



AGENDA

California Avocado Commission Governance Committee Meeting

Meeting Information

Date: May 15, 2024

Time: 10:00 a.m.

Location: Hybrid Meeting

Physical Meeting Location:
United Water Conservation District
1701 Lombard St
Oxnard, CA 93030

Web/Teleconference URL:

<https://californiaavocado.zoom.us/j/83055592709?pwd=V3RKcmpzampOYWNI94Qm9PRVVUdz09>

Conference Call Number: (669) 900-6833

Meeting ID: 830 5559 2709

Passcode: 722219

Meeting materials will be posted online at least 24 hours prior to the meeting at:
<https://www.californiaavocadogrowers.com/commission/meeting-agendas-minutes>

Committee Member Attendance

As of Tuesday, May 14, 2024, the following Committee members have advised the Commission they will participate in this meeting:

Victor Araiza
Robert Jackson
Jamie Johnson
Rachael Laenen

| Time | Item |
|-------------------|--|
| 10:00 a.m. | <ol style="list-style-type: none"> 1. Call to Order <ol style="list-style-type: none"> a. Roll Call/Quorum b. Introductions 2. Opportunity for Public Comment Any person may address the Board at this time on any subject within the jurisdiction of the California Avocado Commission. 3. Consent Calendar <ol style="list-style-type: none"> a. Consider approval of Governance Committee meeting minutes of May 9, 2024 4. Discussion and Possible Action Items <ol style="list-style-type: none"> a. CAC assessment rate structure b. Definition of producer c. Board composition d. CAC bylaws |
| 12:00 p.m. | <ol style="list-style-type: none"> 5. Adjourn Meeting |

Disclosures

The times listed for each agenda item are estimated and subject to change. It is possible that some of the agenda items may not be able to be discussed prior to adjournment. Consequently, those items will be rescheduled to appear on a subsequent agenda. All meetings of the California Avocado Commission are open to the public and subject to the Bagley-Keene Open Meeting Act.

All agenda items are subject to discussion and possible action. For more information, or to make a request regarding a disability-related modification or accommodation for the meeting, please contact April Aymami at 949-341-1955, California Avocado Commission, 12 Mauchly, Suite L, Irvine, CA 92618, or via email at aaymami@avocado.org. Requests for disability-related modification or accommodation for the meeting should be made at least 48 hours prior to the meeting time. For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. This meeting schedule notice and agenda is available on the internet at <https://www.californiaavocadogrowers.com/commission/meeting-agendas-minutes> and <http://it.cdfa.ca.gov/igov/postings/detail.aspx?type=Notices>.

If you have questions on the above agenda, please contact April Aymami at aaymami@avocado.org or 949-341-1955.

Summary Definition of Conflict of Interest

It is each member's and alternate's responsibility to determine whether they have a conflict of interest and whether they should excuse themselves from a particular discussion or vote during a meeting. To assist you in this evaluation, the following *Summary Definition of Conflict of Interest* may be helpful.

A Commission *member or employee* has a conflict of interest in a decision of the Commission if it is reasonably foreseeable that the decision will have a material effect, financial or otherwise, on the member or employee or a member of his or her immediate family that is distinguishable from its effect on all persons subject to the Commission's jurisdiction.

No Commission member or employee shall make, or participate in making, any decision in which he or she knows or should know he or she has a conflict of interest.

No Commission member or employee shall, in any way, use his or her position to influence any decision in which he or she knows or should know he or she has a conflict of interest.



COMMITTEE ACTION

ITEM 3: CONSENT CALENDAR: CONSIDER APPROVAL OF GOVERNANCE COMMITTEE MEETING MINUTES OF APRIL 23, 2024 AND MAY 9, 2024

SUMMARY:

The minutes of the Governance Committee meeting of April 23, 2024 were tabled to allow for requested changes to be made prior to approval. Attached for the Committee's review and approval are the revised redline version of the minutes from the April 23, 2024 Governance Committee meeting, as well as minutes from the May 9, 2024 meeting.

FISCAL ANALYSIS:

- Not applicable

COMMITTEE OPTIONS:

- Approve minutes as presented
- Amend minutes
- Take no action

STAFF RECOMMENDATION:

- Approve minutes as presented

EXHIBITS / ATTACHMENTS:

- Minutes of the Governance Committee meeting of April 23, 2024
- Minutes of the Governance Committee meeting of May 9, 2024

**CALIFORNIA AVOCADO COMMISSION
GOVERNANCE COMMITTEE MINUTES
April 23, 2024**

A meeting of the California Avocado Commission (CAC) Governance Committee was held on April 23, 2024 at 10:00 a.m. with the following people present:

MEMBERS PRESENT

Victor Araiza
John Berns
Robert Jackson
Jamie Johnson
Rachael Laenen
Jason Cole, *CAC Chairman Ex-officio*

STAFF PRESENT

April Aymami
Ken Melban
Terry Splane
Cristina Wede

GUESTS PRESENT

Dan Coxe
Rob Grether
Jessica Hunter
Ohannes Karaoghlanian
Doug O'Hara
Joanne Robles-Swanson

OFFICIALLY PRESENT

Ben Kardokus, *CDFA*
Samantha Mareno, *USDA*
George Soares, *Kahn, Soares & Conway*

ITEM #1 Call to Order

Roll Call/Quorum – Item 1.a.

Rachael Laenen, CAC Governance Committee chairperson, called the meeting to order 10:05 a.m. and established a quorum.

Introductions – Item 1.b.

April Aymami, CAC director of industry affairs and operations, announced the California Department of Food and Agriculture (CDFA) and US Department of Agriculture (USDA) representatives, CAC staff and known guests participating in the meeting.

ITEM # 2 Opportunity for Public Comment

Dan Coxe provided comments encouraging the to Commission come out in support of the Senators' letter regarding deforestation and that changes should be made to the CAC law so that importers are not allowed to serve on the CAC Board in producer seats.

ITEM # 3 CONSENT CALENDAR

Ms. Laenen introduced the consent calendar and asked for questions or comments.

MOTION:

The CAC Governance Committee approves the Consent Calendar, Item 3.a as presented.

(Jackson/Araiza) MSC Unanimous

MOTION 24-04-23-1

The Consent Calendar is included in the April 23, 2024 Governance Committee Packet and is attached to the permanent copy of these Minutes and identified as EXHIBIT A, Item 3.a.

ITEM # 4 Discussion Items

CAC assessment rate structure – Item 4.a

Ken Melban, CAC vice president of industry affairs and operations, provided an overview of the historical budget and assessment rate information provided in the packet, which demonstrated less variability from year to year if the CAC assessment rate was set as a flat rate per pound. Jason Cole, CAC chairman, provided additional explanation of the size profile analysis, which indicated that growers producing larger sized fruit at higher value, paying more under the current CAC assessment structure.

The Committee discussed the current assessment rate structure and idea for changing to a fixed rate per pound. There was support for a fixed rate as it provided growers and CAC the ability to better manage their budgets and that a fixed rate was more equitable for all growers, as it would be the same

rate no matter what size or value of the fruit being sold. Ben Kardokus with CDFA provided comments that nearly all commodity boards under CDFA purview have assessments as a fixed rate per pound. At the conclusion of discussion, Ms. Laenen stated that with consensus supporting a fixed rate assessment structure, management would work with legal to determine whether changes would need to be made to CAC law to implement this change, or if it could be addressed in the Commission's bylaws.

Definition of producer – Item 4.b

Ms. Laenen summarized the previous Committee discussion regarding the definition of a producer, specifically whether the 10,000-pound threshold was still a relevant baseline or if it should be changed. Mr. Melban reviewed the industry demographics, provided as part of the packet, which outlined the number of growers and production volume at various threshold levels.

There was robust discussion regarding this topic, with points made both in support of a change and cautious about proceeding. Those in favor of increasing the threshold stated this would provide additional financial relief to smaller growers. It was noted that while growers would lose the ability to vote in elections and serve on the CAC Board, exempt growers still have the benefits of CAC's advocacy efforts, online resources and can attend meetings and seminars. Those not in favor, expressed caution about the Commission becoming an elitist organization by excluding a large number of California growers and stated that they had heard from smaller growers that they want to vote in elections. Committee member John Berns read written comments supporting his position that a vote of the membership should be conducted before a change is made. A number of the Committee members stated that Commission Board members are elected to represent the interest of the constituents in their district, and were not supportive of an industry vote on the threshold.

Written Comments Entitled "No Assessment Threshold Change Without a Membership Vote" Read by John Berns are attached to the permanent copy of these Minutes and identified as EXHIBIT B.

Ms. Laenen suggested that with no clear consensus at this time on a definitive change, that management look at whether the CAC law could be changed to allow the Board to make changes in the future to the threshold through the CAC bylaws.

George Soares, CAC's legal counsel, stated ~~that he would work with management and CDFA to determine what could be done to shift some of the governance language in the existing CAC law to the bylaws, and would provide an update on these discussion at the next Governance Committee meeting. certain changes to laws governing Commissions and Boards are considered by CDFA to be major amendments, and in those cases, would be subject to a vote by constituents. Mr. Soares~~He noted said he would report back at the next meeting on discussions with CDFA regarding what constitutes major amendments and would require a referendum note. He advised that July 3, 2024 would be the last date CAC could propose changes to the law to be included in the current legislative session.

Due to lengthy discussion, the Governance Committee was not able to discuss Items 4.c, Board Composition, and 4.d, CAC bylaws, at this meeting.

ITEM # 5 Timeline/Schedule Next Meeting

The Committee agreed that in order to complete discussion on the remaining agenda items they would need to convene another meeting prior to their currently scheduled May 15, 2024 meeting. Mr. Melban stated that he would work with the Committee to schedule the next meeting the week of May 6, 2024.

ADJOURN MEETING

Ms. Laenen adjourned the meeting at 12:06 p.m.

Respectfully submitted,

April Aymami, CAC Director of Industry Affairs and Operations

EXHIBITS ATTACHED TO THE PERMANENT COPY OF THESE MINUTES

- Exhibit A April 23, 2024 Governance Committee Packet
- Exhibit B Written Comments Entitled “No Assessment Threshold Change Without a Membership Vote” Read by John Berns
- Exhibit C April 23, 2024 Governance Committee Meeting AB 2720 Roll Call Vote Tally Summary

Exhibit C

CALIFORNIA AVOCADO COMMISSION

AB 2720 Roll Call Vote Tally Summary
To be attached to the Meeting Minutes

| | | |
|---|--|---|
| Meeting Name: <i>Governance Committee Meeting</i> | Meeting Location: <i>Hybrid - In-Person (Oxnard)/Online (Zoom)</i> | Meeting Date: <i>April 23, 2024</i> |
|---|--|---|

| <i>Attendees Who Voted</i> | <i><u>MOTION</u></i> <i><u>24-04-23-1</u></i> |
|-----------------------------------|--|
| Rachael Laenen | Did not vote |
| Victor Araiza | Yea |
| John Berns | Yea |
| Robert Jackson | Yea |
| Jamie Johnson | Yea |
| <i>Outcome</i> | Unanimous |

**CALIFORNIA AVOCADO COMMISSION
GOVERNANCE COMMITTEE MINUTES
May 9, 2024**

A meeting of the California Avocado Commission (CAC) Governance Committee was held on May 9, 2024 at 10:00 a.m. with the following people present:

MEMBERS PRESENT

Victor Araiza
John Berns
Robert Jackson
Jamie Johnson
Rachael Laenen
Hayden McIntyre
Jason Cole, *CAC Chairman Ex-officio*

STAFF PRESENT

April Aymami
Ken Melban
Terry Splane
Cristina Wede

GUESTS PRESENT

Jennifer Bantle
Rick Carey
Dan Coxe
Ohannes Karaoghlanian
Matt Nelson
Joanne Robles-Swanson
Madison Spach
Duane Urquhart

OFFICIALLY PRESENT

Vickie Carpenter, *USDA*
Ben Kardokus, *CDFA*
George Soares, *Kahn, Soares & Conway*

Item #1 Call to Order

Roll Call/Quorum – Item 1.a.

Rachael Laenen, CAC Governance Committee chair, called the meeting to order 10:02 a.m. and established a quorum.

Introductions – Item 1.b.

April Aymami, CAC director of industry affairs and operations, announced the California Department of Food and Agriculture (CDFA) and US Department of Agriculture (USDA) representatives, CAC legal counsel, CAC staff and known guests participating in the meeting.

Item # 2 Opportunity for Public Comment

Duane Urquhart requested to make his public comment when the Committee discussion on that specific topic took place. After hearing split positions from Committee members on this request, Ms. Laenen stated that public comment on all agenda items would take place at this point in the meeting, and the Committee could follow up with questions of the speakers during discussion on that topic.

Mr. Urquhart provided comments regarding the producers serving on the CAC Board who also have a financial interest in handling operations. He noted that when CAC was created, handlers were not importing fruit, therefore there was not an issue with a producer having a financial interest in a packing house, as it was all California fruit. Mr. Urquhart suggested that the definition of a producer be changed to someone who exclusively farms in California and has no financial interest in handlers who import fruit.

Item # 3 Consent Calendar

Ms. Laenen introduced the consent calendar and asked for questions or comments. Committee member John Berns requested Item 4.b of the minutes be amended to reflect what he thought George Soares told the Committee regarding major amendments to the law requiring a vote of the membership. There was discussion between Mr. Berns and Mr. Soares about the comments made during the April 23 Committee meeting. With some uncertainty about exactly what was said, Ms. Aymami requested that no motion be made at this time so that revisions could be made and reviewed by Mr. Soares prior to the Committee's approval. There was agreement to table approval of the April 23 meeting minutes until the May 15, 2024 Governance Committee meeting.

The Consent Calendar is included in the May 9, 2024 Governance Committee Packet and is attached to the permanent copy of these Minutes and identified as EXHIBIT A, Item 3.a.

Item # 4 Update on Previous Discussion Items

Ben Kardokus, CDFA senior agricultural economist, provided the CDFA's position on the type of major amendments to law that require a referendum. With regard to CAC increasing the exemption threshold, there was precedence of other Commission's doing this, and a referendum was not required. He noted that CDFA would consider requiring a referendum if the change resulted in new growers being subject to the assessment but does not require a vote if changes to the language relieved growers of being charged the assessment.

Mr. Kardokus also reported on CAC's consideration to change the assessment structure to a flat rate per pound. He stated that the existing CAC language of a percent of value, not to exceed 6 ½ percent is standard language found in the California Marketing Act. Mr. Kardokus said that he did find other cases where programs had the same assessment language as CAC (percent of value), but the programs assessment rate was structured as a flat rate of volume. He noted that under CAC's current law, the Board could approve an assessment structure as a flat rate per pound, so long as it did not exceed the 6 ½ percent of value calculations. Mr. Kardokus stated that if CAC wished to change the language in the law, so long as it would not increase the current rate charged to producers, it would not constitute a major amendment and no referendum vote would be required by CDFA.

There was discussion about examples of other organizations that faced similar decisions CAC was considering, to which Mr. Kardokus stated the Cut Flower Commission had increased their grower threshold in the 90s, and that the California Prune Board assessment language referenced assessment maximums of the California Marketing Act, restated on a per ton basis. Mr. Kardokus referred Committee members to the *Policy Manual for Marketing Programs* and *California Marketing Act*, as substantiation for the CDFA's position on these topics. At the request of a Committee member, Mr. Soares weighed in with legal counsel's position that none of the changes currently being considered by the Commission would be considered major amendments, therefore would not require a referendum vote.

CAC assessment rate structure – Item 4.a

Ken Melban, CAC vice president of industry affairs and operations, reported that management had worked with legal counsel to provide draft language for changes to the CAC law based on direction received at the April 23 Governance Committee meeting. He noted that in some cases, draft changes had not yet been discussed, but were included as a starting point for discussion at this meeting.

The Committee discussed the draft changes to Section 67101 which added clarification to the law that the Commission could establish an assessment rate as a fixed rate or percentage of value. It was noted that the Commission could establish a fixed rate under the existing language, but this was being proposed to provide additional clarity to the Board on the options available when setting the annual assessment rate. There was discussion regarding the 6 ½ percent maximum and a suggestion to lower that amount, however consensus among the Committee was that the existing language was standard language taken from the California Marketing Act and that any changes to the law in this area could not be undone easily and should not be taken lightly. The consensus of the Committee was to provide a recommendation to the Board to accept revisions to Section 67101 of the CAC law as presented.

The CAC Law with Redline Revisions – DRAFT 5-7-24 is included in the May 9, 2024 Governance Committee Packet and is attached to the permanent copy of these Minutes and identified as EXHIBIT B.

Definition of producer – Item 4.b

Ms. Laenen reported that at the last Committee meeting consensus had not been reached regarding a change to the exemption volume identified in the CAC law, therefore direction had been given to management to explore language that would give the Board the authority to adjust the threshold volume without requiring further changes to CAC law.

The Committee discussed the proposed language, which would allow the Board to increase the threshold volume with a favorable two-thirds vote. There was support for providing flexibility to make this decision at the Board level without having to continually go back and make changes through the legislative process. It was noted that the proposed language actually strengthened the number of favorable votes needed by the Board to make this type of change, as currently, changes to the CAC law can be approved by a simple majority of the Board. Concern was raised about the potential for the Board to vote to disenfranchise a large number of California growers and the perception of CAC becoming an elitest organization. Another Committee member was opposed to any changes to the law without a vote of the membership.

At the conclusion of discussion, the following motion was made:

MOTION:

The CAC Governance Committee recommends the CAC Board accept revisions to Section 67039 of the CAC law as presented.

(Araiza/McIntyre) MSC (3 Yea/2 Nay)

MOTION 24-05-09-1

Item # 5 Additional Discussion Items

Board Composition – Item 5.a

Ms. Laenen introduced discussion on Board composition, specifically the handler seats. She noted that that while CAC law currently allows for two handler members and one alternate handler member, only one handler member was currently serving on the Board.

Discussion by the Committee turned back to the definition of producer, with comments about growers who have a financial interest in handlers being eligible to serve on the CAC Board as a producer. A suggestion was offered that the definition of producer be changed to require that a substantial portion (majority) of their income be derived from the production of California avocados. There was robust discussion on the definition of producer being tied to a distinct legal entity, and that individuals who may be a director/officer/employee of a handler, are still eligible to serve as a producer member based on the separate legal entity of the grove ownership. Mr. Kardokus confirmed that CDFCA would find it problematic if CAC were to assess a producer but then not allow them to serve on the Board.

Additional discussion ensued regarding the conflict of interest, both true and perceived, of producers with financial interest in handlers who import avocados from other countries. Comments were made that CAC should do a better job of educating and guiding members on when they have a conflict of interest and should recuse themselves from discussion and voting. It was noted that the summary conflict of interest code is included on every agenda and that there are already numerous safeguards to provide transparency of individuals financial interests, including the Form 700 disclosures and disclosure of affiliations with election ballots.

The Committee discussed the ability for representatives of an eligible producer to serve on the Board, such as grove managers, under the language in the CAC law of “causing to be produced.” Comments were offered that grove managers are running in elections that they don’t personally receive a ballot to vote on. Ms. Aymami commented that previously it was required that all producer nominees for election provide the address of an eligible producer, which was verified by CAC staff, prior to being accepted as a candidate in the election. She noted that the requirement to provide an assessment paying grove location and subsequent verification had been removed by the prior Governance Committee. There

was a request from a Committee member to revisit the election nomination forms and requirements for confirming eligibility to serve as a producer member at a future meeting.

Ms. Laenen stated that the definition of producer had been discussed at length in prior Committee meetings, and revised language had already been approved by the Committee earlier in this meeting. She requested the Committee discuss Article 3, Section 67051 of the CAC law regarding Board composition, with draft revisions to remove handler members and alternates as voting member of the CAC Board, and instead allow the Board to appoint them as non-voting ex officio members.

MOTION:

***The CAC Governance Committee recommends the CAC Board accept revisions to Section 67051 of the CAC law as presented.
(Jackson/Berns) MSC (3 Yea/1 Nay)***

MOTION 24-05-09-2

Discussion on the motion centered around ensuring the CAC Board and management would still have opportunities to gain valuable insight from the handler community once they no longer had a voting seat on the Board. The Committee discussed the role of handlers on the Marketing Committee and the need to revisit the responsibilities of the Marketing Committee and the role they serve in the upcoming Board strategic planning sessions.

CAC Bylaws – Item 5.b

Ms. Laenen reported that she had requested the CAC bylaws be included on the agenda to discuss the idea of formalizing a policy regarding public comment during CAC meetings. There was a brief discussion on the topic, with requests to see CAC's current public comment policy and proposed revised language. Due to time constraints, Ms. Laenen said discussion on this topic would be tabled.

Item # 5 Timeline/Schedule Next Meeting

The next meeting would take place on May 15, 2024 with in-person participation at the United Water Conservation District office in Oxnard and online via Zoom.

ADJOURN MEETING

Ms. Laenen adjourned the meeting at 12:07 p.m.

Respectfully submitted,

April Aymami, CAC Director of Industry Affairs and Operations

EXHIBITS ATTACHED TO THE PERMANENT COPY OF THESE MINUTES

Exhibit A May 9, 2024 Governance Committee Packet
Exhibit B CAC Law with Redline Revisions – DRAFT 5-7-24
Exhibit C May 9, 2024 Governance Committee Meeting AB 2720 Roll Call Vote Tally Summary

CALIFORNIA AVOCADO COMMISSION

AB 2720 Roll Call Vote Tally Summary

To be attached to the Meeting Minutes

| | | |
|---|--|--|
| Meeting Name: <i>Governance Committee Meeting</i> | Meeting Location: <i>In-Person (Ventura) Online (Zoom)</i> | Meeting Date: <i>May 9, 2024</i> |
|---|--|--|

| <i>Attendees Who Voted</i> | <i><u>MOTION</u> 24-05-09-1</i> | <i><u>MOTION</u> 24-05-09-2</i> |
|-----------------------------------|--|--|
| Rachael Laenen | Did not vote | Did not vote |
| Victor Araiza | Yea | Yea |
| John Berns | Nay | Yea |
| Robert Jackson | Nay | Yea |
| Jamie Johnson | Yea | Nay |
| Hayden McIntyre | Yea | Not Present |
| <i>Outcome</i> | <i>3 Yea 2 Nay</i> | <i>3 Yea 1 Nay</i> |



COMMITTEE INFORMATION

ITEM 5: DISCUSSION AND POSSIBLE ACTION ITEMS

SUMMARY:

Included again for Committee reference are the CAC law with draft redline edits and CAC bylaws.

FISCAL ANALYSIS:

- Not applicable

COMMITTEE OPTIONS:

- Discuss and take action, if desired

STAFF RECOMMENDATION:

- Not applicable

EXHIBITS / ATTACHMENTS:

- CAC law with draft redline edits
- CAC bylaws

CALIFORNIA AVOCADO COMMISSION LAW
(Current as of 1/1/2018)

Article 1. Declaration and General Provisions

67001. Avocados produced in this state constitute one of the state's principal tree fruit crops. The avocado industry in this state is expanding. The industry constitutes an important source of jobs for many people in the state, a high proportion of whom are from underprivileged and historically deprived segments of the population.

67002. Opportunity exists for continued growth and expansion of the industry, by creating new markets. The success of an expansion program is uniquely dependent upon effective advertising, promotion, and collection and dissemination of public information, since the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of avocados.
(Amended by Stats. 2015, Ch. 307, Sec. 1. Effective January 1, 2016.)

67003. The establishment of a commission is imperative for the efficient development and management of a national and international advertising program which will ensure that the California avocado industry can compete successfully in the marketplace and increase revenues to avocado producers.

67004. The production and marketing of avocados produced in this state is hereby declared to be affected with public interest. The provisions of this chapter are enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

67005. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of avocados the opportunity to avail themselves of the benefits of collective action in the broad fields of advertising; promotion; production, nutrition, and marketing research; quality and maturity standards; the collection and dissemination of crop volume and related statistics; and public education.

67006. No action taken by the commission, or by any person in accordance with this chapter or with rules or regulations adopted under this chapter, is a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of that Part 2), or any statutory or common law against monopolies or combinations in restraint of trade.

Article 2. Definitions

67021. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

67022. "Avocado" means any variety of avocado produced in the state, including any avocado delivered to a processor for processing into any avocado product.

67023. "Books and records" mean books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to the provisions of this chapter.

67025. "Commission" means the California Avocado Commission or the commission board of directors as the context requires.

67026. "Ex officio members" means non-voting members of the commission.

67028. (a) (1) "Handler" means any person who engages, in this state, in the operation of selling, marketing, or distributing avocados which ~~he or she has~~ they have produced or purchased or acquired from a producer, or which ~~he or she is~~ they are marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

(2) "Handler" also includes any person engaged as a processor in the business of processing avocados.

(b) When the handler is a corporation or a limited liability company, all of the directors, officers, managers, and members of the corporation or limited liability company in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments to which a corporate handler or a handler that is a limited liability company may be subject pursuant to this chapter shall include identical liability upon each individual director, officer, manager, or member of the corporation or limited liability company.

(c) (1) "Handler" does not include a cooperative bargaining association that recommends that its members market their avocados through specified handlers and which otherwise is not involved in the sale of avocados.

(2) "Handler" also does not include a retailer, except for a retailer who purchases or acquires from any producer, or handles on behalf of any producer, avocados which were not previously subjected to regulation by the commission.

67030. "Handle" means to engage in the business of a handler.

67034. "Marketing research" means any research relating to the sale or inventory of avocados.

67035. "Marketing season" or "fiscal year" means the period beginning November 1 of any year and extending through the last day of October of the following year.

67036.5. "Person" means an individual, partnership, corporation, limited liability company, or other business entity.

67037. "Processor" means any person engaged, within this state, in any of the activities with respect to avocados as set forth in Section 58619.

67038. "Process" means to engage in the business of a processor.

67039. "Producer" ~~or "grower"~~ means any person who is engaged within this state in the business of producing, or causing to be produced, avocados for market. "Producer" ~~or "grower"~~ does not include any person who has an average annual production of less than 10,000 pounds of avocados in the three preceding marketing years or a greater amount as may be established by a two-thirds vote of the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 4. Effective January 1, 2017)

67040. "Production research" means any research related to the production of avocados other than marketing research.

67040.5. "Secretary" means the Secretary of the Department of Food and Agriculture.

Article 2.5. Districts

67041. The commission shall establish no fewer than three districts and no more than five districts within the state, each representing approximately the same percentage of avocado production in California.

(Amended by Stats. 2015, Ch. 307, Sec. 2. Effective January 1, 2016.)

67042. Beginning in the 2000-01 marketing season, districts shall be reapportioned every fifth year in accordance with redistricting procedures adopted by a two-thirds vote of the commission and concurred in by the secretary.

(Amended by Stats. 2015, Ch. 307, Sec. 3. Effective January 1, 2016.)

Article 3. The California Avocado Commission

67051. (a) There is in the state government the California Avocado Commission.

(b) The commission shall be composed of the following members:

(1) (A) If the commission consists of three districts, nine producers who are not handlers, three elected from each district.

(B) If the commission consists of four districts, eight producers who are not handlers, two elected from each district.

(C) If the commission consists of five districts, 10 producers who are not handlers, two elected from each district.

~~(2) Two avocado handlers elected on a statewide basis.~~

~~(3)~~(2) One public member who shall be appointed to the commission by the secretary from nominees recommended by the commission.

~~(4)~~(3) The secretary who shall be an ~~nonvoting~~ ex officio member of the commission.

(4) The commission may appoint one or more handlers as ex officio members. A handler shall handle no less than 1 percent of the total industry volume of avocados in the preceding marketing year.

(Amended by Stats. 2016, Ch. 451, Sec. 5. Effective January 1, 2017)

67051.5. The secretary may require the commission to correct or cease any activity or function which is determined by the secretary not to be in the public interest or is in violation of this chapter.

If the commission refuses or fails to cease the activities or functions or to make corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities of the commission until the time that the

cessation or correction of activities or functions as required by the secretary have been accomplished.

Any written notice, to cease any activity which is the subject of a contract of the commission entered into by the commission prior to the notice, shall not be effective until after the period of notice for termination provided in the contract or 120 days, whichever is shorter.

Upon service of the written notice, the secretary shall notify the commission in writing, of the specific acts which ~~he or she~~ they determines are not in the public interest or are in violation of this chapter.

67051.6. Either the commission or the secretary may bring an action for judicial relief in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

67052. (a) Each district shall have one alternate producer member, to be elected in the same manner as producer members.

(b) The alternate producer member shall, in the absence of a producer member from the same district, sit-serve in place of the absent producer member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the producer member when sitting-serving on the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 7. Effective January 1, 2017)

~~67052.3. (a) There shall be one alternate handler member to be elected in the same manner as the handler members.~~

~~—(b) The alternate handler member shall, in the absence of a handler member, sit in place of the absent handler member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the handler member when sitting on the commission.~~

~~*(Amended by Stats. 2016, Ch. 451, Sec. 8. Effective January 1, 2017)*~~

67052.5. (a) There shall be one alternate public member who shall be appointed by the secretary from nominees recommended by the commission.

(b) The alternate public member shall, in the absence of the public member, sit-serve in place of the absent public member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the public member when sitting-serving on the commission.

67053. (a) Any vacancy on the commission occurring by the failure of any person elected to the commission as a member or alternate member to continue in ~~his or her~~ their position due to a change in status making ~~him or her~~ them

ineligible to serve, or through death, removal, or resignation, shall be filled, for the unexpired portion of the term, by a majority vote of the commission.

(b) Any person filling a vacant member or alternate member position shall meet all the qualifications set forth in this article as required for the member whose office ~~he or she is~~ they are to fill.

(Amended by Stats. 2016, Ch. 451, Sec. 9. Effective January 1, 2017)

67054. (a) Producer members and alternate producer members on the commission shall have a financial interest in producing, or causing to be produced, avocados for market. In order to be elected a member or alternate member, a producer shall, at the time of the election, have a financial interest in the production of avocados within the district in which the producer stands for election.

(b) A producer may stand for election in any district in which the producer has a financial interest in the production of avocados.

~~(c) Handler members and the alternate handler members shall have a financial interest in handling avocados for markets. To be nominated and elected, a handler or alternate handler shall handle no less than 1 percent of the total industry volume of avocados in the preceding marketing year. Any handler elected to the commission pursuant to this section shall be required to maintain his or her eligibility under this section during his or her entire term of office.~~

~~(d)~~(c) The public member and alternate member shall not have any financial interest in the avocado industry. Except for the nomination of another public member, the public member and ~~his or her~~ their alternate member on the commission shall have all the powers, rights, and privileges of any other member on the commission.

(Amended by Stats. 2016, Ch. 451, Sec. 10. Effective January 1, 2017)

67055. (a) Except as specified in subdivision (b), the term of office of all members and alternate members, except ~~the~~ ex officio members, shall be for two years from the date of their election or appointment and until their successors are qualified.

(b) Of the first members of the commission from each district, one shall serve for one year, and the remaining member or members shall serve for two years, with the determination of the term of each member to be made by lot. Subsequent to the election of the first members from each district, the terms of the members shall continue to be staggered, as provided in this subdivision.

(c) Terms of office of each member and alternate member shall be limited to four consecutive terms.

(Amended by Stats. 2015, Ch. 307, Sec. 12. Effective January 1, 2016.)

67056. The commission shall have the power to sue and be sued and to contract and be contracted with. Copies of its proceedings, records, and acts,

when certified by an officer, are admissible in evidence in all courts of the state, and are prima facie evidence of the truth of all statements therein.
(Amended by Stats. 2015, Ch. 307, Sec. 13. Effective January 1, 2016.)

67057. The commission may appoint its own officers, including a chair~~man~~, one or more vice chair~~men~~, and such other officers as it deems necessary. The officers shall have the powers and duties as may be delegated to them by the commission.

67058. The commission shall have the power to appoint committees composed of both members and nonmembers of the commission including avocado producers not subject to the provisions of this chapter to advise the commission in carrying out this chapter.

67059. Unless otherwise specified, a quorum of the commission shall be any nine-seven voting members if the commission consists of three or four districts and any 10-eight voting members if the commission consists of five districts. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.
(Amended by Stats. 2016, Ch. 451, Sec. 11. Effective January 1, 2017)

67059.5. The secretary or his or her the secretary's representatives shall be notified and may attend each meeting of the commission.

67060. A member, alternate member, or member of a committee who is a nonmember of the commission shall not receive a salary, but may receive a sum of not to exceed one hundred dollars (\$100) per day, as established by the commission, for each day spent in actual attendance at or in traveling to and from meetings of the commission or committees of the commission, or on authorized assignment for the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.
(Amended by Stats. 2015, Ch. 307, Sec. 15. Effective January 1, 2016.)

67061. All moneys received by any person from the assessments levied under the authority of this chapter or otherwise received by the commission, shall be deposited in such financial institutions as the commission may designate and shall be disbursed by order of the commission through a member, officer, or employee designated for that purpose. Any such person shall be bonded by a fidelity bond, executed by a surety company authorized to transact business as such in the State of California, in favor of the commission, conditioned upon the

strict accounting of all funds of the commission in the penal sum of not less than five hundred thousand dollars (\$500,000).

67062. The state is not liable for the acts of the commission or its contracts, except for state-directed supervision of the avocado inspection program, as specified in Chapter 9 (commencing with Section 44971) of Division 17, which is performed under an agreement that specifies that each of the parties shall be responsible and liable for that party's decisions made pursuant to the agreement, and that each of the parties shall not be held liable by the other party for the decisions made pursuant to the agreement. Payment of all claims arising by reason of the administration of this chapter or acts of the commission shall be limited to the funds collected by the commission. No member of the commission or alternate member, or any employee or agent thereof, shall be personally liable on the contracts of the commission nor shall a member, alternate member, or employee of the commission be responsible individually in any way to any producer or handler or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for ~~his or her~~their own individual acts of dishonesty or crime. No member or alternate member shall be held responsible individually for any act or omission of any member of the commission. The liability of the members and alternate members shall be several and not joint, and no member or alternate member shall be liable for the default of any other members or alternate members.

Article 4. Voting Procedures

67081. (a) The secretary shall establish a list of producers in each district. In establishing the lists, the secretary shall require that handlers in the state submit the names, mailing addresses, grove location, and handled volume of each producer from whom they purchased or handled avocados in the preceding marketing season. The request for information from handlers shall be in writing and shall be filed by the handlers within 60 days following receipt of the written request.

(b) Any producer of avocados whose name does not appear upon the secretary's list of producers may have ~~his or her~~their name established on the list by filing with the commission a signed statement, identifying ~~himself or herself~~themselves as a producer. Failure to be on the list does not exempt the producer from paying assessments under this chapter.

(Amended by Stats. 2016, Ch. 451, Sec. 12. Effective January 1, 2017)

67082. ~~Subsequent to the first election of members under this chapter,~~ Persons to be elected to the commission shall be selected pursuant to nomination and election procedures adopted by the commission and concurred in by the secretary.

Article 5. Duties and Powers of the Commission

67091. The powers and duties of the commission include, but are not limited to, all of the following:

(a) Adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary ~~rules, procedures, and orders~~ to carry out this chapter and in the exercise of its powers and the performance of its duties, including the adoption of ~~rules-procedures~~ to regulate appeals from any ~~action rule, procedure, or order~~ of the commission.

(b) Administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(c) Employ a person, to serve, at the pleasure of the commission, as president and chief executive officer of the commission, ~~or a person or persons to serve as executive officers of the commission~~, and other personnel, including legal counsel.

(d) Establish offices, incur expenses, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments that may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(e) Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual independent audit by an auditing firm approved by the secretary. The independent audit shall be made a part of an annual report to all producers and handlers of avocados, copies of which shall also be submitted to the Legislature. In addition, the secretary may, as ~~he or shethey~~ determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

(f) Promote the sale of avocados by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for avocados and to educate and instruct the public with respect to avocados and the uses of the several varieties and the healthful properties and nutritional value of avocados.

(g) Enter into cost-sharing advertising with other products considered, by the commission, to be fair and equitable to both parties.

(h) Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling avocados; arrange for the performance of dealer service work providing display and other promotional materials; make market and inventory surveys and analyses; present facts to and negotiate with state, federal, and foreign agencies on matters which affect the avocado industry; and undertake any other activities which the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new markets for avocados.

(i) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements that the commission may deem necessary for the promotion of the sale of avocados.

(j) Conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere respecting the inventory, marketing, and distribution of avocados. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to this chapter.

(k) Accept and match contributions of private, local, state, or federal funds and make contributions of commission funds to other persons or to local, state, or federal agencies for purposes of promoting, and enhancing, ~~and maintaining~~ the California avocado industry.

(l) Publish and distribute without charge, a bulletin or other communication for dissemination of information relating to inventory, marketing, and other information of value to the commission and the avocado industry to producers, handlers, and the public.

(m) Establish an assessment rate to defray operating costs of the commission.

(n) Establish an annual budget.

(o) Investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(p) Carry out the requirements prescribed in Chapter 9 (commencing with Section 44971) of Division 17.

(q) To provide to the secretary, on a quarterly basis, a summary of the programs, activities, and costs under review for the next marketing season.

(r) Require producers to provide information as determined by the commission pertaining to the locations at which avocados are produced and the annual volume of avocados produced at each location. The information shall be provided in a time and manner prescribed by the commission and shall be subject to the confidentiality provisions of Section 67104.

(s) Utilize information provided to the commission for the purposes of food safety, communications, reapportionment of districts, and the conduct of elections and referenda and any other matters related to activities of the commission.

67094. (a) To prevent unfair trade practices which are detrimental to California's avocado industry, including, but not limited to, deception and misinformation, the commission shall collect and disseminate to any and all interested persons, handler f.o.b., market price information based on sales which have occurred.

(b) The identity of each handler reporting information and the information reported under this section shall be kept confidential and not made public under

any circumstances. Information that gives industry totals, averages, and other similar data may be disclosed by the commission.

(c) The procedure for the collection and dissemination of the information pursuant to this section shall be approved by the secretary.

67095. In order to avoid excessive administrative charges which adversely impact avocado producers, handlers, and consumers, the commission may decide, not later than February 1 of any year, to exercise its authority prescribed in Chapter 9 (commencing with Section 44971) of Division 17 during the next succeeding marketing season.

Article 6. Assessments and Records

67101. The commission shall, not later than November 1 of each year, establish the assessment as a fixed rate or percentage of value for the following marketing season beginning November 1st and ending October 31st. In no event shall the assessment exceed 6 1/2 percent of the gross dollar value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Expenditures for administrative purposes within the maximum assessment shall not exceed 2 1/2 percent of the gross dollar value of sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers. Assessments provided for in this section shall be upon the producer. The handler shall deduct that assessment from either amounts paid ~~by him or her~~ to the producer or amounts retained by him or her the handler if the handler is also the producer, and the handler shall be a trustee of those funds until they are paid to the commission at the time and in the manner prescribed by the commission.

In no event shall the combined assessment of the commission and any state marketing order exceed 6 1/2 percent of the gross value of the year's sales of avocados by all producers to handlers, or which are sold by handlers on behalf of producers.

~~67102. This chapter does not apply to producers who produce avocados on a noncommercial basis for the producer's home use or where the avocado trees are used only for ornamental purposes. Producers from whom assessments are collected may apply for the refund of assessment payments following the close of any marketing season in which payments have been made, and the commission shall refund assessment payments if the producer demonstrates to the satisfaction of the commission that the avocados were produced for noncommercial purposes.~~

67103. Handlers shall keep a complete and accurate record of all avocados ~~which they~~ shipped ~~by him or her~~ and the names s of the producers s whose avocados were shipped. The records shall be in simple form and contain such information as the commission shall prescribe. The records shall be preserved by ~~the handlers~~ s for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

67104. All the proprietary information obtained by the commission or the secretary from handlers, including, but not limited to, the names and addresses of producers, is confidential and shall not be disclosed except when required by a court order in a judicial proceeding involving this chapter. Information on volume shipments, inventory, crop value, and any other information which is required for reports to governmental agencies and the commission, and other information which the handlers request from the commission that gives only totals, excluding individual handler information, may be disclosed by the commission so long as the information excludes individual handler data which shall be kept confidential as provided in this section.

67105. All assessments shall be paid to the commission by the handler first handling ~~the~~ avocados who shall be primarily and personally liable for the payment of the assessment. Failure of the handler to collect the assessment from any producer shall not exempt the handler from ~~that~~ primary liability. Any producer or handler subject to this section who fails to file a return or pay any assessment within the time required shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, 1 1/2-percent interest per month on the unpaid balance.

67107. The commission shall reimburse the secretary for all expenditures incurred by the secretary carrying out ~~his or her~~ their duties and responsibilities ~~under pursuant to~~ this chapter, except for the expenses incurred for any action ~~under pursuant to~~ Section 67051.6.

Article 7. Actions and Penalties

67111. It shall be a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment, for any person to do any of the following:

(a) Willfully to render or furnish a false report, statement, or record required by the commission.

(b) Willfully fail to render or furnish a report, statement, or record required by the commission.

(c) Secrete, destroy, or alter records required to be kept under this chapter.

67112. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon a petition filed with the appropriate superior court.

67112.5. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and to obtain injunctive relief or specific performance, with respect to this chapter and the rules and regulations adopted under this chapter.

(b) A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other rule or regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(c) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified by Section 485.010 is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or of inadequate remedy at law specified by Section 526 or 527 is not required.

(d) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding avocados until there is full compliance with and satisfaction of the judgment.

(e) The commission is entitled, upon a favorable judgment for the commission, to receive reimbursement for any reasonable attorney's fees and other actual related costs incurred in any action commenced by the commission for the enforcement of this chapter. Venue for actions commenced by the commission may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

67113. It is not necessary for the commission to allege or prove that an adequate remedy at law does not exist in any action brought under this chapter.

67114. This chapter shall be liberally construed. If any section, clause, or part of this chapter is for any reason held to be unconstitutional or invalid as applied to any person or as applied under certain circumstances, that decision shall not affect the remaining portions of this chapter or the application of this chapter to any other persons or under any other circumstance.

Article 8. Implementation, Continuation, or Suspension and Termination

67121. This chapter, except as necessary to conduct such vote, shall not become operative until the secretary finds, in a referendum conducted by the secretary in which at least 40 percent of the total number of producers, from the list established by the secretary, producing at least 40 percent of the total volume of avocados marketed during the last completed marketing season participate, either one of the following:

(a) Sixty-five percent or more of the producers certified by the secretary who voted in the referendum, voted in favor of this chapter, and the producers so voting marketed ~~51 percent a majority~~ or more of the total ~~quantity-volume~~ of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) ~~Fifty-one percent A majority~~ or more of the producers who voted in the referendum voted in favor of this chapter and the producers so voting marketed 65 percent or more of the total ~~quantity-volume~~ of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

67122. The secretary shall establish a period in which to conduct the referendum which shall not be less than 10 days nor more than 60 days in duration, and may prescribe any additional procedure as may be necessary to conduct the referendum.

67123. Nonreceipt of a ballot shall not invalidate the referendum.

67124. If the secretary finds that a favorable vote has been given as provided in Section 67122, ~~he or she the secretary~~ shall certify and give notice of that favorable vote to all producers and handlers whose names and addresses may be on file with the secretary. This chapter shall become operative on the 15th day after certification by the secretary and publication to producers and handlers.

67125. If the secretary finds that assent has not been given as provided in Section 67121, ~~he or she the secretary~~ shall so certify and declare all provisions of this chapter inoperative.

67126. Prior to holding the referendum, sureties shall post a bond or security, acceptable to the secretary, in an amount which the secretary shall determine to be sufficient to pay the cost of the referendum should the election determine that the operation of this chapter is to be suspended.

Article 9. Continuation ~~and or~~ Suspension and Termination

67131. Between November 1, 1980, and October 31, 1981, and every fifth year thereafter, the secretary shall cause a referendum to be conducted by the commission among producers to determine whether this chapter shall be reapproved and continued in effect. The operations of this chapter shall be reapproved and continued in effect if the secretary finds that a majority of the eligible ~~growers-producers~~ voting in the referendum voted in favor of continuing the operations of this chapter. If the secretary finds that a favorable vote has been given, ~~he or she the secretary~~ shall so certify and this chapter shall remain effective. If the secretary finds that a favorable vote has not been given, ~~he or she the secretary~~ shall so certify and declare this chapter and the commission suspended upon the expiration of the ~~then~~-current marketing season. Thereupon, the operations of the commission shall be wound up and funds distributed in the manner provided in Section 67133. No bond or security shall be required for the referendum.

67132. Upon the finding of ~~nine seven~~ voting members of the commission if the commission consists of three or four districts, or of ~~10 eight~~ voting members of the commission if the commission consists of five districts, that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operations of the commission shall be suspended, provided that the suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of the recommendation, or upon a petition filed with ~~him or her the secretary~~ requesting the suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding year, cause a referendum to be conducted among the listed producers to determine if the operation of this chapter and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The secretary is authorized to prescribe any additional procedure necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, on a list established by the secretary marketing 40 percent of the total volume marketed by all producers during the ~~last completed immediately preceding~~ marketing season, participate in the referendum, the secretary shall

suspend this chapter upon the expiration of the current marketing season, if ~~he or she~~ the secretary finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of the suspension, and the producers so voting marketed ~~54 percent~~ a majority or more of the total quantity-volume of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) ~~Fifty-one percent~~ A majority or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity-volume of avocados marketed in the preceding season by all of the producers who voted in the referendum.

(Amended by Stats. 2017, Ch. 561, Sec. 66. Effective January 1, 2018)

67133. After the effective date of suspension of this chapter and of the commission, the operations of the commission shall be wound up, and any asset of the commission shall be liquidated and the proceeds, along with any and all moneys remaining held by the commission, collected by assessment and not required to defray the expenses of winding up and terminating operations of the commission, shall be returned upon a pro rata basis to all persons from whom assessments were collected in the immediately preceding ~~current~~ marketing season. However, if the commission finds that the amounts so returnable are so small as to make impractical the computation and remitting of a pro rata refund to those persons, any moneys remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program or used to fund activities related to the subject matter of this chapter. ~~to any existing state or federally authorized avocado program. If no program exists, the moneys shall be paid into the State Treasury as unclaimed trust moneys.~~

67134. Upon suspension of this chapter and the commission, a notice shall be issued by the secretary, and a copy of the notice shall be published in a newspaper of general circulation in each district. The commission shall provide a copy of the notice of suspension to all producers and handlers affected by the suspension whose names and addresses are on file.

(Amended by Stats. 2015, Ch. 307, Sec. 17. Effective January 1, 2016.)

Article 10. Quality Standards

67140. The commission may recommend to the secretary the adoption of avocado quality standards or engage in any other activity authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of Division 21) that is in accordance with the procedures specified in that act, unless otherwise specified in this article.

67141. Any standards or activities adopted pursuant to this article shall be implemented by the secretary at the beginning of the marketing season next succeeding the date in which they were approved by the secretary.

67142. Any standards or activities recommended by the commission and concurred in by the secretary, shall not be operative until approved in the manner specified in Section 67121.

67143. The commission shall serve as the advisory body to the secretary on all matters pertaining to this article.

DRAFT

BYLAWS
OF
CALIFORNIA AVOCADO COMMISSION

Article I.

NAME AND LOCATION

1. Name.

The name of this organization shall be the California Avocado Commission (hereinafter referred to as the Commission), a corporate body, organized under the provisions of Division 22, Chapter 5, beginning with Section 67001 of the Food and Agricultural Code.

2. Location.

The principal office of the Commission for its transaction of business shall be located within the State of California. The Commission is hereby granted full power and authority to change the specific location of the principal office within California and may establish other offices as it deems appropriate. Any change or establishment of other locations shall not be considered an amendment of these Bylaws.

3. Definitions.

All definitions contained in Article 2, Chapter 5 of Division 22 of the Food and Agricultural Code shall apply to these Bylaws.

Article II.

PURPOSES AND OBJECTIVES

1. Scope of Activity.

The Commission shall deal with the broad fields of advertising, promotion, production research, the collection and dissemination of crop volume and related

statistics and marketing research. Commission activities may include, but not be limited to the following:

- a. Promote the sale of avocados through advertising and other promotional means for the purpose of maintaining and expanding present markets, and creating new and larger intrastate, interstate, and foreign markets for avocados.
- b. Enter into cost-sharing advertising with other products.
- c. Educate and instruct the wholesale, retail and foodservice trade with respect to proper methods of handling and selling avocados.
- d. Conduct scientific research including the study, analysis, dissemination and accumulation of information obtained from the research in respect to the inventory, marketing and distribution of avocados.
- e. Publish and distribute information regarding Commission activities to producers, handlers and the public.
- f. Present facts to, and negotiate with, public and private agencies on matters which affect the marketing of avocados.
- g. Educate and instruct the public with respect to the healthful properties and nutritional value of avocados.
- h. Do any and all things necessary, legal and proper to accomplish the purposes and objectives of the Commission as provided in these Bylaws and in law.
- i. Whenever appropriate and within statutory authority, assist the avocado industry in the coordination of its many and varied activities.

Article III.

MEETINGS OF COMMISSION

1. Regular Meetings.

Meetings of the Commission shall be held upon the direction of the Chairperson at locations designated by the Chairperson. The Commission shall

meet at least four (4) times each year for the purposes of conducting its regular business.

2. Special Meetings.

The Chairperson, or a majority of the Commission, after notifying the Chairperson, may call other meetings of the Commission as may be deemed necessary.

3. Notice of Meetings.

- a. Notice of all regular meetings shall state the place, date, and time of the meeting, and the matters of business which the Commission intends to transact. Notice shall be mailed, or sent via facsimile or e-mail, to each member and alternate member of the Commission, and any other person who requests notice in writing, at least ten (10) days prior to the time of the meeting. Notice shall be deemed delivered when deposited in the United States mail, postage prepaid, or when confirmed via facsimile or e-mail, addressed to the person at the address as it appears on the records of the Commission at the time of mailing. A closed session of the Commission as provided for in Section 7 of this Article may be held only if the closed session is referenced in the meeting notice as herein provided.
- b. Notice of special meetings shall state the place, date, and time of the meeting. The business to be transacted shall also be stated in the notice and no other business may be considered at the meeting. The notice shall be delivered in the time and manner specified in subsection a.

4. Order of Business.

The regular order of business of the Commission meetings, unless otherwise determined by the Chairperson, shall be as follows: (1) roll call; (2) opportunity for public comment; (3) approval of minutes of previous meeting; and (4) action on matters on written agenda.

5. Attendance.

Any member or alternate who misses three (3) consecutive meetings or four (4) total meetings in a marketing season for any reason automatically loses his or her seat on the Commission unless the Board expressly waives this provision by majority vote¹ of the members present at a meeting at which there is a quorum. Any vacancy created by this Section 5 shall be filled in accordance with Section 67053 of Commission law and the Commission's election procedures.

6. Quorum and Voting.

A quorum of the Commission shall be nine (9) members if the Commission consists of three or four districts or ten (10) members if the Commission consists of five districts. Except as provided in these Bylaws or in law, the vote of a majority of the members present at a meeting at which there is a quorum shall constitute the act of the Commission. Notwithstanding anything to the contrary in Roberts Rules of Order or the law, "members present" shall mean those present at the time a vote is taken and shall include members who abstain from the vote. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of members if any action taken is approved by at least a majority of the required quorum for the meeting.

All votes shall be cast in person. There shall be no proxy voting.

7. Closed Sessions of the Commission.

If properly noticed as provided for in Section 3 of this Article, the Commission may enter into closed session during a regular or special meeting in accordance with the provisions of the Bagley-Keene Open Meeting Act (Government Code Section 11126). Examples of permissible reasons for a closed session include the

¹ The Board's waiver of the automatic removal provision can be based on an excuse acceptable to the Board or any other justification deemed appropriate by the Board.

appointment, employment, evaluation of performance, or dismissal of a Commission employee, or to confer with or receive advice from legal counsel regarding pending litigation.

Any action taken by the Commission in closed session shall be announced upon reconvening a regular or special meeting and made a part of the minutes. A record of topics discussed and any resulting decisions shall be made by the Commission and kept confidential and not disclosed except as required by law.

8. Parliamentary Authority.

Roberts Rules of Order, as may be amended from time to time, shall govern meetings of the Commission.

Article IV.

COMMITTEES

1. Committees; Appointments.

- a. The Commission shall establish committees as deemed necessary to carry out the purposes and objectives of the Commission. Standing committees shall include, but not be limited to the following:
 - (1) Executive Committee
 - (2) Marketing Committee
 - (3) Production Research Committee
 - (4) Finance Committee
- b. The Chairperson of the Commission shall appoint all committee chairpersons and shall appoint all members of each committee after consultation with the committee Chairperson affected. Appointments are subject to approval by the Commission and may be changed from time to time as determined by the Chairperson and concurred in by the Commission.
- c. No member shall serve as Chairperson of more than one (1) standing committee.

- d. The Chairperson of the Commission may appoint committee members from among the Commission members and alternates, and from the industry in general.
- e. All committees of the Commission shall decide the rules and procedures under which they will conduct their activities, except as may be provided in these Bylaws or in law, and subject to the approval or ratification by the Commission. Unless otherwise specified, the Commission shall be the final authority on all programs, projects, activities, and policies adopted by any committee of the Commission.

2. Executive Committee.

The Executive Committee shall include, but not be limited to, the Chairperson, Vice-Chairperson, Secretary, and Treasurer of the Commission. The Chairperson of the Commission shall serve as Chairperson of the Executive Committee. The committee shall specifically handle claims, complaints and personnel matters; and monitor the overall administration of the Commission.

The committee may act on behalf of the Commission under circumstances where action is of an urgent nature and necessary prior to the next meeting of the Commission. Such action shall not result in expenditures in excess of \$25,000.00 and shall be reported to the Commission at the next meeting of the Commission. The report shall specify the need for the action; the action taken, any expenditure involved; and the results of the action.

3. Marketing Committee.

The Marketing Committee shall advise Commission personnel, Commission committees and others on avocado packing, handling, distribution and marketing issues impacting on the Commission. These issues may include input regarding wholesalers, distributors, retailers, exporters, and foodservice operators. Additionally, the committee shall provide input on trade advertising and publicity programs, foodservice programs and foreign export. The committee shall also provide input to the Commission personnel concerning the annual crop estimate.

The Marketing Committee shall consist of a minimum of four (4) members, each of which represent a separate AMRIC Handler. In the event that the Marketing Committee does not include any seated members of the Commission, the committee shall select one member of the committee who shall serve as a non-voting ex-officio member of the Commission.

4. Production Research Committee.

The Production Research Committee will assist Commission personnel in the prioritization of research needs and the solicitation, selection, and timely execution of funded research projects. The Committee will advise Commission personnel in the disbursement of budgeted research funds to researchers and research institutions. The Committee will assist in the timely dissemination of relevant research results from the production research program and other sources that could improve production and post harvest practices and increase profitability for avocado growers.

5. Finance Committee

The Finance Committee shall establish procedures for the disbursement of Commission funds, including procedures for the acquisition of property, the signing of checks, purchase orders, review of travel and expense reports and credit card statements and other similar matters. The Committee shall also recommend to the Board the annual assessment rate, budget, reserve and cash-flow requirements; recommend investment programs for Commission funds; and oversees the preparation of financial reports which shall be made available to the Commission on a periodic basis. The Treasurer of the Commission shall serve as chairperson of the Finance Committee. The independent auditor of the Commission shall report to the Committee.

6. Special Committees.

From time to time, special committees may be established by the Chairperson or by the Commission for the investigation, study or review of specific matters as are deemed necessary. Special committees shall limit their activities to

the accomplishment of the purpose for which they were created and terminate upon completion of the purpose.

The Chairperson of the Commission shall appoint committee members in the manner provided for in Section I of this Article, except that the Chairperson of any special committee who is not a Commission member or alternate shall have all rights, powers and duties of any other committee member, including voting privileges, unless otherwise provided in these Bylaws or in law.

7. Notice.

Notice of committee meetings shall be given in the same manner provided in Section 3.a. of Article III of these Bylaws. Notice may be waived by any committee member, either before or after the meeting, through written or verbal waiver of notice or by attendance at the meeting. All waivers shall be made a part of committee records.

8. Quorum.

Except as otherwise provided in these Bylaws, a majority of the committee shall constitute a quorum and the acts of a majority of the members present at a meeting at which a quorum is present shall constitute the acts of the committee. Notwithstanding anything to the contrary in Roberts Rules of Order or the law, "members present" shall mean those present at the time a vote is taken and shall include members who abstain from the vote. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of members if any action taken is approved by at least a majority of the required quorum for the meeting.

9. Closed Sessions of Committees.

Committees of the Commission may enter into closed session only in accordance with the provisions of the Bagley-Keene Open Meeting Act (Government Code Section 11126). Examples of permissible reasons for a closed session include discussion relating to the appointment, employment, evaluation of

performance, or dismissal of a Commission employee, or to confer with or receive advice from legal counsel regarding pending litigation. Any recommendations resulting from a closed session shall be transmitted to the Commission for consideration. A record of topics discussed and any resulting recommendations shall be made by the committee and kept confidential and not disclosed except when required by law.

Article V.

MEMBERS AND ALTERNATES

1. Composition.

As defined in law, the Commission shall be composed of no fewer than eight (8) and no more than ten (10) producer members who do not handle avocados through the same legal entity under which they were elected as a producer member of the Commission, two (2) handler members and one (1) public member. The public member shall be selected in accordance with Section 5 of this Article.

a. Composition of producer members shall be as follows:

- (1) If the Commission consists of three (3) districts, nine (9) producer members, three (3) elected from each district.
- (2) If the Commission consists of four (4) districts, eight (8) producer members, two (2) elected from each district.
- (3) If the Commission consists of five (5) districts, ten (10) producer members, two (2) elected from each district.

2. Ex-Officio Members.

- a. The Secretary of Food and Agriculture or his or her representative shall be notified of and may attend each meeting of the Commission and any committee meeting of the Commission.
- b. Other appropriate individuals, as determined by the Commission, may serve as ex-officio members.

3. Alternate Producer Members.

One (1) alternate producer member from each district shall be elected in the same manner as the producer members. An alternate producer member may serve in place of any absent producer member in the alternate's district. "Absent" means any time the member is not present, including but not limited to temporary absences from the room, and includes a situation in which the member has recused himself/herself from a vote due to a conflict of interest. Provided however that the Chairperson, in his/her sole discretion, may delay a vote and wait for the member in instances where the member is only temporarily out of the room. An alternate producer member shall have, and be able to exercise, all the rights, privileges, and powers of the producer member when sitting on the Commission.

4. Alternate Handler Members.

One (1) alternate handler member shall be elected in the same manner as the handler members. The alternate handler member shall serve as the alternate to the two handler members. An alternate handler member may serve in place of any of the absent handler members. "Absent" means any time the member is not present, including but not limited to temporary absences from the room, and includes a situation in which the member has recused himself/herself from a vote due to a conflict of interest. Provided however that the Chairperson, in his/her sole discretion, may delay a vote and wait for the member in instances where the member is only temporarily out of the room. An alternate handler member shall have, and be able to exercise, all the rights, privileges, and powers of the handler member when sitting on the Commission.

5. Public Member.

The public member shall be appointed to the Commission by the Secretary of Food and Agriculture from a nominee recommended by the Commission. If the Secretary does not appoint the person nominated by the Commission to serve as the public member, the Commission shall nominate a different person to serve in this capacity and will repeat the process until a nominee of the Commission is approved by the Secretary and appointed to the Commission.

6. Financial Interests.

- a. Producer members and their alternates shall have a financial interest in producing avocados for market and shall meet and maintain the qualifications outlined in the Commission's Election Procedures.
- b. Handler members and their alternates shall have a financial interest in handling avocados for market and shall meet and maintain the qualifications outlined in the Commission's election procedures.
- c. The public member and alternate shall not have any financial interest in the avocado industry and shall meet and maintain the qualifications outlined in the Commission's election procedures.

Article VI.

OFFICERS AND DUTIES

1. Officers.

The Commission shall elect a Chairperson, Vice-Chairperson, Secretary and Treasurer (or Secretary/Treasurer) from among its producer members, and delegate to the officers duties as determined by the Commission. Alternate members shall not be eligible to be elected as officers of the Commission.

2. Term of Office.

The officers elected by the Commission shall serve one (1) year terms or until new officers are elected. Officers may be re-elected annually to the office held or to any other office of the Commission but shall not serve for more than three (3) consecutive terms in any one (1) office.

3. Chairperson.

The Chairperson shall preside at all meetings of the Commission. He or she may sign on behalf of the Commission any contract or other instrument, the execution of which has been authorized by the Commission, except where the signing and execution thereof has been otherwise expressly reserved or delegated by the Commission to itself or some other office, member or employee. The

Chairperson shall appoint the members of all committees subject to approval of the Commission as provided for in Article IV, Section I; serve as a non-voting ex-officio member of all committees; and perform all other duties provided in these Bylaws or in law.

4. Vice-Chairperson.

The Vice-Chairperson shall act as and perform all the duties of the Chairperson in the Chairperson's absence. He or she shall perform additional duties as may be assigned by the Chairperson or the Commission. If the Chairperson becomes disqualified for any reason, the Vice-Chairperson shall serve as acting Chairperson until the Commission elects a new Chairperson.

5. Secretary.

The Secretary shall maintain accurate records of all committee and Commission meetings and perform other duties as usually pertain to the office. The Secretary may delegate any and all duties of the office to the President of the Commission whenever, in his or her judgment, the action is necessary for the handling of the business affairs of the Commission in a timely manner.

6. Treasurer.

The Treasurer shall serve as Chairperson of the Finance Committee. The Treasurer oversees the reporting of the financial reports to the Commission and may delegate any and all duties of the office to the President of the Commission whenever, in his or her judgment, the action is necessary for the handling of the financial affairs of the Commission in a timely manner. The Treasurer retains oversight over all financial policies, and must report to the Board of Directors on the financial position of the Commission. The Treasurer shall work in conjunction with the President and other Commission personnel to ensure that all financial records and dealings of the Commission are in order at all times. The Treasurer shall have full and unrestricted access to all financial records of the Commission. There will be an annual audit conducted by an outside auditing firm which will be completed no

later than 90 days after the end of the fiscal year and presented to the Commission within 30 days after issuance of the final audited financial statements.

Article VII.

EMPLOYEES AND THEIR DUTIES

1. President.

The Commission shall employ a person, who shall not be a member of the Commission, to serve as President and Chief Executive Officer. The performance of the President, who shall serve at the pleasure of the Commission, shall be evaluated by October by the Executive Committee of the Commission. The Committee shall prepare a written review for inclusion in the President's personnel file and the Chairman shall give a verbal report to the Commissioners at the October Board meeting. Compensation of the President shall be fixed by the Commission and shall be reviewed annually.

The President shall:

- a. Be responsible at all times for the proper administration of all actions and policies of the Commission and for the proper performance of all duties on behalf of the Commission.
- b. Employ, establish appropriate titles, fix salaries within approved budgetary guidelines, supervise, and when necessary discharge any of the employees of the Commission.
- c. Serve as a non-voting ex-officio member of the Commission and all committees of the Commission.
- d. Strictly adhere to and carry out all rules and procedures adopted by the Commission as provided for in these Bylaws and in law.
- e. Be responsible for the compilation and dissemination of industry information that will advance the purposes and objectives of the Commission.
- f. Provide any and all assistance, counsel, and advice to the Commission and committees of the Commission that may be

necessary for the proper execution of Commission responsibilities and duties.

Article VIII.

RULES AND PROCEDURES

1. Powers and Duties.

The Commission, by majority vote of the members present at a meeting at which there is a quorum, is authorized to adopt and modify from time to time, all proper and necessary rules, procedures and orders for carrying out the purposes and objectives of the Commission. The rules and procedures shall include, but are not limited to the following:

- a. Establish nomination and election procedures for persons to be elected to the Commission which shall be concurred in by the Secretary of Food and Agriculture.
- b. Establish procedures for the purpose of addressing any claims against the Commission or its members and alternates, and for the purpose of according individuals aggrieved by the actions or determinations of the Commission an informal hearing before the Commission, or before a committee of the Commission designated for the purpose.
- c. Establish not later than November 1 of each year, the assessment for the following twelve (12) months.
- d. Establish a procedure for the collection and handling of assessments, including the preparation of assessment collection forms which fully inform handlers of their obligation to deduct assessments from amounts paid to producers and the penalties and interest involved in failure to pay assessments in the time and manner prescribed by the Commission.
- e. Establish an affidavit form to be filed with the Commission by any person requesting an exemption from the assessments required by the Commission.

- f. Establish a rate of compensation for all Commission members and alternates, except ex-officio government members, and for non-members of the Commission who serve on committees of the Commission. Compensation shall not exceed one hundred dollars (\$100.00) per day for each day spent in actual attendance at, or in traveling to and from meetings of the Commission or committees of the Commission or while on special assignment for the Commission. The rate of compensation shall also make provision for necessary traveling expenses and meal and lodging allowances.
- g. Establish procedures for the collection and dissemination of market price information based on sales which have occurred. Any such procedures shall ensure the confidentiality of the identity of handlers reporting the information and information reported.

Article IX.

LIABILITY

1. Restraint of Trade.

No action taken by the Commission or by an individual in accordance with the rules and procedures adopted by the Commission shall be deemed a violation of the Cartwright Act, the Fair Trade Act, the Unfair Practices Act, or any statutory or common law against monopolies or combinations in restraint of trade.

2. Payment of Claims.

Payment of all claims arising by reason of administration of the Commission or the acts of the Commission shall be limited to the funds collected by the Commission.

3. Liability of Individuals.

- a. No member or alternate member of the Commission or any employee or agent thereof, shall be personally liable for the contracts of the Commission or responsible individually in any way to any producer,

any handler or any other person for error in judgment, mistake, or other acts, either of commission or omission, except for the person's individual acts of dishonesty or crime. No member or alternate member shall be held responsible individually for any act or omission of any other member or alternate member of the Commission.

- b. The liability of the members and alternate members shall be several and not joint, and no member or alternate member shall be liable for the default of any other member or alternate member.

Article X.

AMENDMENTS

1. Power to Amend.

The Bylaws of the Commission may be amended, repealed, or added to, or new Bylaws may be adopted by a two-thirds vote of the members present at a meeting at which there is a quorum.