the quality of prunes 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 prunes.

e. 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 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 prunes. Marketing research may include consumer studies and trade surveys as well as health and nutrition research related to prunes. (Amended 1/11/2001)

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 prunes. Production research may include but shall not be limited to studies relating to cultural practices, harvesting methods and practices and the preparation of prunes for entry into marketing channels. Processing research may include any research activity relating to the processing of prunes 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 prunes.

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

BUDGETS AND ASSESSMENTS

Section A. BUDGETS.

For the purpose of providing funds for expenses incurred by the Department in the formulation, issuance, administration and enforcement of this Marketing Order, as Amended, the Board shall recommend for each marketing season, an estimated budget to cover proposed expenditures for advertising and sales promotion and research, and an estimated budget to cover the necessary administrative expenses for each such fiscal year.

Section B. ASSESSMENTS.

1. At the beginning of each marketing season, the Board after consideration of the recommendations of the producer members of the Board and the processor members of the Board as provided in Subsections 2 and 3 of this Section shall recommend to the Department an assessment rate upon producers and dehydrators and an assessment rate upon processors for such marketing season, which rates are calculated to provide adequate funds to defray the proposed expenditures set forth in the budget recommended pursuant to Section A of this Article. The Board shall not recommend to the Department an assessment rate upon producers and dehydrators which is a higher rate than the rate recommended by the producer members of the Board pursuant to Subsection 2 of this Section. The Board shall not recommend to the Department an assessment rate upon processors which is higher than the rate recommended to the Board by the processor members of the Board pursuant to Subsection 3 of this Section. In any event, the maximum combined assessment rate 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 prunes delivered by producers and dehydrators to processors and received by processors from

producers and dehydrators; provided, said 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 combined 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). (Amended 7/ 1/ 1992.)

2. The producer members of the Board shall recommend to the Board the assessment rate to be applied to producers and dehydrators. Such recommendation shall be on the basis of an affirmative vote by not less than eleven (11) producer members of the Board who are present and voting at a meeting of the Board.

3. The processor members of the Board shall recommend to the Board the assessment rate to be applied to processors. Such recommendation shall be on the basis of an affirmative vote by not less than five (5) processor members of the Board who are present and voting at a meeting of the Board.

Section C. 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 D. APPLICATION OF ASSESSMENTS.

1. Assessments upon producers and dehydrators which are established pursuant to the foregoing paragraphs shall be applied only upon the "salable tonnage" portion of prunes delivered by producers and dehydrators to processors as "salable tonnage".

2. Assessments upon processors which are established pursuant to the foregoing paragraphs shall be applied only upon prunes received by processors from producers or dehydrators as "salable tonnage".

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 prunes.

Section E. 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 prunes 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 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 prunes 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 prunes 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 F. COLLECTION OF ASSESSMENTS.

Any 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 assessments from the processor, in which case the processor shall deduct the producer's or dehydrator's share of such assessment from any monies owed by him to such producer or dehydrator. (Amended 2/1/84)

ARTICLE VI

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 said 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 by him disclosed to any other person save to a person with like right to obtain the same, or by court order.

ARTICLE VII

OPERATING RULES AND REGULATIONS

Section A. ISSUANCE OF OPERATING RULES AND REGULATIONS.

1. 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 VIII

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 IX

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 X

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 XI

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 XII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME AND TERMINATION.

This Marketing Order shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act. 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. (Amended 1/11/2001)

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.