

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Identification of "Also Known As" Name		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
California Fluid Milk Processor Advisory Board		09/01/1995	STATE AGENCY: CALIFORNIA
RECEIVING PARTY DATA			
Name:	California Milk Processor Board		
Also Known As:	AKA California Fluid Milk Processor Advisory Board		
Street Address:	1801A Fourth Street		
City:	Berkeley		
State/Country:	CALIFORNIA		
Postal Code:	94710		
Entity Type:	STATE AGENCY: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	1903870	GOT MILK?	
CORRESPONDENCE DATA			
Fax Number:	(213)896-6600		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
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ATTORNEY DOCKET NUMBER:	04908-80020 TM GOT MILK?		
NAME OF SUBMITTER:	Sandra S. Fujiyama		
Signature:	/ssf/		

CH \$40.00 1903870

Date:

12/21/2005

Total Attachments: 49

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DEPARTMENT OF FOOD AND AGRICULTURE

MARKETING BRANCH

**MARKETING ORDER FOR ADVERTISING,
PROMOTION, RESEARCH, AND EDUCATION
RELATING TO FLUID MILK PRODUCTS
IN CALIFORNIA**

EFFECTIVE

JANUARY 1, 1993

**TRADEMARK
REEL: 003214 FRAME: 0830**

ARTICLE I
DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Marketing Order, the following terms have the following meanings:

1. "Director" means the Director of Food and Agriculture of the State of California.
2. "Act" means the California Marketing act of 1937, being Part 2, Chapter 1 of the Food and Agricultural Code, as amended.
3. "Person" means any individual, partnership, corporation, association, or any other business unit.
4. "Milk" means the lacteal secretion which is obtained from the udders of cows.
5. "Fluid Milk Products" mean the following Class 1 products that are both processed and sold within the State of California: flavored and unflavored forms of whole, lowfat, extra light, and nonfat milks, as well as any of these products with added cultures and lactose-reduced versions of any of these products. Fluid milk products do not include products (a) resembling fluid milk products and sold in competition with such dairy products but in which all or part of the milkfat or nonfat milk solids have been replaced by non-dairy ingredients, (b) processed in the State but sold outside the State, or (c) sold within the State but processed outside the State.
6. "Fluid Milk Handler" and "Handler" as used herein are synonymous terms which mean any person, who, as owner, agent, or broker, purchases or otherwise acquires possession or control of milk or any of its components from a producer or a producer-handler, in the form of unprocessed milk or cream, or in any other unprocessed form, and processes it in a plant located within the state of California into one or more fluid milk products. For the purpose of this Marketing Order, fluid milk handler shall include any person who produces milk and uses such production, or any part thereof, for the processing of one or more fluid milk products.
7. "Fiscal Year" means the 12 month period beginning on the first day of the month following the effective date of this Marketing Order, and every succeeding 12 month period beginning on the first day of the month following the effective date of the Marketing Order.

8. "Board", "Advisory Board", and "Processor Advisory Board", are synonymous terms which mean the California Fluid Milk Processor Advisory Board established pursuant to this Marketing Order.

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

A R T I C L E I I
CALIFORNIA FLUID MILK PROCESSOR ADVISORY BOARD
AND COMMITTEES

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE

1. An industry advisory board to be known as the California Fluid Milk Processor Advisory Board has been established by the Director to assist in the administration of this Marketing Order. This Board shall be composed of nine (9) members all of whom shall be handlers.

2. Members of the Board shall be appointed by the Director from nominations received for that purpose.

3. The term of office for Board members shall be three (3) years except as provided in Subsections 4 and 5 of this Section. Members shall serve for the duration of their term or until their successor has been duly appointed and qualified.

4. The initial appointees to the Board shall all serve for three (3) years; provided, however, that if the Marketing Order is not extended beyond its original three-and-one-half (3 1/2) year authorization, the initial appointees to the Board shall serve for three-and-one-half (3 1/2) years.

5. If the Marketing Order is extended beyond its original three-and-one-half (3 1/2) year authorization, the terms of office for the Board members appointed to serve beginning on the first day of the thirty-seventh (37) month following the effective date of the Marketing Order shall be established as follows:

Three (3) members shall be appointed for a one (1) year term; three (3) members shall be appointed for a two (2) year term; and three (3) members shall be appointed for a three (3) year term. To the extent practicable, the varying term lengths shall be allocated proportionally among the three districts as provided in this Section.

6. Board members may not serve more than two (2) consecutive terms without at least three (3) years intervening between their second consecutive term and their next appointment to the Board.

7. Nominations and appointment of fluid milk handlers as members of the Board shall be from the three (3) districts as described hereinafter.

District Number 1 - Shall be composed of the Northern California marketing area as defined in the Stabilization and Marketing Plan, as amended, for Market Milk for the Northern California Marketing Area, issued by the Director of the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21 of the Food and Agricultural Code, effective February 3, 1992. In the event such marketing area is modified or eliminated, this district shall remain as defined in the Northern California Stabilization and Marketing Plan, effective February 3, 1992, Article II, Section 200.0. Representation shall be three (3) fluid milk handlers.

District Number 2 - Shall be composed of the South Valley marketing area as defined in the Stabilization and Marketing Plan, as amended, for Market Milk for the South Valley Marketing Area, issued by the Director of the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21 of the Food and Agricultural Code, effective February 3, 1992. In the event such marketing area is modified or eliminated, this district shall remain as defined in the South Valley Stabilization and Marketing Plan, effective February 3, 1992, Article II, Section 200.0. Representation shall be one (1) fluid milk handler.

District Number 3 - Shall be composed of the Southern California marketing area as defined in the Stabilization and Marketing Plan, as amended, for Market Milk for the Southern California Marketing Area, issued by the Director of the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21 of the Food and Agricultural Code, effective February 3, 1992. In the event such marketing area is modified or eliminated, this district shall remain as defined in the Southern California Stabilization and Marketing Plan, effective February 3, 1992, Article II, Section 200.0. Representation shall be five (5) fluid milk handlers.

Section B. MODIFICATION OF DISTRICTS AND REPRESENTATION

In the event of changes in the sales of fluid milk products in the three districts and in order to maintain reasonably equitable representation upon the Board for all fluid milk handlers, the Board may from time to time recommend to the Director, and the Director may approve modifications of districts or representation therefrom; provided, that each district shall have at least one (1) Board member, and provided further, that any such modifications shall be coordinated with terms of office of members so that nominations may be made from the districts as modified and appointments made in accordance therewith. Any said modification of districts or representation shall be a minor amendment as defined in the Act.

Section C. NOMINATION OF MEMBERS OF THE BOARD

1. Not later than three (3) months prior to the end of any fiscal year in which members of the Board must be appointed, the Director shall distribute nomination forms to every fluid milk handler subject to the Marketing Order, requesting nominations for members to serve on the Board, and specifying a date after which nominations will not be accepted. Nomination forms must be signed by the person submitting the nomination. The Director shall ascertain that all persons nominated are willing to serve.

2. There shall be no more than one (1) nominee from a handler subject to the Marketing Order. In the event more than one (1) person is nominated from the same fluid milk handler, the Director shall ascertain which nominee the handler wishes to represent the company on the ballot.

Section D. APPOINTMENT OF MEMBERS

1. The Director shall prepare separate ballots for each district to include the names of all nominees for that district qualified pursuant to Subsections 2 and 3 of Section C and Section E.

2. Not later than 45 days prior to the end of a fiscal year in which members of the Board must be appointed, a district ballot shall be mailed to all handlers subject to this Marketing Order that operate a plant or plants in that district.

3. Fluid milk handlers who operate a plant in more than one district shall receive a ballot for each district in which they operate a plant or plants.

4. The Director shall prescribe a date by which ballots shall be returned, such date to be no later than 30 days prior to the end of the fiscal year in any year in which members of the Board must be appointed.

5. The Director shall select and appoint members from the nominations received and with due consideration given to the results of the balloting conducted in each district.

Section E. QUALIFICATION OF BOARD MEMBERS

1. Each person appointed by the Director for membership on the Board shall be a fluid milk handler, or a full time employee of a fluid milk handler, and shall qualify also by filing with the Director a written acceptance and such other necessary papers as the Director may require.

Section F. INTERIM FILLING OF VACANCIES

To fill any vacancy occasioned by failure of any person appointed as a member to qualify, or in the event of death, removal, resignation, or disqualification of any member of the Board, a successor shall be appointed from among persons remaining on the list of eligible nominees established during the immediately preceding nomination process; provided, that if no such nominees remain on such list, the remaining members of the Board may nominate qualified persons eligible for appointment by the Director to fill such vacancies. All vacancies filled by the Director pursuant to this Section shall be only for the remainder of the term of such vacant membership.

Section G. DUTIES AND POWERS OF THE BOARD

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

1. To administer the provisions of this Marketing Order.
2. To recommend to the Director annually, and more frequently as may be required, programs of advertising, promotion, research, and education of fluid milk products as authorized in Article III of this Marketing Order.
3. To recommend to the Director administrative rules and regulations pertaining to the administration and enforcement of this Marketing Order.
4. To receive and report to the Director violations of this Marketing Order.
5. To recommend to the Director amendments to this Marketing Order.
6. To recommend to the Director annually budgets covering estimated income, administrative expenses of the Board and the Director, and the expenses to be incurred under proposed programs of advertising, promotion, research, and education.
7. To provide for administration of the Marketing Order in any manner chosen by the Board, including, but not limited to, entering into a contract with another organization to administer the Board's affairs or the hiring of a Manager and such other employees as it may deem necessary to carry out its functions. The Board shall have the power to fix the salaries of any employees as well as to define their duties.
8. To keep minutes, books, and records which clearly reflect all of its acts and transactions, and which shall at all times be subject to examination by the Director or his duly authorized representatives, and to provide to the Director copies of the minutes of all meetings, duly certified by an authorized officer of the Board.

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

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

11. To provide for the annual evaluation of the effectiveness of the Marketing Order programs, including, but not limited to, the establishment of measurable goals for the program at its inception and at all times thereafter. Such evaluations shall be conducted by an objective, third party and shall include, but not be limited to, an analysis of sales levels and consumer attitudes.

12. Receive, invest, and disburse funds pursuant to the provisions of Section 58845(d) and Article 10 of the Act.

13. To recommend to the Director the purchase of general liability insurance for this Marketing Order, pursuant to the provisions of Section 58714 of the Act.

Section H. COMPENSATION AND EXPENSES OF MEMBERS OF THE BOARD

No compensation shall be provided any Board member for the performance of his/her duties and exercising his/her powers, however, Board members shall be reimbursed for any expenses incurred in performing his/her duties and exercising his/her powers under this Marketing Order. Nothing in this section shall prohibit any Board member from declining reimbursement for any expenses incurred in performing his/her duties and exercising his/her powers under this Marketing Order.

Section I. COMMITTEES OF THE BOARD

1. Committees. The Advisory Board may at any time recommend to the Director the establishment of committees and the appointment of members thereto to carry out duties and functions as delegated or assigned by the Board and shall be limited to those necessary to carry out the actions and policies of the Board. Committees may include persons not members of the Board. Any action taken by any committee shall be subject to approval by the Board and the Director.

2. Executive Committee. An Executive Committee shall be formed consisting of the Chairman, Vice Chairman, and Secretary-Treasurer of the Board.

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

Section J. PROCEDURE FOR BOARD

A quorum shall consist of not less than five (5) members. No actions relating to (a) the selection or dismissal of an administrative contractor or management personnel directly employed by the Board or (b) any program of advertising, promotion, research, and education of fluid milk products shall be valid unless approved by a two-thirds (2/3) vote of the total appointed Board. All other actions of the Board shall be valid if approved by a majority vote of the total appointed Board.

Section K. LIMITATION OF LIABILITY OF BOARD MEMBERS AND EMPLOYEES

Pursuant to the provisions of Section 58847 of the Act, the members of the Board, however selected and appointed, and while serving as members of the Board or of the committees established hereunder, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any fluid milk handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members 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, PROMOTION, RESEARCH, AND EDUCATION PROGRAMS

Section A. ADVERTISING AND PROMOTION PROGRAMS

Pursuant to the provisions of Section 58889 of the Act, as amended, the Board is authorized to develop programs of advertising, trade promotion, and public relations activities relating to fluid milk products, for consideration and approval by the Director; provided, that any such plans shall be directed toward increasing the sale of such products without reference to any private brand or trade name used by any handler of such products; and provided further, that no such advertising or promotion program for fluid milk products shall make use of any false or unwarranted claims in behalf of any such products, or disparage the quality, value, sale, or use of any other commodity.

The Board may provide for advertising and promotion programs that include (a) tie-in campaigns with other than dairy products defined in Division 15 of the Food and Agricultural Code and (b) cooperative advertising programs in which no fluid milk handler affected by the Marketing Order is involved.

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

Section B. RESEARCH PROGRAMS

As provided in Section 58892 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Director, for approval by the Director, programs of research relating to fluid milk products; provided that such programs of research shall be limited to those that directly relate to the development, implementation, or evaluation of advertising, promotion, or education programs for fluid milk products.

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

Section C. EDUCATIONAL PROGRAMS

Pursuant to the provisions of Section 58893 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Director for approval, programs of education relating to fluid milk products; provided that any such program will be designed and implemented in a manner coordinated with any educational programs operated by the Dairy Council of California and other dairy industry groups. Such programs may include programs designed to acquaint consumers with the safety and nutritional benefits of fluid milk products, and may also include educational programs designed to make available to handlers, retailers, health care professionals, the general public, and other interested groups the findings of research programs carried out pursuant to the provisions of Section B of this Article.

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

Section D. ALLOCATION OF EXPENDITURES

To the maximum extent practicable, the Board shall allocate expenditures on advertising, promotion, research and education among population centers of the State in proportion to the share of sales of fluid milk products represented by each of the several population centers.

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

In order to carry out any advertising, promotion, research, or education program authorized by this Article, the Board is authorized to enter into any necessary contracts with public or private agencies or persons qualified to assist in the formulation and conduct of any such programs or plans, and to prepare estimates of the costs of any such programs. Any such contract shall clearly state the services to be performed and the estimated costs to be incurred and shall provide for an accurate accounting of all actual expenditures under such contract. Any such contract may include invitations, pursuant to Section 58850 of the Act, to persons to serve in an advisory capacity to the Board.

Section F. APPROVAL BY THE DIRECTOR

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

A R T I C L E I V
F I N A N C I A L P R O V I S I O N S

Section A. ASSESSMENT RATE

1. From the first day of the month following the effective date of this Marketing Order and continuing for the next twelve (12) consecutive months, each fluid milk handler in this State shall pay to the Director an assessment at the rate of three (3) cents per gallon of fluid milk products sold in the state of California.

2. Beginning with the first day of the thirteenth month following the effective date of this Marketing Order and continuing for the next twelve (12) consecutive months, each fluid milk handler in this State shall pay to the Director an assessment at the rate of two and seven-tenth (2.7) cents per gallon of fluid milk products sold in the state of California.

3. Beginning with the first day of the twenty-fifth month following the effective date of this Order and continuing for the next twelve (12) consecutive months, each fluid milk handler in this State shall pay to the Director an assessment at the rate of two and three-tenth (2.3) cents per gallon of fluid milk products sold in the state of California.

4. Assessment rates prescribed in Subsections 1, 2, and 3 of this Section shall not be increased; provided, however, they may be reduced by the Director if the Board so recommends by a vote of not less than two-thirds (2/3) majority of the total appointed Board. Any decision to reduce the assessment shall be based upon a determination that the prescribed assessment will generate revenue in excess of that needed to effectively carry out the provisions of the Marketing Order.

5. In the event the Marketing Order is approved for an extension beyond three-and-one-half (3 1/2) years as provided in Article XIII, each fluid milk handler in this State shall pay to the Director an assessment at the rate of two and three-tenth (2.3) cents per gallon of fluid milk products, beginning on the first day of the thirty-seventh month following the effective date and continuing as long as the Marketing Order is in effect, unless the assessment is modified pursuant to Section B of this Article.

6. The monthly volume of fluid milk products sold during the time this Marketing Order is in effect shall be reported to the Director by the fluid milk handler in a manner prescribed by the Director; provided that each fluid milk handler shall be allowed no less than fifteen (15) days after the last day of the month in which the fluid milk products were sold to submit such reports.

7. In lieu of the rates per gallon specified in Subsections 1, 2, and 3 of this Section, the Board may recommend and the Director may approve a rate based upon hundredweights of finished product or pounds of fat, solids-not-fat, and/or fluid carrier, provided such rate results in the same total monetary collection statewide and further provided that such rate includes all fluid milk products and all fluid milk handlers.

8. Assessments made pursuant to this Marketing Order shall in no event exceed the maximum assessment rates provided in Article 10 of the Act.

Section B. MODIFICATION OF ASSESSMENT RATE

1. After the Marketing Order has been in effect for three (3) years, the assessment rate may not be increased from the level prescribed in Subsection 5 of Section A, except as provided herein.

2. Following the time specified in Subsection 1 of this Section, the Board may recommend and the Director may approve an increase in the assessment rate provided in Subsection 5 of Section A of this Article to a level not exceeding four (4) cents per gallon of fluid milk products sold in the State; provided, that no increase in the rate of assessment shall be made effective by the Director unless and until such proposed increase in the rate has been recommended by the Board to the Director on a vote of not less than two-thirds (2/3) majority of the total appointed members, and thereafter submitted by the Director to a referendum of fluid milk handlers in accordance with the provisions of Article 12 of the Act.

3. If the assent procedure for fluid milk handlers upon the question of increasing the assessment rate is held and if the Director finds that handlers have approved the proposed increase in assessment rate in such assent procedure, he may make the proposed increase effective upon fluid milk handlers. If not, he shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect.

4. The assessment rate prescribed in Subsection 5 of Section A of this Article, or any assessment rate established pursuant to Subsection 2 of Section B of this Article, may be reduced by the Director if the Board so recommends by a vote of not less than two-thirds (2/3) majority of the total appointed Board. Any decision to reduce the assessment shall be based upon a determination that the prescribed assessment will generate revenue in excess of that needed to effectively carry out the provisions of the Marketing Order.

Section C. ADJUSTMENT OF ASSESSMENT WHEN FEDERAL PROGRAM IN EFFECT

1. Notwithstanding the provisions of paragraph 4, Section A, Article IV, if during the first 36 months that any assessment is in effect under this Marketing Order, a mandatory national program for fluid milk involving any one or more of advertising, promotion, research, or education is ordered, the assessments provided in paragraphs 1, 2, 3, and 4 of Section A of Article IV herein shall be reduced by the total amount of the assessment for the national program. In such instance, the Board and the Director shall make a maximum effort to secure a credit or rebate from the national program for the State program so that the State program shall have total funds available to it equal as closely as possible to the funds that would have been generated under the assessment rates provided for in Section A of Article IV.

2. At the time of the referendum specified in paragraph 2 of Section A of Article XIII, fluid milk processors shall be afforded the opportunity to vote on how any mandatory federal program assessments will affect the level of assessment established for the State program pursuant to paragraph 5, Section A, Article IV.

Section D. COLLECTION OF ASSESSMENTS

1. Each fluid milk handler shall be liable for the payments of assessments levied hereunder upon fluid milk products processed by him.

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

Section E. PENALTIES FOR NONPAYMENT OF ASSESSMENTS

To any assessment unpaid within the time specified by the Director, the Director may add penalties and interest as prescribed in the Act.

Section F. BUDGETS

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

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

3. All monies derived from the assessment of fluid milk handlers pursuant to the provisions of this Marketing Order shall be expended exclusively for programs of advertising, promotion, research, or education applicable to fluid milk products as authorized herein, and in the Act, and for the necessary expenses incurred by the Board and the Director in the administration of such programs and this Marketing Order, and shall not be diverted to any other usages within the Department of Food and Agriculture or otherwise.

Section G. REFUNDS

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

Nothing in this Section shall preclude the Board and Director from carrying over assessments collected in any fiscal year to a following fiscal year in which the Marketing Order is in effect, if such carryover will effectuate the purposes of this Marketing Order.

Section H. BONDS

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

A R T I C L E V
GENERAL PROVISIONS

Section A. ADMINISTRATIVE RULES AND REGULATIONS

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

Section B. COORDINATION WITH OTHER STATE OR FEDERAL PROGRAMS

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

A R T I C L E VI
BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

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

Section B. REPORTS TO THE BOARD

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

Section C. CONFIDENTIAL INFORMATION

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

Section D. IMMUNITY

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

A R T I C L E V I I
A P P E A L S

Section A. APPEALS

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

Section B. EFFECT OF APPEAL

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

A R T I C L E V I I I
R E L A T I O N T O O T H E R L E G I S L A T I O N

Section A. ANTITRUST LAWS

This Marketing Order is issued in effectuation of the public policy and purposes of the Act, as stated in Sections 58652 and 58654, and in furtherance of trade. Consistent with the provision of Section 58655 of the Act, proof that any act of the Board was taken or committed in compliance with the provisions of this Marketing Order, and in furtherance of the purposes and provisions stated, shall be a complete defense to any civil or criminal action or proceeding asserting violation by the Board or any of its members of the Cartwright Act (Sections 16600 et seq. of the California Business and Professions Code), the Unfair Practices Act (Sections 17000 et seq. of the Business and Professions Code), the Dairy Products Unfair Practices Act (commencing with Section 61301 of the Food and Agricultural Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade.

A R T I C L E I X
D U R A T I O N O F I M M U N I T I E S

Section A. DURATION

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

A R T I C L E X
A G E N T S

Section A. AGENTS

The Director may, by a designation in writing, name any person, including any officer or employee of the State or any employee, branch or division of the California Department of Food

and Agriculture, to act as his agent or representative in connection with any of the provisions of this Marketing Order.

ARTICLE XI DEROGATION

Section A. DEROGATION

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

ARTICLE XII SEPARABILITY

Section A. SEPARABILITY

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

ARTICLE XIII EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

1. This Marketing Order shall become effective on the date specified by the Director and shall continue in effect for forty-two (42) consecutive months unless extended as provided in Subsection 2 of this Section or until suspended or terminated by the Director, or by operation of law in accordance with the provisions of the Act.

2. The Director shall conduct a referendum among all affected fluid milk handlers on the question of the continuance of the Marketing Order not earlier than the thirty-second (32) month after the Marketing Order becomes effective and not later than the end of the thirty-fourth (34) month after the Marketing Order becomes effective. Such referendum shall be conducted in accordance with the provisions of Article 12 of the Act. The results of this referendum shall determine whether the Marketing Order is terminated as provided in Subsection

1 of this Section or continued without interruption beyond the initial period of forty-two (42) months.

If the Marketing Order is continued beyond the initial forty-two (42) months, assessments shall continue without interruption as provided in Subsection 5 of Section A of Article IV.

3. In the event the Marketing Order is not extended beyond the initial forty-two (42) months, assessments as provided in Article IV of this Marketing Order shall continue in effect only for the first thirty-six (36) months of the forty-two (42) month period, with the remaining six (6) months during which the Marketing Order is in force and effect devoted to an efficient dissolution of the business of the Board and the Marketing Order, including, at the discretion of the Board and the Director, the expenditure of any funds remaining at the end of the thirty-six (36) month period in a manner consistent with the provisions of the Marketing Order.

Section B. SUSPENSION OR TERMINATION

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

2. Petition for Termination. If the Director receives a petition from fluid milk handlers of the State pursuant to the provisions of Section 59083 of the Act requesting the Director to conduct a hearing upon the question of continuation of this Marketing Order, the Director shall conduct such a hearing as provided in the Act, and if he finds, from the testimony received at said hearing that there is serious question whether fluid milk handlers support continuation of the Marketing Order, he shall submit the question to fluid milk handlers through the assent procedure as provided in Subsections (a) and (b) of Section 58991 of the Act. If such fluid milk handlers indicate by such method their desire to continue this Marketing Order, the Director shall continue it, if not, the Director shall terminate this Marketing Order; provided, that no such termination shall become effective until the close of the fiscal year then current.

3. Mandatory Termination. The Director shall terminate this Marketing Order if he/she receives from a requisite number of handlers subject to the Order, pursuant to Section 59082 of the Act, a written request that the Order be terminated.

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 provisions of this Marketing Order not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of any provision of this Marketing Order or any rule or regulation issued hereunder, occurring prior to the effective time of such amendment suspension, or termination, or (c) affect or impair any rights or remedies of the Director or any person with respect to any such violation.

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STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



California Department of Food and Agriculture

**MARKETING ORDER
FOR ADVERTISING, PROMOTION, RESEARCH AND
EDUCATION RELATING TO FLUID MILK PRODUCTS
IN CALIFORNIA**

EFFECTIVE JANUARY 1, 1993
INCORPORATING AMENDMENTS THROUGH SEPTEMBER 1, 1995

TRADEMARK
REEL: 003214 FRAME: 0849

MARKETING ORDER FOR ADVERTISING, PROMOTION, RESEARCH, AND EDUCATION RELATING TO FLUID MILK PRODUCTS IN CALIFORNIA

Originally Effective January 1, 1993
With Amendments Through September 1, 1995

The following amendments were made effective 4/1/93:

**Fluid milk sales to schools were temporarily exempted.*

**Definition of "fluid milk products" was clarified so as to specifically exclude raw milk products.*

**Actual calendar dates replaced unspecified dates that referenced the effective date.*

The following amendments were made effective 9/1/95:

**Reapproval procedure was changed from a hearing every 5 years to an industry vote every 3 years.*

**Ongoing assessment rate was set at 3 cents per gallon.*

**Staggered terms and term limits were eliminated.*

**Assessment credit provisions pertaining to federal fluid milk promotion program were clarified.*

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Marketing Order, the following terms have the following meanings:

1. "Department" means the Department of Food and Agriculture of the State of California.
2. "Act" means the California Marketing act of 1937, being Part 2, Chapter 1 of the Food and Agricultural Code, as amended.
3. "Person" means any individual, partnership, corporation, association, or any other business unit.
4. "Milk" means the lacteal secretion which is obtained from the udders of cows.
5. "Fluid Milk Products" mean the following Class 1 products that are both processed (pasteurized, ultrapasteurized, or UHT processed) and sold within the State of California: flavored and unflavored forms of whole, lowfat, extra light, and nonfat milks, as well as any of these products with added cultures and lactose-reduced versions of any of these products. Fluid milk products do not include products (a) resembling fluid milk products and sold in competition with such dairy products but in which all or part of the milkfat or nonfat milk solids have been replaced by non-dairy ingredients, (b) processed in the State but sold outside the State, or (c) sold within the State but processed outside the State.
6. "Fluid Milk Handler" and "Handler" as used herein are synonymous terms which mean any person, who, as owner, agent, or broker, purchases or otherwise acquires possession or control of milk or any of its components from a producer or a producer-handler, in the form of

unprocessed milk or cream, or in any other unprocessed form, and processes it in a plant located within the state of California into one or more fluid milk products. For the purpose of this Marketing Order, fluid milk handler shall include any person who produces milk and uses such production, or any part thereof, for the processing of one or more fluid milk products.

7. "Fiscal Year" means the period beginning February 1 of any year and extending through January 31 of the following year.

8. "Board", "Advisory Board", and "Processor Advisory Board", are synonymous terms which mean the California Milk Processor Board established pursuant to this Marketing Order.

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

ARTICLE II

CALIFORNIA MILK PROCESSOR BOARD AND COMMITTEES

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE

1. An industry advisory board to be known as the California Milk Processor Board has been established by the Department to assist in the administration of this Marketing Order. This Board shall be composed of nine (9) members all of whom shall be handlers.

2. Members of the Board shall be appointed by the Department from nominations received for that purpose.

3. The term of office for Board members shall be three (3) years, beginning January 1 of the fiscal year in which they are appointed and continuing through December 31 of the third fiscal year following their appointment. Members shall serve for the duration of their term or until their successor has been duly appointed and qualified.

4. Nominations and appointment of fluid milk handlers as members of the Board shall be from the three (3) districts as described hereinafter.

District Number 1 - "Northern California" - Shall be composed of all Counties north of and including Monterey, San Benito, Merced, Madera, Tuolumne, and Alpine. Representation shall be three (3) fluid milk handlers.

District Number 2 - "South Valley" - Shall be composed of the Counties of Fresno, Kings, Tulare, and Kern Representation shall be one (1) fluid milk handler.

District Number 3 - "Southern California" - Shall be composed of the Counties of Mono, Inyo, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial.

Section B. MODIFICATION OF DISTRICTS AND REPRESENTATION

In the event of changes in the sales of fluid milk products in the three districts and in order to maintain reasonably equitable representation upon the Board for all fluid milk handlers, the Board may from time to time recommend to the Department, and the Department may approve modifications of districts or representation therefrom; provided, that each district shall have at least one (1) Board member, and provided further, that any such modifications shall be coordinated with terms of office of members so that nominations may be made from the districts as modified and appointments made in accordance therewith. Any said modification of districts or representation shall be a minor amendment as defined in the Act.

Section C. NOMINATION OF MEMBERS OF THE BOARD

1. Not later than November 1 of any fiscal year in which members of the Board must be appointed, the Department shall distribute nomination forms to every fluid milk handler subject to the Marketing Order, requesting nominations for members to serve on the Board, and specifying a date after which nominations will not be accepted. Nomination forms must be signed by the person submitting the nomination. The Department shall ascertain that all persons nominated are willing to serve.

2. There shall be no more than one (1) nominee from a handler subject to the Marketing Order. In the event more than one (1) person is nominated from the same fluid milk handler, the Department shall ascertain which nominee the handler wishes to represent the company on the ballot.

Section D. APPOINTMENT OF MEMBERS

1. The Department shall prepare separate ballots for each district to include the names of all nominees for that district qualified pursuant to Subsection 2 of Section C and Section E.

2. Not later than December 15 of a fiscal year in which members of the Board must be appointed, a district ballot shall be mailed to all handlers subject to this Marketing Order that operate a plant or plants in that district.

3. Fluid milk handlers who operate a plant in more than one district shall receive a ballot for each district in which they operate a plant or plants.

4. The Department shall prescribe a date by which ballots shall be returned, such date to be no later than December 31 of the fiscal year in which members of the Board must be appointed.

5. The Department shall select and appoint members from the nominations received and with due consideration given to the results of the balloting conducted in each district.

Section E. QUALIFICATION OF BOARD MEMBERS

1. Each person appointed by the Department for membership on the Board shall be a fluid milk handler, or a full time employee of a fluid milk handler, and shall qualify also by filing with the Department a written acceptance and such other necessary papers as the Department may require.

Section F. INTERIM FILLING OF VACANCIES

To fill any vacancy occasioned by failure of any person appointed as a member to qualify, or in the event of death, removal, resignation, or disqualification of any member of the Board, a successor shall be appointed from among persons remaining on the list of eligible nominees established during the immediately preceding nomination process; provided, that if no such nominees remain on such list, the remaining members of the Board may nominate qualified persons eligible for appointment by the Department to fill such vacancies. All vacancies filled by the Department pursuant to this Section shall be only for the remainder of the term of such vacant membership.

Section G. DUTIES AND POWERS OF THE BOARD

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

1. To administer the provisions of this Marketing Order.
2. To recommend to the Department annually, and more frequently as may be required, programs of advertising, promotion, research, and education of fluid milk products as authorized in Article III of this Marketing Order.
3. To recommend to the Department administrative rules and regulations pertaining to the administration and enforcement of this Marketing Order.
4. To receive and report to the Department violations of this Marketing Order.
5. To recommend to the Department amendments to this Marketing Order.
6. To recommend to the Department annually budgets covering estimated income, administrative expenses of the Board and the Department, and the expenses to be incurred under proposed programs of advertising, promotion, research, and education.
7. To provide for administration of the Marketing Order in any manner chosen by the Board, including, but not limited to, entering into a contract with another organization to administer the Board's affairs or the hiring of a Manager and such other employees as it may deem necessary to carry out its functions. The Board shall have the power to fix the salaries of any employees as well as to define their duties.
8. To keep minutes, books, and records which clearly reflect all of its acts and transactions, and which shall at all times be subject to examination by the Department or his duly authorized representatives, and to provide to the Department copies of the minutes of all meetings, duly certified by an authorized officer of the Board.
9. To elect, from the membership of the Board, a Chairman, Vice Chairman, and Secretary-Treasurer and such other officers as may be appropriate.
10. To adopt such other rules for the conduct of the business of the Board as the Board may deem advisable.

11. To provide for the annual evaluation of the effectiveness of the Marketing Order programs, including, but not limited to, the establishment of measurable goals for the program at its inception and at all times thereafter. Such evaluations shall be conducted by an objective, third party and shall include, but not be limited to, an analysis of sales levels.

12. Receive, invest, and disburse funds pursuant to the provisions of Section 58845(d) and Article 10 of the Act.

13. To recommend to the Department the purchase of general liability insurance for this Marketing Order, pursuant to the provisions of Section 58714 of the Act.

14. To bring to the attention of the Department the actions of any other state or federal program which impacts upon or conflicts with the operation of this Order and/or the attainment of its objectives.

Section H. COMPENSATION AND EXPENSES OF MEMBERS OF THE BOARD

No compensation shall be provided any Board member for the performance of his/her duties and exercising his/her powers, however, Board members shall be reimbursed for any expenses incurred in performing his/her duties and exercising his/her powers under this Marketing Order. Nothing in this section shall prohibit any Board member from declining reimbursement for any expenses incurred in performing his/her duties and exercising his/her powers under this Marketing Order.

Section I. COMMITTEES OF THE BOARD

1. Committees. The Advisory Board may at any time recommend to the Department the establishment of committees and the appointment of members thereto to carry out duties and functions as delegated or assigned by the Board and shall be limited to those necessary to carry out the actions and policies of the Board. Committees may include persons not members of the Board. Any action taken by any committee shall be subject to approval by the Board and the Department.

2. Executive Committee. An Executive Committee shall be formed consisting of the Chairman, Vice Chairman, and Secretary -Treasurer of the Board.

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

Section J. PROCEDURE FOR BOARD

A quorum shall consist of not less than five (5) members. No actions relating to (a) the selection or dismissal of an administrative contractor or management personnel directly employed by the Board or (b) any program of advertising, promotion, research, and education of fluid milk products shall be valid unless approved by a two-thirds (2/3) vote of the total appointed Board. All other actions of the Board shall be valid if approved by a majority vote of the total appointed Board.

Section K. LIMITATION OF LIABILITY OF BOARD MEMBERS AND EMPLOYEES

Pursuant to the provisions of Section 58847 of the Act, the members of the Board, however selected and appointed, and while serving as members of the Board or of the committees established hereunder, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any fluid milk handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members 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, PROMOTION, RESEARCH, AND EDUCATION PROGRAMS

Section A. ADVERTISING AND PROMOTION PROGRAMS

Pursuant to the provisions of Section 58889 of the Act, as amended, the Board is authorized to develop programs of advertising, trade promotion, and public relations activities relating to fluid milk products, for consideration and approval by the Department; provided, that any such plans shall be directed toward increasing the sale of such products without reference to any private brand or trade name used by any handler of such products; and provided further, that no such advertising or promotion program for fluid milk products shall make use of any false or unwarranted claims in behalf of any such products, or disparage the quality, value, sale, or use of any other commodity.

The Board may provide for advertising and promotion programs that include (a) tie-in campaigns with other than dairy products defined in Division 15 of the Food and Agricultural Code and (b) cooperative advertising programs in which no fluid milk handler affected by the Marketing Order is involved.

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

Section B. RESEARCH PROGRAMS

As provided in Section 58892 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Department, for approval by the Department, programs of research relating to fluid milk products; provided that such programs of research shall be limited to those that directly relate to the development, implementation, or evaluation of advertising, promotion, or education programs for fluid milk products.

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

Section C. EDUCATIONAL PROGRAMS

Pursuant to the provisions of Section 58893 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Department for approval, programs of education relating to fluid milk products; provided that any such program will be designed and implemented in a manner coordinated with any educational programs operated by the Dairy Council of California and other dairy industry groups. Such programs may include programs designed to acquaint consumers with the safety and nutritional benefits of fluid milk products, and may also include educational programs designed to make available to handlers, retailers, health care professionals, the general public, and other interested groups the findings of research programs carried out pursuant to the provisions of Section B of this Article.

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

Section D. ALLOCATION OF EXPENDITURES

To the maximum extent practicable, the Board shall allocate expenditures on advertising, promotion, research and education among population centers of the State in proportion to the share of sales of fluid milk products represented by each of the several population centers.

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

In order to carry out any advertising, promotion, research, or education program authorized by this Article, the Board is authorized to enter into any necessary contracts with public or private agencies or persons qualified to assist in the formulation and conduct of any such programs or plans, and to prepare estimates of the costs of any such programs. Any such contract shall clearly state the services to be performed and the estimated costs to be incurred and shall provide for an accurate accounting of all actual expenditures under such contract. Any such contract may include invitations, pursuant to Section 58850 of the Act, to persons to serve in an advisory capacity to the Board.

Section F. APPROVAL BY THE DEPARTMENT

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

ARTICLE IV

FINANCIAL PROVISIONS

Section A. ASSESSMENT RATE

1. For the period of February 1, 1996 through January 31, 1999, each fluid milk handler in this State shall pay to the Department an assessment at the rate of three (3) cents per gallon of fluid milk products sold in the state of California.

2. During the period of February 1, 1996 through January 31, 1999, the rates shall not be increased above three (3) cents per gallon of fluid milk products; provided, however, it may be reduced by the Department for any specific year if the Board so recommends by a vote of not less than two-thirds (2/3) majority of the total appointed Board. Any decision to reduce the assessment shall be based upon a determination that the prescribed assessment will generate revenue in excess of that needed to effectively carry out the provisions of the Marketing Order.

3. In the event the Marketing Order is approved for an extension beyond January of 1999 as provided in Article XIII, each fluid milk handler in this State shall pay to the Department an assessment at the rate of three (3) cents per gallon of fluid milk products, beginning on February 1, 1999 and continuing as long as the Marketing Order is in effect, unless the assessment is modified pursuant to Section B of this Article.

4. The monthly volume of fluid milk products sold during the time this Marketing Order is in effect shall be reported to the Department by the fluid milk handler in a manner prescribed by the Department, provided that each fluid milk handler shall be allowed no less than fifteen (15) days after the last day of the month in which the fluid milk products were sold to submit such reports.

5. In lieu of assessment rate applied on a per gallon basis, the Board may recommend and the Department may approve a rate based upon hundredweights of finished product or pounds of fat, solids-not-fat, and/or fluid carrier, provided such rate results in the same total monetary collection statewide and further provided that such rate includes all fluid milk products and all fluid milk handlers.

6. Assessments made pursuant to this Marketing Order shall in no event exceed the maximum assessment rates provided in Article 10 of the Act.

Section B. MODIFICATION OF ASSESSMENT RATE

1. Beginning February 1, 1999, the assessment rate may not be increased above three (3) cents per gallon of fluid milk products, except as provided herein.

2. For the period beginning February 1, 1999, the Board may recommend and the Department may approve an increase in the assessment rate above three (3) cents per gallon of fluid milk products to a level not exceeding four (4) cents per gallon of fluid milk products sold in the State; provided, that no increase in the rate of assessment shall be made effective by the Department unless and until such proposed increase in the rate has been recommended by the Board to the Department on a vote of not less than two-thirds (2/3) majority of the total appointed members, and thereafter submitted by the Department to a vote of fluid milk handlers.

If a vote of fluid milk handlers upon the question of increasing the assessment rate is held and if the Department finds that of those voting, a majority of the handlers accounting for a majority of the voted volume, approve of the proposed increase in assessment rate, it may make the proposed increase effective upon fluid milk handlers. If not, it shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect.

3. The assessment rate prescribed in Section A of this Article, or any assessment rate established pursuant to Subsection 2 of Section B of this Article, may be reduced by the Department if the Board so recommends by a vote of not less than two-thirds (2/3) majority of the total appointed Board. Any decision to reduce the assessment shall be based upon a determination that the prescribed assessment will generate revenue in excess of that needed to effectively carry out the provisions of the Marketing Order.

Section C. ADJUSTMENT OF ASSESSMENT WHEN FEDERAL PROGRAM IN EFFECT

1. If during any time that any assessment is in effect under this Marketing Order, a mandatory national program for fluid milk processors involving any one or more of advertising, promotion, research, or education is ordered, the assessment rate provided for by this Marketing Order shall be reduced by an amount equivalent to the assessment rate established for the national program. In such instance, the Board and the Department shall make a maximum effort to secure a credit or rebate of at least 80% from the national program for the State program so that the State program shall have total funds available to it equal as closely as possible to the funds that would have been generated in the absence of the national program.

The reduction in the assessment rate for the State program is intended to offset the assessments paid by California processors to the national program, but only for those products which are assessed under both programs. There is no accounting by the State program for assessments paid on any additional products which are assessed only under the national program.

Section D. COLLECTION OF ASSESSMENTS

1 Each fluid milk handler shall be liable for the payments of assessments levied hereunder upon fluid milk products produced by him/her.

2 The Department shall prescribe procedures with respect to the application and collection of assessments authorized herein.

Section E. PENALTIES FOR NONPAYMENT OF ASSESSMENTS

To any assessment unpaid within the time specified by the Department, the Department may add penalties and interest as prescribed in the Act.

Section F. BUDGETS

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

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

3. All monies derived from the assessment of fluid milk handlers pursuant to the provisions of this Marketing Order shall be expended exclusively for programs of advertising, promotion, research, or education applicable to fluid milk products as authorized herein, and in the Act, and for the necessary expenses incurred by the Board and the Department in the administration of such programs and this Marketing Order, and shall not be diverted to any other usages within the Department of Food and Agriculture or otherwise.

Section G. REFUNDS

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

Nothing in this Section shall preclude the Board and Department from carrying over assessments collected in any fiscal year to a following fiscal year in which the Marketing Order is in effect, if such carryover will effectuate the purposes of this Marketing Order.

Section H. BONDS

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

ARTICLE V

GENERAL PROVISIONS

Section A. ADMINISTRATIVE RULES AND REGULATIONS

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

Section B. COORDINATION WITH OTHER STATE OR FEDERAL PROGRAMS

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

ARTICLE VI

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

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

Section B. REPORTS TO THE BOARD

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

Section C. CONFIDENTIAL INFORMATION

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

Section D. IMMUNITY

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

ARTICLE VII

APPEALS

Section A. APPEALS

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

Section B. EFFECT OF APPEAL

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

ARTICLE VIII

RELATION TO OTHER LEGISLATION

Section A. ANTITRUST LAWS

This Marketing Order is issued in effectuation of the public policy and purposes of the Act, as stated in Sections 58652 and 58654, and in furtherance of trade. Consistent with the provision of Section 58655 of the Act, proof that any act of the Board was taken or committed in compliance with the provisions of this Marketing Order, and in furtherance of the purposes and provisions stated, shall be a complete defense to any civil or criminal action or proceeding asserting violation by the Board or any of its members of the Cartwright Act (Sections 16600 et seq. of the California Business and Professions Code), the Unfair Practices Act (Sections 17000 et seq. of the Business and Professions Code), the Dairy Products Unfair Practices Act (commencing with Section 61301 of the Food and Agricultural Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade.

ARTICLE IX

DURATION OF IMMUNITIES

Section A. DURATION

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

ARTICLE X

AGENTS

Section A. AGENTS

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

ARTICLE XI

DEROGATION

Section A. DEROGATION

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

ARTICLE XII

SEPARABILITY

Section A. SEPARABILITY

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

ARTICLE XIII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

1. This Marketing Order shall continue in effect until suspended or terminated by the Secretary or by operation of law in accordance with the provisions of the Act; provided that during the 1998-1999 fiscal year and every third fiscal year thereafter, the Department shall conduct a vote of fluid milk handlers to determine whether or not the Marketing Order should be continued or terminated. The Marketing Order may be continued if the Department finds that of those voting, a majority of the handlers accounting for a majority of the voted volume favor continuation..

2 In the event the Marketing order is not extended assessments as provided in Article IV of this Marketing Order shall continue in effect only through January of the respective fiscal year. Additionally, the Board's office may continue to operate for an additional six months in order to provide for an efficient dissolution of the business of the Board and the Marketing Order, including, at the discretion of the Board and the Secretary, the expenditure of any funds remaining in a manner consistent with the provisions of the Marketing Order.

Section B. SUSPENSION OR TERMINATION

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

2. Petition for Termination. If the Department receives a petition from fluid milk handlers of the State pursuant to the provisions of Section 59083 of the Act requesting the Department to conduct a hearing upon the question of continuation of this Marketing Order, the Department shall conduct such a hearing as provided in the Act, and if it finds, from the testimony received at said hearing that there is serious question whether fluid milk handlers support continuation of the Marketing Order, it shall submit the question to fluid milk handlers through the referendum procedure as provided in Subsection C of Section 58991 of the Act. If such fluid milk handlers indicate by such method their desire to continue this Marketing Order, the Department shall continue it, if not, the Department shall terminate this Marketing Order; provided, that no such termination shall become effective until the close of the fiscal year then current.

3. Mandatory Termination. The Department shall terminate this Marketing Order if it receives from a requisite number of handlers subject to the Order, pursuant to Section 59082 of the Act, a written request that the Order be terminated.

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 provisions of this Marketing Order not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of any provision of this Marketing Order or any rule or regulation issued hereunder, occurring prior to the effective time of such amendment suspension, or termination, or (c) affect or impair any rights or remedies of the Department or any person with respect to any such violation.

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Marketing Order for Advertising, Promotion, Research, and Education
Relating to Fluid Milk Products in California

Effective January 1, 1993
Incorporating Amendments Through May 26, 2004

MARKETING ORDER FOR ADVERTISING, PROMOTION, RESEARCH, AND EDUCATION RELATING TO FLUID MILK PRODUCTS IN CALIFORNIA

Originally Effective January 1, 1993
With Amendments Through May 26, 2004

The following amendments were made effective 4/1/93:

- Fluid milk sales to schools were temporarily exempted.
- Definition of "fluid milk products" was clarified so as to specifically exclude raw milk products.
- Actual calendar dates replaced unspecified dates that referenced the effective date.

The following amendments were made effective 9/1/95:

- Reapproval procedure was changed from a hearing every 5 years to an industry vote every 3 years.
- Ongoing assessment rate was set at 3 cents per gallon.
- Staggered terms and term limits were eliminated.
- Assessment credit provisions pertaining to federal fluid milk promotion program were clarified.

The following amendment was made effective 11/19/98:

- Allow for up to two individuals from one fluid milk handler entity to be on the Board.

The following amendment was made effective 1/28/99

- Added a "member-at-large" position to the Board.
- Quorum requirement was changed to a majority of the Board
- Removed the 2/3 Board vote requirement for Board actions pertaining to advertising, promotion, research and education of fluid milk products.

The following amendment was made effective 5/26/04

- Added a second "member-at-large" position to the Board.

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Marketing Order, the following terms have the following meanings:

1. "Department" means the Department of Food and Agriculture of the State of California.
2. "Act" means the California Marketing act of 1937, being Part 2, Chapter 1 of the Food and Agricultural Code, as amended.
3. "Person" means any individual, partnership, corporation, association, or any other business unit.
4. "Milk" means the lacteal secretion that is obtained from the udders of cows.
5. "Fluid Milk Products" mean the following Class 1 products that are both processed (pasteurized, ultrapasteurized, or UHT processed) and sold within the State of California: flavored and unflavored forms of whole, lowfat, extra light, and nonfat milks, as well as any of these products with added cultures and lactose-reduced versions of any of these products. Fluid milk products do not include products (a) resembling fluid milk products and sold in competition with such dairy products but in which all or part of the milkfat or nonfat milk solids have been replaced by non-dairy ingredients, (b) processed in the State but sold outside the State, or (c) sold within the State but processed outside the State.

6. "Fluid Milk Handler" and "Handler" as used herein are synonymous terms which mean any person, who, as owner, agent, or broker, purchases or otherwise acquires possession or control of milk or any of its components from a producer or a producer-handler, in the form of unprocessed milk or cream, or in any other unprocessed form, and processes it in a plant located within the state of California into one or more fluid milk products. For the purpose of this Marketing Order, fluid milk handler shall include any person who produces milk and uses such production, or any part thereof, for the processing of one or more fluid milk products.

7. "Fiscal Year" means the period beginning February 1 of any year and extending through January 31 of the following year.

8. "Board", "Advisory Board", and "Processor Advisory Board", are synonymous terms that mean the California Milk Processor Board established pursuant to this Marketing Order.

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

ARTICLE II

CALIFORNIA MILK PROCESSOR BOARD AND COMMITTEES

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE

1. An industry advisory board to be known as the California Milk Processor Board has been established by the Department to assist in the administration of this Marketing Order. This Board shall be composed of eleven (11) members all of whom shall be handlers. (Amended May 26, 2004)

2. Members of the Board shall be appointed by the Department from nominations received for that purpose.

3. The term of office for Board members shall be three (3) years, beginning January 1 of the fiscal year in which they are appointed and continuing through December 31 of the third fiscal year following their appointment. Members shall serve for the duration of their term or until their successor has been duly appointed and qualified.

4. Nominations and appointment of fluid milk handlers as members of the Board shall be from the three (3) districts and two (2) members-at-large as described hereinafter. (Amended May 26, 2004)

District Number 1 - "Northern California" - Shall be composed of all Counties north of and including Monterey, San Benito, Merced, Madera, Tuolumne, and Alpine. Representation shall be three (3) fluid milk handlers.

District Number 2 - "South Valley" - Shall be composed of the Counties of Fresno, Kings, Tulare, and Kern. Representation shall be one (1) fluid milk handler.

District Number 3 – “Southern California” - Shall be composed of the Counties of Mono, Inyo, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial. Representation shall be five (5) fluid milk handlers.

Member-at-Large – In addition to the District membership, the Board by a majority vote shall nominate and the Department may appoint not more than two (2) members-at-large, who will be selected without regard to districts. The term of office for the members-at-large shall be three (3) years beginning January 1 of the fiscal year in which he/she is appointed and continuing through December 31 of the succeeding third fiscal year, or until his/her successor has been duly appointed and qualified. (Amended May 26, 2004)

Section B. MODIFICATION OF DISTRICTS AND REPRESENTATION

In the event of changes in the sales of fluid milk products in the three districts and in order to maintain reasonably equitable representation upon the Board for all fluid milk handlers, the Board may from time to time recommend to the Department, and the Department may approve modifications of districts or representation therefrom; provided, that each district shall have at least one (1) Board member, and provided further, that any such modifications shall be coordinated with terms of office of members so that nominations may be made from the districts as modified and appointments made in accordance therewith. Any said modification of districts or representation shall be a minor amendment as defined in the Act.

Section C. NOMINATION OF MEMBERS OF THE BOARD

1. Not later than November 1 of any fiscal year in which members of the Board must be appointed, the Department shall distribute nomination forms to every fluid milk handler subject to the Marketing Order, requesting nominations for members to serve on the Board, and specifying a date after which nominations will not be accepted. Nomination forms must be signed by the person submitting the nomination. The Department shall ascertain that all persons nominated are willing to serve.

2. There shall be no more than two (2) nominees from a handler subject to the Marketing Order. In the event more than two (2) individuals are nominated from the same fluid milk handler, the Department shall ascertain which two nominees the handler wishes to represent the company on the ballot. (Amended 11/19/1998)

Section D. APPOINTMENT OF MEMBERS

1. The Department shall prepare separate ballots for each district to include the names of all nominees for that district qualified pursuant to Subsection 2 of Section C and Section E.

2. Not later than December 15 of a fiscal year in which members of the Board must be appointed, a district ballot shall be mailed to all handlers subject to this Marketing Order that operate a plant or plants in that district.

3. Fluid milk handlers who operate a plant in more than one district shall receive a ballot for each district in which they operate a plant or plants.

4. The Department shall prescribe a date by which ballots shall be returned, such date to be no later than December 31 of the fiscal year in which members of the Board must be appointed.

5. The Department shall select and appoint members from the nominations received and with due consideration given to the results of the balloting conducted in each district.

Section E. QUALIFICATION OF BOARD MEMBERS

1. Each person appointed by the Department for membership on the Board shall be a fluid milk handler, or a full time employee of a fluid milk handler, and shall qualify also by filing with the Department a written acceptance and such other necessary papers as the Department may require.

Section F. INTERIM FILLING OF VACANCIES

To fill any vacancy occasioned by failure of any person appointed as a member to qualify, or in the event of death, removal, resignation, or disqualification of any member of the Board, a successor shall be appointed from among persons remaining on the list of eligible nominees established during the immediately preceding nomination process; provided, that if no such nominees remain on such list, the remaining members of the Board may nominate qualified persons eligible for appointment by the Department to fill such vacancies. All vacancies filled by the Department pursuant to this Section shall be only for the remainder of the term of such vacant membership.

Section G. DUTIES AND POWERS OF THE BOARD

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

1. To administer the provisions of this Marketing Order.
2. To recommend to the Department annually, and more frequently as may be required, programs of advertising, promotion, research, and education of fluid milk products as authorized in Article III of this Marketing Order.
3. To recommend to the Department administrative rules and regulations pertaining to the administration and enforcement of this Marketing Order.
4. To receive and report to the Department violations of this Marketing Order.
5. To recommend to the Department amendments to this Marketing Order.
6. To recommend to the Department annually budgets covering estimated income, administrative expenses of the Board and the Department, and the expenses to be incurred under proposed programs of advertising, promotion, research, and education.
7. To provide for administration of the Marketing Order in any manner chosen by the Board, including, but not limited to, entering into a contract with another organization to administer the Board's affairs or the hiring of a Manager and such other employees as it may deem necessary to carry out its functions. The Board shall have the power to fix the salaries of any employees as well as to define their duties.
8. To keep minutes, books, and records which clearly reflect all of its acts and transactions, and which shall at all times be subject to examination by the Department or his duly authorized

representatives, and to provide to the Department copies of the minutes of all meetings, duly certified by an authorized officer of the Board.

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

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

11. To provide for the annual evaluation of the effectiveness of the Marketing Order programs, including, but not limited to, the establishment of measurable goals for the program at its inception and at all times thereafter. Such evaluations shall be conducted by an objective, third party and shall include, but not be limited to, an analysis of sales levels.

12. Receive, invest, and disburse funds pursuant to the provisions of Section 58845(d) and Article 10 of the Act.

13. To recommend to the Department the purchase of general liability insurance for this Marketing Order, pursuant to the provisions of Section 58714 of the Act.

14. To bring to the attention of the Department the actions of any other state or federal program which impacts upon or conflicts with the operation of this Order and/or the attainment of its objectives.

Section H. COMPENSATION AND EXPENSES OF MEMBERS OF THE BOARD

No compensation shall be provided any Board member for the performance of his/her duties and exercising his/her powers, however, Board members shall be reimbursed for any expenses incurred in performing his/her duties and exercising his/her powers under this Marketing Order. Nothing in this section shall prohibit any Board member from declining reimbursement for any expenses incurred in performing his/her duties and exercising his/her powers under this Marketing Order.

Section I. COMMITTEES OF THE BOARD

1. Committees. The Advisory Board may at any time recommend to the Department the establishment of committees and the appointment of members thereto to carry out duties and functions as delegated or assigned by the Board and shall be limited to those necessary to carry out the actions and policies of the Board. Committees may include persons not members of the Board. Any action taken by any committee shall be subject to approval by the Board and the Department.

2. Executive Committee. An Executive Committee shall be formed consisting of the Chairman, Vice Chairman, and Secretary -Treasurer of the Board.

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

Section J. PROCEDURE FOR BOARD

A quorum shall consist of not less than a majority of the members of the members on the Board. No actions relating to the selection or dismissal of an administrative contractor or management personnel directly employed by the Board shall be valid unless approved by a two-thirds (2/3) vote of the total appointed Board. All other actions of the Board shall be valid if approved by a majority vote of the members present. (Amended January 28, 1999)

Section K. LIMITATION OF LIABILITY OF BOARD MEMBERS AND EMPLOYEES

Pursuant to the provisions of Section 58847 of the Act, the members of the Board, however selected and appointed, and while serving as members of the Board or of the committees established hereunder, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any fluid milk handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members 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, PROMOTION, RESEARCH, AND EDUCATION PROGRAMS

Section A. ADVERTISING AND PROMOTION PROGRAMS

Pursuant to the provisions of Section 58889 of the Act, as amended, the Board is authorized to develop programs of advertising, trade promotion, and public relations activities relating to fluid milk products, for consideration and approval by the Department; provided, that any such plans shall be directed toward increasing the sale of such products without reference to any private brand or trade name used by any handler of such products; and provided further, that no such advertising or promotion program for fluid milk products shall make use of any false or unwarranted claims in behalf of any such products, or disparage the quality, value, sale, or use of any other commodity.

The Board may provide for advertising and promotion programs that include (a) tie-in campaigns with other than dairy products defined in Division 15 of the Food and Agricultural Code and (b) cooperative advertising programs in which no fluid milk handler affected by the Marketing Order is involved.

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

Section B. RESEARCH PROGRAMS

As provided in Section 58892 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Department, for approval by the Department, programs of research relating to fluid milk products; provided that such programs of research shall be limited to those that directly relate to the development, implementation, or evaluation of advertising, promotion, or education programs for fluid milk products.

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

Section C. EDUCATIONAL PROGRAMS

Pursuant to the provisions of Section 58893 of the Act, as amended, the Board is authorized to prepare from time to time and to present to the Department for approval, programs of education relating to fluid milk products; provided that any such program will be designed and implemented in a manner coordinated with any educational programs operated by the Dairy Council of California and other dairy industry groups. Such programs may include programs designed to acquaint consumers with the safety and nutritional benefits of fluid milk products, and may also include educational programs designed to make available to handlers, retailers, health care professionals, the general public, and other interested groups the findings of research programs carried out pursuant to the provisions of Section B of this Article.

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

Section D. ALLOCATION OF EXPENDITURES

To the maximum extent practicable, the Board shall allocate expenditures on advertising, promotion, research and education among population centers of the State in proportion to the share of sales of fluid milk products represented by each of the several population centers.

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

In order to carry out any advertising, promotion, research, or education program authorized by this Article, the Board is authorized to enter into any necessary contracts with public or private agencies or persons qualified to assist in the formulation and conduct of any such programs or plans, and to prepare estimates of the costs of any such programs. Any such contract shall clearly state the services to be performed and the estimated costs to be incurred and shall provide for an accurate accounting of all actual expenditures under such contract. Any such contract may include invitations, pursuant to Section 58850 of the Act, to persons to serve in an advisory capacity to the Board.

Section F. APPROVAL BY THE DEPARTMENT

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

ARTICLE IV

FINANCIAL PROVISIONS

Section A. ASSESSMENT RATE

1. For the period of February 1, 1996 through January 31, 1999, each fluid milk handler in this State shall pay to the Department an assessment at the rate of three (3) cents per gallon of fluid milk products sold in the state of California.

2. During the period of February 1, 1996 through January 31, 1999, the rates shall not be increased above three (3) cents per gallon of fluid milk products; provided, however, it may be reduced by the Department for any specific year if the Board so recommends by a vote of not less than two-thirds (2/3) majority of the total appointed Board. Any decision to reduce the assessment shall be based upon a determination that the prescribed assessment will generate revenue in excess of that needed to effectively carry out the provisions of the Marketing Order.

3. In the event the Marketing Order is approved for an extension beyond January of 1999 as provided in Article XIII, each fluid milk handler in this State shall pay to the Department an assessment at the rate of three (3) cents per gallon of fluid milk produces, beginning on February 1, 1999 and continuing as long as the Marketing Order is in effect, unless the assessment is modified pursuant to Section B of this Article.

4. The monthly volume of fluid milk products sold during the time this Marketing Order is in effect shall be reported to the Department by the fluid milk handler in a manner prescribed by the Department, provided that each fluid milk handler shall be allowed no less than fifteen (15) days after the last day of the month in which the fluid milk products were sold to submit such reports.

5. In lieu of assessment rate applied on a per gallon basis, the Board may recommend and the Department may approve a rate based upon hundredweights of finished product or pounds of fat, solids-not-fat, and/or fluid carrier, provided such rate results in the same total monetary collection statewide and further provided that such rate includes all fluid milk products and all fluid milk handlers.

6. Assessments made pursuant to this Marketing Order shall in no event exceed the maximum assessment rates provided in Article 10 of the Act.

Section B. MODIFICATION OF ASSESSMENT RATE

1. Beginning February 1, 1999, the assessment rate may not be increased above three (3) cents per gallon of fluid milk products, except as provided herein.

2. For the period beginning February 1, 1999, the Board may recommend and the Department may approve an increase in the assessment rate above three (3) cents per gallon of fluid milk products to a level not exceeding four (4) cents per gallon of fluid milk products sold in the State; provided, that no increase in the rate of assessment shall be made effective by the Department unless and until such proposed increase in the rate has been recommended by the Board to the Department on a vote of not less than two-thirds (2/3) majority of the total appointed members, and thereafter submitted by the Department to a vote of fluid milk handlers.

If a vote of fluid milk handlers upon the question of increasing the assessment rate is held and if the Department finds that of those voting, a majority of the handlers accounting for a majority of the voted volume, approve of the proposed increase in assessment rate, it may make the proposed increase effective upon fluid milk handlers. If not, it shall not make such increase effective, in which case the assessment rate then in effect shall remain in effect.

3. The assessment rate prescribed in Section A of this Article, or any assessment rate established pursuant to Subsection 2 of Section B of this Article, may be reduced by the Department if the Board so recommends by a vote of not less than two-thirds (2/3) majority of the total appointed Board. Any decision to reduce the assessment shall be based upon a

determination that the prescribed assessment will generate revenue in excess of that needed to effectively carry out the provisions of the Marketing Order.

Section C. ADJUSTMENT OF ASSESSMENT WHEN FEDERAL PROGRAM IN EFFECT

1. If during any time that any assessment is in effect under this Marketing Order, a mandatory national program for fluid milk processors involving any one or more of advertising, promotion, research, or education is ordered, the assessment rate provided for by this Marketing Order shall be reduced by an amount equivalent to the assessment rate established for the national program. In such instance, the Board and the Department shall make a maximum effort to secure a credit or rebate of at least 80% from the national program for the State program so that the State program shall have total funds available to it equal as closely as possible to the funds that would have been generated in the absence of the national program.

The reduction in the assessment rate for the State program is intended to offset the assessments paid by California processors to the national program, but only for those products which are assessed under both programs. There is no accounting by the State program for assessments paid on any additional products that are assessed only under the national program.

Section D. COLLECTION OF ASSESSMENTS

1 Each fluid milk handler shall be liable for the payments of assessments levied hereunder upon fluid milk products produced by him/her.

2 The Department shall prescribe procedures with respect to the application and collection of assessments authorized herein.

Section E. PENALTIES FOR NONPAYMENT OF ASSESSMENTS

To any assessment unpaid within the time specified by the Department, the Department may add penalties and interest as prescribed in the Act.

Section F. BUDGETS

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

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

3. All monies derived from the assessment of fluid milk handlers pursuant to the provisions of this Marketing Order shall be expended exclusively for programs of advertising, promotion, research, or education applicable to fluid milk products as authorized herein, and in the Act, and for the necessary expenses incurred by the Board and the Department in the administration of such programs and this Marketing Order, and shall not be diverted to any other usages within the Department of Food and Agriculture or otherwise.

Section G. REFUNDS

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

Nothing in this Section shall preclude the Board and Department from carrying over assessments collected in any fiscal year to a following fiscal year in which the Marketing Order is in effect, if such carryover will effectuate the purposes of this Marketing Order.

Section H. BONDS

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

ARTICLE V

GENERAL PROVISIONS

Section A. ADMINISTRATIVE RULES AND REGULATIONS

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

Section B. COORDINATION WITH OTHER STATE OR FEDERAL PROGRAMS

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

ARTICLE VI

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

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

Section B. REPORTS TO THE BOARD

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

Section C. CONFIDENTIAL INFORMATION

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

Section D. IMMUNITY

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

ARTICLE VII

APPEALS

Section A. APPEALS

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

Section B. EFFECT OF APPEAL

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

ARTICLE VIII

RELATION TO OTHER LEGISLATION

Section A. ANTITRUST LAWS

This Marketing Order is issued in effectuation of the public policy and purposes of the Act, as stated in Sections 58652 and 58654, and in furtherance of trade. Consistent with the provision of Section 58655 of the Act, proof that any act of the Board was taken or committed in compliance with the provisions of this Marketing Order, and in furtherance of the purposes and provisions stated, shall be a complete defense to any civil or criminal action or proceeding asserting violation by the Board or any of its members of the Cartwright Act (Sections 16600 et seq. of the California Business and Professions Code), the Unfair Practices Act (Sections 17000 et seq. of the Business and Professions Code), the Dairy Products Unfair Practices Act (commencing with Section 61301 of the Food and Agricultural Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade.

ARTICLE IX

DURATION OF IMMUNITIES

Section A. DURATION

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

ARTICLE X

AGENTS

Section A. AGENTS

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

ARTICLE XI

DEROGATION

Section A. DEROGATION

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

ARTICLE XII

SEPARABILITY

Section A. SEPARABILITY

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

ARTICLE XIII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

1. This Marketing Order shall continue in effect until suspended or terminated by the Secretary or by operation of law in accordance with the provisions of the Act; provided that during the 1998-1999 fiscal year and every third fiscal year thereafter, the Department shall conduct a vote of fluid milk handlers to determine whether or not the Marketing Order should be continued or terminated. The Marketing Order may be continued if the Department finds that of those voting, a majority of the handlers accounting for a majority of the voted volume favor continuation.

2. In the event the Marketing order is not extended assessments as provided in Article IV of this Marketing Order shall continue in effect only through January of the respective fiscal year. Additionally, the Board's office may continue to operate for an additional six months in order to provide for an efficient dissolution of the business of the Board and the Marketing Order, including, at the discretion of the Board and the Secretary, the expenditure of any funds remaining in a manner consistent with the provisions of the Marketing Order.

Section B. SUSPENSION OR TERMINATION

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

2. Petition for Termination. If the Department receives a petition from fluid milk handlers of the State pursuant to the provisions of Section 59083 of the Act requesting the Department to conduct a hearing upon the question of continuation of this Marketing Order, the Department shall conduct such a hearing as provided in the Act, and if it finds, from the testimony received at said hearing that there is serious question whether fluid milk handlers support continuation of the Marketing Order, it shall submit the question to fluid milk handlers through the referendum procedure as provided in Subsection C of Section 58991 of the Act. If such fluid milk handlers indicate by such method their desire to continue this Marketing Order, the Department shall continue it, if not, the Department shall terminate this Marketing Order; provided, that no such termination shall become effective until the close of the fiscal year then current.

3. Mandatory Termination. The Department shall terminate this Marketing Order if it receives from a requisite number of handlers subject to the Order, pursuant to Section 59082 of the Act, a written request that the Order be terminated.

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 provisions of this Marketing Order not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of any provision of this Marketing Order or any rule or regulation issued hereunder, occurring prior to the effective time of such amendment suspension, or termination, or (c) affect or impair any rights or remedies of the Department or any person with respect to any such violation.