



# Agriculture and Markets

## NEW YORK STATE DAIRY PROMOTION ORDER

Advisory Board Membership Handbook

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## Welcome Message

Congratulations on your appointment! Thank you for your willingness to serve the farmers of New York State. Your service on the Dairy Promotion Order Advisory Board is a tremendous opportunity to influence the promotion and research that can affect the ongoing continuous improvement of the dairy industry in our State.

Your appointment carries a great deal of responsibility. Your preparation for and regular attendance at meetings is vital to the success of your term. Your level of participation will directly correlate to your impact on the health of the New York State dairy industry. You will be expected to maintain the highest level of ethical standards and to avoid the appearance of conflicts of interest.

As you put your time and considerable talents to work, it is critical that you keep our dairy farmers in mind. You are not only their representative, you are an ambassador to your industry and your community.

Again, I deeply appreciate your commitment to public service and your assistance in increasing promotion and consumption of milk in New York State. I know you will do a great job!

Sincerely,



Commissioner  
Department of Agriculture and Markets

President  
Urban Development Corporation

## **1. Dairy Promotion Order Advisory Board**

The New York State Dairy Promotion Order Advisory Board is established pursuant to the authority of Urban Development Corporation Law, Section 16-X (See Appendix 1) and Part 40 of the NYS Department of Agriculture and Markets Regulations (See Appendix 2).

The purpose of the Board is to strengthen and expand the marketplace for New York's dairy industry by advising the Commissioner of the NYS Department of Agriculture and Markets and the President of the Urban Development Corporation on the development and coordination of programs to advertise, promote, research and educate consumers on the uses of New York-produced fluid milk and dairy products. These activities occur through the administration of the provisions in the Dairy Promotion Order and are intended to reach both domestic and international markets.

## **2. Roles and Responsibilities**

### **2.1 Board Member Responsibilities**

The Board is in a unique position to influence the dairy industry in New York State. Board members are selected because of their knowledge of current issues affecting the dairy industry and their ability to work collaboratively to recommend efficient and effective programs to the Commissioner.

Service on and the operation of this Board is a public trust, requiring Board members to put the interests of the Board above their own private gain. Board members are Public Officers and must comply with all provisions of Public Officers Law (Appendix 3).

Board members must always be familiar with and operate within their board's governing statutes, and state and federal laws and regulations.

Board member questions or comments about Board issues should be directed to Department staff and the entire Board. These questions and the related responses will be shared with the entire Board.

#### **2.1.1 Appointment.**

Appointments are made in accordance with the Regulations (Appendix 2). Upon appointment, the members accept and acknowledge their appointments to a three-year term, at the pleasure of the Commissioner (Sample attached as an Appendix 4). To accept appointment, each Board member must fill out and sign their acceptance form. Each Board member must agree to follow all applicable laws and policies not limited to those described in this handbook.

### **2.1.2 Attendance.**

Regular attendance is required. It is important to notify the Department if a board member cannot attend a scheduled meeting since a quorum of the Board is required to conduct official business. A person may forfeit his or her position on the board or be removed from the board by the Commissioner as a result of poor attendance.

### **2.1.3 Preparation.**

Board members are expected to have reviewed any meeting materials that were distributed prior to the meeting. Department staff members are available to provide any additional information that will help the Board make informed decisions.

### **2.1.4 Conflict of Interest Policy**

Each Board member must submit to the Department a Conflict of Interest Disclosure Form (Appendix 5). This must be submitted annually and upon any change to the information on the form. Failure to submit this form will be considered a resignation from the Board. Failure to disclose a conflict may result in removal from the Board.

A conflict of interest exists when you or your family member may substantially benefit – financially or otherwise, directly or indirectly – from a matter being decided by the Board. An appearance of conflict of interest exists when the public might reasonably conclude that such a benefit exists.

### **2.1.5 Open Meetings Law**

No quorum of Board members can engage in Board business outside of properly noticed Board meetings. If there happens to be six Board members together at a non-Board event, they must not discuss any matters related to the Board.

See section 4.1 below for further information on how Open Meetings Law affects other Board activities (Appendix 6).

### **2.1.6 Ethics and Appearance of Fairness**

The purpose of Public Officers Law is to apply to the highest standards of integrity to the operation of state government. Public Officers must always act in the best interests of the public they serve, which means avoiding any appearance of conflict of interest or impropriety. Members of the Advisory Board are considered Public Officers and must adhere to the following prohibitions:

1. All conflicts of interest, financial or otherwise, direct or indirect, must be reported immediately upon the Board member learning of the conflict.

2. You are prohibited from using for personal gain any confidential information acquired through work on the Board and from discussing confidential Board matters with non-board members.
3. You should not receive or accept money or any other consideration from anyone or any organization other than the Board—not including salary derived from one’s primary employment—for the performance of duties as a Board member, unless approved by the Department.
4. You should not receive or accept anything from anyone who is doing or seeking to do business with the Board under circumstances from which it reasonably could be inferred that the item was intended to influence the Board member in an official action.
5. You should not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with Board duties and responsibilities.
6. You should never give an impression that you might be improperly influenced in the performance of your duties.
7. You should never do anything that would raise suspicion among the public that you are engaged in acts that are in violation of your trust.
8. You should never appear to be speaking on behalf of the Board, such as at professional or industry gatherings, unless specifically authorized to do so.

This law is attached in its entirety as Appendix 3 to this Handbook and further information is available at the New York State Joint Commission on Public Ethics at <https://jcope.ny.gov/>.

### **2.1.7 Resignations**

A Board member wishing to resign must inform the Commissioner in writing of the effective date of the resignation.

### **2.2 Department Responsibilities**

The duties of the Department in support of the DPO include:

- Ensuring compliance with all applicable laws and regulations.
- Administering the approved contracts and programs.
- Keeping Board members apprised of pertinent issues.
- Arranging meetings, developing the agenda, preparing meeting materials, and compiling information and research as necessary.

All communication between any Board member and the Department regarding Board-specific business shall be shared with the entire Board. Verbal conversations shall be summarized and shared via email.

The Commissioner shall appoint a staff member to be the Recording Secretary for the Board. The duties of the Recording Secretary are to:

- Prepare meeting minutes to include meeting time and location; attendance; copies of all reports received, issued, or approved; and a summary and voting record of all matters discussed, conclusions reached, and resolutions adopted.
- Submit the minutes of each meetings to the Board for review and acceptance by the Board during the subsequent meeting.
- Publish approved minutes in accordance with Open Meetings Law.
- Retain copies of the approved minutes of all meetings of the Board.

During the first meeting of each term, the Commissioner may select a Board Chair and Vice-Chair or rotating Board Chair and Vice-Chair upon recommendations received from the Board. The Commissioner may also at his or her discretion reselect such positions during the term if needed. These individuals provide support to the Board and execute the Board meeting agendas, in coordination with the Department assigned Recording Secretary. In the absence of a Chair, the Vice-Chair shall preside over the meeting.

The Office of Counsel provides legal counsel to the Commissioner and the Department. The Office is available to advise Board members on legal issues such as:

- Assurance that Board actions fall within the Board’s statutory authority.
- Questions about compliance with all other State laws, such as Open Meetings Law, Public Officers Law, and State Finance Law.
- Review of proposed regulations and revisions.
- Drafting of legal documents.
- General legal advice about Board actions, procedures and activities.

## **2.3 Empire State Development Roles and Responsibilities**

In 2016, the Dairy Promotion Order was administratively transferred to Urban Development Corporation (UDC). The Department continues to administer this program in cooperation with UDC. Several divisions within UDC provide services to the Dairy Promotion Order, such as fiscal management and contract preparation.

## **3. Other Roles**

### **3.1 Special Subcommittee**

Special ‘sub’ committees may consist of any number of members of the Board as may be desirable and appointed by the Board without regard to geographic representation and may be assigned duties necessary to the handling of such specific matters as the Board deems necessary. Special committees shall have only such authority specifically granted to them by the Board and shall cease to exist upon completion of their assignment and the presentation of a report to the Board.

## 3.2 Advisory Workgroup

An advisory workgroup may consist of any number of persons, that are not members of the Board, as may be desired to assist with matters related to the Board proceedings. Members of the advisory workgroup may be selected by the Commissioner and the Board. An Advisory Workgroup may be formed to perform such tasks given to them with the goal of providing insight or advice to the Board regarding the effectiveness of a research or promotional program funded by the Board. Advisory Workgroups shall have only such authority specifically granted to them and shall cease to exist upon completion of their assignment.

The Department shall pay the actual and reasonable expenses of the Advisory Workgroup members incurred by them while engaged in Board business.

## 4. Meeting Requirements

### 4.1 Open Meetings Law

The Open Meetings Law applies to the Dairy Promotion Order Advisory Board.

1. **Attendance at meetings.** All meetings of the Board must be open to the public. No member of the public may be asked to leave during an open meeting.
2. **Notification of meetings.**
  - a. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
  - b. Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.
  - c. The public notice provided for by this section shall not be construed to require publication as a legal notice.
  - d. When videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.
3. All meetings will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.
4. Notification of such meetings shall be published on the Department's website.
5. **Minutes.** The minutes and recordings of all meetings must be made available to the public by posting on the Department's website.

6. **Accessibility requirements.** Meetings must be held in facilities which are accessible to members of the public with disabilities so that all interested parties have an equal opportunity to participate.
7. **Executive Sessions. No Board duties meet the exemption that allows executive sessions.**

See Appendix 7 for more information about conducting public meetings and public hearings.

## 4.2 Meeting Intervals

Meetings of the Board shall be held periodically, at the request of the Board or the Department. Such meetings shall be held at various locations within the state based on the nature of the meeting, the availability of necessary participants, and to maximize access to the Board meetings by interested parties.

Notices of all meetings, together with a written agenda, may be provided to each Board member at least two weeks prior to each meeting.

*Suggested* meeting intervals and topics to be covered annually are listed below:

Month	Agenda Item	Note
Spring	<u>Promotion/Research Initial Kick-off:</u> Presentation of close of last year and year to date (YTD) activities, review assessment tool spreadsheet with goals, objectives, timeline for completion, etc.	Promotion/Research Presentation 1
Summer	<u>Promotion/Research:</u> 1. Mid-Year Status: Provide update/status on YTD progress, review spreadsheet, discuss % complete 1. 2. Initial budget preparation, RFP language and estimates	Promotion/Research Presentation 2
Summer	<u>Promotion:</u> Proposals for following year funding	Promotion Presentation 3
Fall	<u>Research:</u> Proposals for following year funding	Research Presentation 3
Winter	<u>Promotion/Research Final Year Report Out:</u> review draft end of year report, review final status, % complete. Discuss goals and objectives for next year.	Promotion/Research Presentation 4

## 4.3 Quorum

*Quorum* is the number of Board members who must be present to conduct official business. If a quorum is not present, no official business can be transacted. The quorum protects against unrepresentative actions by a small number of individuals.

When the Board has ten members, six members constitute quorum: six members must be physically present in order for the Board to conduct business. If the Board has nine members, then five Board members constitute quorum.

#### **4.4 Voting**

All votes must be cast in person. Exceptions can be made only in extraordinary circumstances and with the approval of the Commissioner.

Each member's vote is recorded as part of the public record. Voting cannot be by secret ballot.

#### **4.5 Recusal and Conflict of Interests**

Board members must annually submit the Conflict of Interest Form (Appendix 5). Conflicts may also arise in between the annually filings. Any potential conflict of interest or the potential appearance of a conflict of interest must be disclosed in writing to the Commissioner and to the Board's Recording Secretary. All conflicts will be disclosed at the following Board meeting and noted in the minutes.

Board members must recuse themselves from all discussion and votes on all matters relating to the potential conflict of interest. Recusals will be noted in the Board minutes.

To recuse, a Board member must (1) be physically and virtually absent from the room during any related discussions\* and votes, and (2) not discuss the issue with any Board member prior to, during or after the meeting.

\* Discussions include, but may not be limited to: all issues involving that entity, for example: funding for proposed projects, debriefings, contract administration, performance goal/objective reviews, assessments, updates, progress reports, etc.

#### **4.6 Reasonable Accommodation of Persons with Disabilities**

The Americans with Disabilities Act (ADA) sets criteria for accessibility and accommodation. Under the ADA, people who have disabilities have a right to an equal opportunity for effective participation in the activities of boards and commissions, whether as appointed members or as members of the public.

Meetings and other Board sponsored activities must be held in accessible locations. Qualified sign language interpreters, materials in accessible formats, such as Braille, large print and tape, and other forms of auxiliary aids for effective communications may be provided upon request.

## 5. Advisory Board Member Travel Expenses

### 5.1 Expense Reimbursement Guidelines

Board members will be reimbursed for actual and necessary travel expenses in accordance with guidelines published by the New York State Office of the State Comptroller (OSC).

To be reimbursed, the Board member must submit the Standard Expense Travel Voucher (Appendix 8) and attach all receipts.

A Tax Exempt Certificate Form should be used for overnight hotel accommodations. This form is provided in Appendix 9.

Reimbursable expenses include the following:

- Mileage for auto travel at a rate to be determined by OSC.
- Transportation charges of a common carrier at the lowest rate (first class or business class plane tickets are not allowed and use of a limousine service is not allowed).
- Bridge tolls, tips, parking, or other charges incidental to transportation, but excluding fuel, oil, auto repairs or service.
- Breakfasts and dinners while engaged in Board business will be reimbursed using per-diem rates published by the U.S. General Services Agency.
- Hotel or motel room charges when Board business requires the claimant to be away from his or her place of residence overnight, provided the rates do not exceed the rates published by the U.S. General Services Agency.

All overnight travel requires pre-approval from the Department. See Appendix 10 for additional information on NYS travel guidelines.

### 5.2 Authority to Reimburse Advisory Board Member Expenses

*Urban Development Corporation Law*  
§ 16-x. Dairy promotion act. Section 10 (b)

(b) No member of an advisory board shall receive a salary but shall be entitled to his or her actual and reasonable expenses incurred while performing his or her duties as authorized in this section.

*NYS Regulations, Part 40*  
§ 40.21 Compensation and expenses.

The members of the advisory board shall not receive salaries, but each member shall be reimbursed for his or her actual and reasonable expenses while attending a meeting or committee meeting of the advisory board or in performing a duty necessary to the

functions and activities of the advisory board as determined by the Commissioner. The monies required for payment to members of the advisory board as authorized pursuant to this section shall be paid by the Commissioner, as trustee, from the funds obtained through assessments against producers pursuant to the terms of this Part.

## **6. Fiscal Year**

The Board's fiscal year is January 1 through December 31.

## **7. Proposals**

The Department is responsible for seeking proposals for the Board to review. A request for proposal or similar competitive process will be used to solicit proposals from interested parties for the purposes of procuring a service from such parties. Proposals are typically requested annually and upon receipt are evaluated and rated by the Board against a set of criteria.

All contracts executed under this proposal process are required to comply with Section 112 of the State Finance Law. The Office of the State Comptroller independently reviews and approves contracts administered under the DPO.

This independent review of contracts protects taxpayers, agencies, not-for-profit organizations contracting with the State and other vendors by validating that a contract's costs are reasonable, that its terms are favorable to the State, and that a level playing field exists for bidders. Independent review also serves as an important deterrent to waste, fraud and abuse.

At the beginning of the fiscal year, all contractors funded by the Board will submit measurable goals and objectives. All contractors will be evaluated against these goals and objectives throughout the fiscal year.

## **8. Freedom of Information Law (FOIL)**

State agencies and boards are required to have available for public inspection and copying their public records, and other records, written or electronic. Exemptions to disclosure are limited and identified in statute.

## **9. Effective Date**

The policies within this Handbook become effective upon approval by the Commissioner.

## **10. Dissolution**

In the event of dissolution of the Board, the affairs of the Board shall be liquidated in the manner delineated in Urban Development Corporation Law.

## Useful Links

NYS Department of Agriculture and Markets  
<https://www.agriculture.ny.gov/>  
Open Meetings Law – Advisory Opinions

[https://www.dos.ny.gov/coog/oml\\_listing/oindex.html](https://www.dos.ny.gov/coog/oml_listing/oindex.html)

Public Ethics – Conflicts of Interests discussed

<https://jcope.ny.gov/conflicts-interest>

Public Ethics – Advisory Opinions

<https://jcope.ny.gov/ethics-advisory-opinions>

NYS Department of Agriculture and Markets – DPO Advisory Board meetings (bottom of page)

<https://www.agriculture.ny.gov/DI/DInews.html>

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**Appendix 1: Urban Development Corporation Law – Dairy Promotion Act**

§ 16-x. Dairy promotion act.

1. Declaration of policy.

(a) It is hereby declared that the mission of the corporation is to promote a vigorous and growing state economy. In implementing this mission, the corporation has undertaken a vigorous campaign to market the state's assets and, by carrying out the provisions of this section, would further this mission by promoting the state's dairy industry.

(b) It is further declared that the continued existence of the state dairy industry, and the continued production of milk on the farms of this state, is of vast economic importance to the state and to the health and welfare of the inhabitants thereof; that it is essential, in order to assure such continued production of milk and its handling and distribution, that prices to producers be such as to return reasonable costs of production, and at the same time to assure an adequate supply of milk and dairy products to consumers at reasonable prices; and to these ends it is essential that consumers and others be adequately informed as to the dietary needs and advantages of milk and dairy products and as to the economies resulting from the use of milk and dairy products, and to command for milk and dairy products, consumer attention and demand consistent with their importance and value. It is further declared that continued decline in the consumption of fluid milk and some other dairy products will jeopardize the production of adequate supplies of milk and dairy products because of increasing surpluses necessarily returning less to producers; and that continued adequate supplies of milk and dairy products is a matter of vital concern as affecting the health and general welfare of the people of this state. It is therefore declared to be the legislative intent and policy of the state:

(i) To enable milk producers and others in the dairy industry, with the aid of the state, to more effectively promote the consumption of milk and dairy products,

(ii) To provide methods and means for the development of new and improved dairy products, and to promote their use, and

(iii) To this end, to eliminate the possible impairment of the purchasing power of the milk producers of this state and to assure an adequate supply of milk for consumers at reasonable prices.

2. Definitions. As used in this section the following terms shall have the following meanings:

(a) "President" means the president of the corporation.

(b) "Dairy products" means milk and products derived therefrom, and products of which milk or a portion thereof is a significant part.

(c) "Producer" means any person in this state who is engaged in the production of milk or who causes milk to be produced for any market in this or any other state.

(d) "Advisory board" means the persons appointed by the commissioner from nominations from producers to assist the president in administering a dairy promotion order.

(e) "Milk dealer" means any person who purchases or handles or receives or sells milk, including individuals, partnerships, corporations, cooperative associations, and unincorporated cooperative associations.

(f) "Dairy promotion order" means an order issued by the president, pursuant to the provisions of this section.

(g) "Cooperative" means an association or federation or cooperative of milk producers organized under the laws of New York state, or any other state, having agreements with their producer members to market, bargain for or sell the milk of such producers, and is actually performing one or more of these services in the marketing of the milk produced by their members, through the cooperative or through a federation of milk cooperatives in which the cooperative has membership.

(h) "State" means the state of New York.

(i) "Department" means the New York state department of agriculture and markets.

(j) "Commissioner" means the commissioner of the New York state department of agriculture and markets.

### 3. Powers and duties of the president.

(a) The president shall administer and enforce the provisions of this section. In order to effectuate the declared policy of this section the president, in consultation with the commissioner and producers, may, after due notice and hearing, make and issue a dairy promotion order, or orders.

(b) Such order or orders shall, in consultation with the commissioner and producers, be issued and amended or terminated in accordance with the following procedures:

(i) Before any such order may become effective it must be approved by fifty-one per centum of the producers of milk voting in the referendum for the area to be regulated by such order. Such referendum shall not constitute valid approval unless fifty-one per centum of all milk producers for the area to be regulated vote in the referendum. Producers may vote by individual ballot or through their cooperatives in accordance with the following procedures:

(A) Cooperatives may submit written approval of such order within a period of one hundred twenty days after the president has announced a referendum on a proposed order, for such producers who are listed and certified to the president as members of such cooperative; provided, however, that any cooperative before submitting such written approval

shall give at least sixty days prior written notice to each producer who is its member, of the intention of the cooperative to approve such proposed order, and further provide that if such cooperative does not intend to approve such proposed order, it shall likewise give written notice to each such producer who is its member, of its intention not to approve of such proposed order.

(B) Any producer may obtain a ballot from the president so that he or she may register his or her own approval or disapproval of the proposed order.

(C) A producer who is a member of a cooperative which has notified him or her of its intent to approve or not to approve of a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the president as to the name of the cooperative of which he or she is a member, and the president shall remove such producer's name from the list certified by such cooperative.

(D) In order to ensure that all milk producers are informed regarding a proposed order, the president shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the president either directly or through his or her cooperative.

(E) The president shall consult with the milk producers and establish a referendum advisory committee to assist and advise him or her in the conduct of the referendum. Such committee shall review referendum procedures and the tabulation of results, and shall advise the president of its findings. The final certification of the referendum results shall be made by the president. The committee shall be selected by the commissioner in consultation with the president, and shall consist of not less than three members, none of whom shall be persons directly affected by the promotion order being voted upon. Two members shall be representatives of general farm organizations which are not directly affected by the order being voted upon. The members of the committee shall not receive a salary but shall be entitled to actual and reasonable expenses incurred in the performance of their duties.

(ii) The president, in consultation with the commissioner, may, and upon written petition of not less than ten per centum of the producers in the area, either as individuals or through cooperative representation, shall, call a hearing to amend or terminate such order, and any such amendment or termination shall be effective only upon approval of fifty-one per centum of the producers of milk for

the area regulated participating in a referendum vote as provided pursuant to this paragraph.

(c) The president, consulting with and seeking the advice and consent of the advisory board, shall administer and enforce any such dairy promotion order while it is in effect, for the purpose of:

(i) Encouraging the consumption of milk and dairy products by acquainting consumers and others with the advantages and economy of using more of such products,

(ii) Protecting the health and welfare of consumers by assuring an adequate supply of milk and dairy products,

(iii) Providing for research programs designed to develop new and improved dairy products,

(iv) Providing for research programs designed to acquaint consumers and the public generally with the effects of the use of milk and dairy products on the health of such consumers,

(v) Carrying out, in other ways, the declared policy and intent of this section.

4. Provisions of dairy promotion orders. Any dairy promotion order or orders may contain, among others, any or all of the following:

(a) Provision for levying an assessment against all producers subject to the regulation for the purpose of carrying out the provisions of such order and to pay the cost of administering and enforcing such order. In order to collect any such assessments, provision shall be made for each milk dealer who receives milk from producers to deduct the amount of assessment from moneys otherwise due to producers for the milk so delivered. The rate of such assessment shall not exceed two percent per hundredweight of the gross value of the producers' milk, and there may be credited against any such assessment the amounts per hundredweight otherwise paid by any producer covered by the order by voluntary contribution or otherwise pursuant to any other federal or state milk market order for any similar research promotion or advertising program. Notwithstanding the provisions of paragraph (b) of subdivision three of this section, the president, upon written petition of no less than twenty-five percent of producers in the area, either as individuals or through cooperative representation, and in consultation with the commissioner, may call a hearing for the sole purpose of establishing a new rate of assessment hereunder and may submit a proposed change in the rate of assessment to the producers for acceptance or rejection without otherwise affecting the order. The producers in the area may vote on the proposed rate either as individuals or through cooperative representation. Notwithstanding the foregoing provisions of this paragraph and of paragraph (b) of subdivision three of this section, or the provisions of any order promulgated pursuant to this section, the rate of assessment, for any period during which a dairy products

promotion and research order established pursuant to the federal dairy and tobacco adjustment act of 1983 is in effect, shall not be less than an amount equal to the maximum credit which producers participating in this state's dairy products promotion or nutrition education programs may receive pursuant to subdivision (g) of Sec. 113 of said federal act.

(b) Provision for payments to organizations engaged in campaigns by advertisements or otherwise, including participation in similar regional or national plans or campaigns to promote the increased consumption of milk and dairy products, to acquaint the public with the dietary advantages of milk and dairy products and with the economy of their inclusion in the diet and to command, for milk and dairy products, consumer attention consistent with their importance and value.

(c) Provision for payments to institutions or organizations engaged in research leading to the development of new or improved dairy products or research with respect to the value of milk and dairy products in the human diet.

(d) Provision for requiring records to be kept and reports to be filed by milk dealers with respect to milk received from producers and with respect to assessments on the milk of such producers.

(e) Provision for the auditing of the records of such milk dealers for the purpose of verifying payment of producer assessments.

(f) Provision for an advisory board pursuant to subdivision 10 of this section.

(g) Provision for the president to retain money collected under any marketing order issued pursuant to this section, to defray the costs and expenses in the administration thereof.

(h) Such other provisions as may be necessary to effectuate the declared policies of this section.

5. Matters to be considered. In carrying out the provisions of this section and particularly in determining whether or not a dairy promotion order shall be issued, the president, in consultation with the commissioner, shall take into consideration, among others, facts available to him or her with respect to the following:

(a) The total production of milk in the area and the proportion of such milk being utilized in fluid form and in other products,

(b) The prices being received for milk by producers in the area,

(c) The level of consumption per capita for fluid milk and of other dairy products,

(d) The purchasing power of consumers,

(e) Other products which compete with milk and dairy products and prices of such products.

6. Interstate orders for compacts. The commissioner is authorized to confer and cooperate with the legally constituted authorities of other states and of the United States with respect to the issuance and operation of joint and concurrent dairy promotion orders or other activities tending to carry out the declared intent of the act. The commissioner may join with such other authorities in conducting joint investigations, holding joint hearings and issuing joint or concurrent order or orders complementary to those of the federal government and the president, after consulting with the commissioner, shall have the authority to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent or supplementary orders.

7. Prior assessments. Prior to the effective date of any dairy promotion order as provided in this section, the president, in consultation with the commissioner, may require that cooperative associations which have petitioned for such an order and that have approved of the issuance of such an order, to deposit with the president such amounts as he or she may deem necessary to defray the expense of administering and enforcing such order until such time as the assessments as herein before provided are adequate for that purpose. Such funds shall be received, deposited and disbursed by the president in the same manner as other funds received by him or her pursuant to this section and the president shall reimburse those who paid these prior assessments from other funds received by him or her pursuant to this section.

8. Status of funds. Any moneys collected under any market order issued pursuant to this section shall not be deemed to be state or corporation funds and shall be deposited in a bank or other depository of the corporation, approved by the president, allocated to each dairy promotion order under which they were collected, and shall be disbursed by the president only for the necessary expenses incurred by the president with respect to each separate order, all in accordance with the rules and regulations of the president. All such expenses shall be subject to audits by the state comptroller. Any moneys remaining in such fund allocable to a particular order, after the termination of such order and not required by the president to defray the expenses of operating such order, may in the discretion of the president be refunded on a pro-rata basis to all persons from whom assessments therefor were collected; provided, however, that if the president finds that the amounts so refundable are so small as to make impracticable the computation and refunding of such moneys, the president may use such moneys to defray the expenses incurred by him or her in the promulgation, issuance, administration or enforcement of any other similar dairy promotion order or in the absence of any other such dairy promotion order, the president may pay such moneys to any organization or institution as provided in paragraph (b) or (c) of subdivision four of this section.

9. Budget. The commissioner, in consultation with the president, shall prepare a budget for the administration and operating costs and expenses including advertising

and sales promotion when required in any dairy promotion order executed hereunder and to provide for the collection of such necessary fees or assessments to defray costs and expenses, in no case to exceed two percent per hundredweight of the gross value of milk marketed by producers in the area covered by the order.

10. Advisory board. (a) Any dairy promotion order issued pursuant to this section shall provide for the establishment of an advisory board to advise and assist the president in the administration of such order. The president shall administer and enforce any such dairy promotion order while it is in effect, consulting with the advisory board and seeking its advice and consent. This board shall consist of not less than five members and shall be appointed by the commissioner from nominations submitted by producers marketing milk in the area to which the order applies. Nominating procedure, qualification, representation, and size of the advisory board shall be prescribed in the order for which such board was appointed.

(b) No member of an advisory board shall receive a salary but shall be entitled to his or her actual and reasonable expenses incurred while performing his or her duties as authorized in this section.

(c) The duties and responsibilities of the advisory board shall be prescribed by the president, in consultation with the commissioner, and he or she shall specifically delegate to the advisory board, by inclusion in the dairy promotion order the following duties and responsibilities:

(i) The recommendation to the president of administrative rules and regulations relating to the order.

(ii) Recommending to the president such amendments to the order as deemed advisable.

(iii) The preparation and submission to the commissioner, in consultation with the president, of an estimated budget required for the proper operation of the order.

(iv) Recommending to the president methods for assessing producers and methods for collecting the necessary funds.

(v) Assisting the president in the collection and assembly of information and data necessary for the proper administration of the order.

(vi) The performance of such other duties in connection with the order as the president shall designate.

11. Rules and regulations; enforcement. (a) The president may, with the advice and consent of the advisory board, make and issue such rules and regulations as may be necessary to effectuate the provisions and intent of this section and to enforce the provisions of any dairy promotion order, all of which shall have the force and effect of law.

(b) The president, in consultation with the commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this section, or any rule or regulation, or dairy promotion order committed to his or her administration, and may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application shall be made to the supreme court in any district or county provided in the civil practice law and rules, or to the supreme court in the third judicial district.

12. Cooperation by the department. The president may request and receive, within ninety days of such request from the department such assistance, information and cooperation as may be necessary for the corporation to provide services with respect to the administration of the procedures set forth for the issuance, termination or amendment of any dairy promotion order and/or the administration of any such order. The corporation shall retain an amount equal to the expenses incurred by the corporation in performing its duties pursuant to this section and reimburse the department an amount equal to the expenses incurred by the department in supplying such services, subsequent to submission and audit of a voucher therefor. Such reimbursement shall not exceed the total amount of funds collected by the corporation pursuant to this section less the reasonable expenses incurred by the corporation in performing its duties pursuant to this section.

13. Indemnification. The state shall defend, indemnify and hold harmless the corporation, its directors, officers, and employees, from and against any and all claims, demands, causes of action, damages, costs and expenses whatsoever arising directly or indirectly from, or relating to, the administration of a dairy promotion order issued or administered pursuant to this section. In connection with the foregoing, the corporation shall give the state (a) prompt written notice of any action, claim or threat of suit, (b) the opportunity to take over, settle or defend such action, claim or suit at the state's sole expense, and (c) assistance in the defense of any such action at the expense of the state.

14. Contractual provisions. The corporation may contract for services with respect to the implementation of this section in accordance with the corporation's policies, procedures and guidelines. Notwithstanding section 2879 of the public authorities law or any other law to the contrary, any such contract may be procured by the corporation on a sole-source basis, and shall not be subject to competitive bid or competitive request for proposal requirements.

\* NB Effective July 11, 2016

\* NB Repealed July 11, 2018

\* § 16-z. Marketing orders.

The marketing orders, the regulatory provisions relating thereto, set forth in title one of the official compilation of codes, rules and regulations of the state of New York parts 40, 200, 201, 202, 203, 204, and 205, and the contracts relating thereto shall remain in full force and effect until amended or repealed pursuant to the statutory authority set forth in sections 16-x and 16-y of this act except that:

(a) such marketing orders, the regulatory provisions relating thereto, and the contracts relating thereto shall be administered by and under the supervision of the president of the corporation as of the effective date of sections 16-x and 16-y of this act;

(b) all undisbursed funds under the control of the department of agriculture and markets shall be transferred to the corporation on or before such effective date; and

(c) any assessments due and payable under such marketing orders shall be remitted to the corporation starting 30 days after the effective date of this section.

\* NB Repealed July 11, 2018

## Appendix 2: Part 40 NYS Regulations

## PART 40

### NEW YORK DAIRY PROMOTION ORDER

(Statutory authority: Agriculture and Markets Law, §§ 16, 18, 258-t, 258-aa)

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#### DEFINITIONS

##### § 40.1 Act.

Act means chapter 1008 of the Laws of the State of New York for 1969, as amended, also known as the Dairy Promotion Act, article 21-A of the Agriculture and Markets Law.

##### § 40.2 Commissioner.

Commissioner means the Commissioner of Agriculture and Markets of the State of New York.

##### § 40.3 Division.

Division means the Division of Dairy Industry Services of the Department of Agriculture and Markets of the State of New York.

##### § 40.4 Dairy products.

Dairy products mean milk and products derived therefrom and products of which milk or a portion thereof is a significant part.

##### § 40.5 Person.

Person means any individual, partnership, corporation, cooperative association, unincorporated cooperative association or other business unit.

##### § 40.6 Producer.

Producer means any person in the State of New York who is engaged in the production of milk in a quantity which exceeds family and on-farm use or who causes milk to be produced for any market in this or any other state.

##### § 40.7 Dairy promotion order.

Dairy promotion order means the provisions of this Part issued by the commissioner pursuant to the act.

##### § 40.8 Advisory board.

Advisory board means those producers who are appointed by the commissioner pursuant to section 40.15 of this Part to advise and assist him in administering this Part.

§ 40.9 Milk dealer.

Milk dealer means any person who purchases or handles or receives or sells milk.

§ 40.10 Cooperative.

Cooperative means an association or federation or cooperative of milk producers organized under the laws of New York State, or any other state, having agreements with their producer members to market, bargain for or sell the milk of such producers, and is actually performing one or more of these services in the marketing of milk produced by their members, through the cooperative or through a federation of milk cooperatives in which the cooperative has membership.

AREA AND PERSONS AFFECTED

§ 40.11 Area.

The area to which this Part shall apply is the State of New York.

§ 40.12 Persons.

Persons subject to or affected by this Part shall be:

- (a) all producers as defined in this Part; and
- (b) all milk dealers as defined in this Part who receive milk from producers.

ADVISORY BOARD

§ 40.13 Advisory board.

An advisory board consisting of 10 members shall be appointed by the commissioner to advise and assist in the administration of this Part. Each member of the advisory board shall be an individual producer, including any individual who is active in a partnership, corporation, association or other business unit which is a producer as defined in this Part.

§ 40.14 Nominations.

The commissioner shall accept nominations of individual producers for the advisory board which have been submitted in accordance with the following procedure:

- (a) The commissioner shall notify in writing each farm organization whose membership is known to include producers as defined in this Part and shall provide such other reasonable notification as he deems appropriate with respect to the date or dates on which he will accept nominations for the advisory board and the final date for submitting any such nomination. The notification by the commissioner shall include a statement setting forth the procedure for submitting a nomination.
- (b) Any individual producer marketing milk in the State of New York may submit to the commissioner in writing within the time limitation fixed by him one or more nominations of individual producers for membership on the advisory board.

(c) Any organization listed in section 40.15 of this Part (or any successor thereto) may submit to the commissioner a resolution of its board of directors or other governing body endorsing the nomination of not less than two of its members received pursuant to subdivision (b) of this section and thereby designate to the commissioner any such producer thus endorsed as a recommended representative of its organization on the advisory board.

#### § 40.15 Appointments.

The commissioner shall appoint the members of the advisory board and determine their acceptance in accordance with the following procedure:

(a) For each of the organizations or joint organizations listed in this subdivision (or any successor thereto), one of the nominees endorsed by such organization or joint organization pursuant to section 40.14(c) of this Part shall be appointed to the advisory board. In the event less than two nominees are endorsed by an organization, the commissioner at his discretion shall appoint to the advisory board an individual producer who has been nominated pursuant to section 40.14(b) of this Part with or without endorsement by such organization.

- (1) Dairylea Cooperative, Inc.
- (2) Eastern Milk Producers Cooperative Association, Inc.
- (3) Northeast Dairy Cooperative Federation, Inc.
- (4) Allied Federated Cooperatives, Inc.
- (5) Niagara Frontier Cooperative Milk Producers Bargaining Agency, Inc.
- (6) Rochester Cooperative Milk Producers Bargaining Agency, Inc.
- (7) New York Farm Bureau, Inc.
- (8) New York State Grange, Inc.
- (9) Agri-Mark, Inc.

(b) One other individual producer shall be appointed to the advisory board from among nominations which have been submitted in accordance with section 40.14(b) of this Part. In the event the commissioner does not receive a nomination other than those endorsed by organizations pursuant to section 40.14(c) of this Part, he shall appoint from among such nominees at his discretion an individual producer who has not otherwise been appointed to the advisory board pursuant to subdivision (a) of this section.

(c) Each individual producer appointed as a member of the advisory board shall file a written acceptance with the commissioner within 15 days after being notified of his appointment by the commissioner.

(d) After the members of the advisory board have been appointed and each member has indicated his acceptance, the commissioner shall make known to the producers generally the names of the members of the advisory board.

§ 40.16 Term of office.

The term of office for each member of the advisory board shall be three years and successor members shall be appointed by the commissioner in accordance with the provisions of sections 40.14 and 40.15 of this Part to coincide with the three-year term.

§ 40.17 Disqualification.

A member of the advisory board shall be disqualified for any of the following reasons:

- (a) ceases to be a producer as defined in this Part; and
- (b) By executive disqualification by the commissioner on recommendation of a majority vote of the advisory board when the member's conduct is deemed prejudicial to the public interest and the dairy promotion order: provided, that a disqualified member shall have the right to appeal and to have a hearing before the full advisory board and the commissioner by filing a written request with the commissioner of his intent to appeal within 10 days after receiving notice of disqualification.

§ 40.18 Vacancies.

In the event of a vacancy on the advisory board created by an appointee's failure to qualify for or accept membership, or which is caused by the death, resignation or disqualification of a member, the commissioner shall appoint an individual producer to serve for the duration of the unexpired term. In making such appointment, the commissioner shall maintain representation on the advisory board in accordance with that prescribed in section 40.15 of this Part.

§40.19 Duties and responsibilities of the advisory board.

It shall be the duty and responsibility of the advisory board to advise and assist the commissioner in all matters pertaining to the administration of this Part, subject only to such limitation as may be prescribed in section 258-t of the Agriculture and Markets Law. The advisory board shall:

- (a) recommend to the commissioner administrative rules and regulations relating to this Part;
- (b) recommend to the commissioner such amendments to this Part as seem advisable;
- (c) prepare and submit to the commissioner at least 30 days in advance of each fiscal year an estimated budget required for the proper operation of this Part during such year;
- (d) recommend to the commissioner methods of assessing producers and methods of collecting the necessary funds;
- (e) assist the commissioner in the collection and assembly of information and data necessary for the proper administration of this Part; and
- (f) perform such other duties in connection with this Part as the commissioner shall designate.

§ 40.20 Quorum and vote majority.

A simple majority of the advisory board members shall be necessary to constitute a quorum. A simple voting majority present shall be required to pass any motion or approve any advisory board action. At assembled meetings all votes shall be cast in person.

§ 40.21 Compensation and expenses.

The members of the advisory board shall not receive salaries, but each member shall be reimbursed for his actual and reasonable expenses while attending a meeting or committee meeting of the advisory board or in performing a duty necessary to the functions and activities of the advisory board as determined by the commissioner. The monies required for payment to members of the advisory board as authorized pursuant to this section shall be paid by the commissioner, as trustee, from the funds obtained through assessments against producers pursuant to the terms of this Part.

BUDGET AND ASSESSMENTS

§ 40.22 Preparation of budget.

At least 15 days in advance of each fiscal year, the commissioner shall announce a budget necessary for its administration and enforcement and for carrying on duly authorized programs and activities including advertising, promotion, education and publicity, marketing and product research, and informational services for encouraging the consumption of dairy products and protecting the health and welfare of consumers, as provided by the act; provided, that the commissioner may modify or revise the budget for any portion of the fiscal year if the maximum rate of assessment authorized under section 40.23 of this Part is amended, in which case he shall announce such revision in budget at least 15 days in advance of the date on which it is to become effective. The total amount of budgeted administrative costs for each fiscal year shall not exceed five percent of the total budget.

§ 40.23 Assessment.

The commissioner shall announce a rate of assessment for each fiscal year to provide adequate funds to defray expenditures in the budget, and there shall be credited against any such assessment the amount per hundredweight otherwise paid by any producer subject to this Part, by voluntary contribution or otherwise, pursuant to the Niagara Frontier and Rochester milk marketing orders and any other State or Federal milk marketing order for any similar research, promotion or advertising program. The rate of assessment shall apply to all milk delivered by producers to milk dealers for sale (including the milk of a milk dealer's own production handled for sale) and shall not exceed a rate per hundredweight which corresponds with the simple average uniform price for the New York - New Jersey Milk Marketing Order (I NYCRR, Part 20) at the 201-210 milk zone for 3.5 percent butterfat milk for the preceding calendar year, rounded to the nearest whole cent, as set forth in the following schedule:

Simple Average Uniform Maximum Rate

Price for Preceding of Calendar Year (Range)	Assessment Dollars Per Hundredweight
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10.01-10.75

.065

10.76-11.50	.070
11.51-12.25	.075
12.26-13.00	.080
13.01-13.75	.085
13.76-14.50	.090
14.51-15.25	.095
15.26-16.00	.100

In the event the average uniform price for the New York - New Jersey order for the preceding calendar year does not fall within the ranges listed in the foregoing schedule, such schedule shall be extended by the same incremental amounts.

#### § 40.24 Collection of assessment.

The rate of assessment fixed by the commissioner pursuant to section 40.23 of this Part upon milk delivered by producers shall be collected as follows:

- (a) Each milk dealer shall deduct from the price otherwise to be paid to producers or collecting cooperatives (other than producers who are credited with the full assessment pursuant to section 40.23 of this Part) the rate of assessment announced by the commissioner for the fiscal year on all milk received from producers.
- (b) Each milk dealer shall on or before the 25th day of the month pay to the commissioner as trustee, the amount deducted from producers or collecting cooperatives pursuant to subdivision (a) of this section on milk received during the preceding month. Each milk dealer with respect to his own production shall also pay to the commissioner as trustee, on or before the 25th day of the month for milk handled for sale during the preceding month, an amount computed at the rate of assessment announced by the commissioner.
- (c) The amounts paid to the commissioner as trustee pursuant to subdivision (b) of this section shall be deposited with a bank or other depository in the State designated by him and the State Comptroller and subject to withdrawal or disbursement by the commissioner in accordance with the act and the terms and provisions of this Part. Such fund shall be known as the dairy promotion fund.

#### § 40.25 Prior assessments.

Any assessments paid to the commissioner by cooperative associations prior to the effective date of this Part to defray the expense of promulgating, administering and enforcing the order until such time as the assessment as provided pursuant to section 40.23 of this Part is adequate for that purpose shall be reimbursed to such cooperative associations from the funds received and deposited by the commissioner in the dairy promotion fund pursuant to section 40.24 of this Part.

#### REPORTS AND RECORDS OF MILK DEALERS

##### § 40.26 Monthly report to the division.

Not later than the 28th day of each month, except as the commissioner may otherwise provide, each milk dealer, including a milk dealer handling only milk of his own production, shall file with the division at Albany, on forms provided for that purpose, an accurate report covering the preceding month, for each plant or other facility operated by him, showing the quantities of milk received from producers and the monies deducted from the prices otherwise paid producers or collecting cooperatives as assessments required under this Part. Such reports shall be sworn to by the milk dealer or by a responsible officer or employee authorized to act in his behalf.

#### § 40.27 Records to be maintained.

Each milk dealer shall maintain accurate records, books of accounts and other data readily available at his or its office or other principal places of business which shall verify the quantity of milk received from producers. Such records shall establish for each plant or other receiving point each month:

- (a) the full name and post office address of each producer from whom the milk dealer has received milk;
- (b) the quantity of milk received from each such producer each day; and
- (c) such other records as the commissioner deems necessary for the administration of this Part.

#### § 40.28 Accurate record of quantities.

When the quantity of milk delivered to a milk dealer by or for the account of a producer is determined by weighing, or otherwise, an accurate record of each such determination showing the quantity of milk received for the account of each such producer shall be made at once. Each such original record containing information with respect to the quantity of milk received for the account of one or more producers, whether the records be for one day or more than one day, shall be dated and signed by the person making the determination, and shall be preserved by the milk dealer purchasing or receiving such milk regardless of the fact that such milk dealer may copy such records for the purpose of making a more permanent record for the milk dealer's own use.

#### § 40.29 Availability of records and facilities.

Each milk dealer shall make available at his office at all reasonable hours to any employee designated by the commissioner all books, papers, records or documents relating to the purchase of milk from producers.

#### § 40.30 Retention of records.

All records required pursuant to this Part to be made available to the commissioner shall be retained by the milk dealer for a period of three years to begin at the end of the month to which such records pertain. If, within the three-year period the commissioner notifies the milk dealer in writing that further retention of such records is necessary, the milk dealer shall retain the specified records until further written notification is received from the commissioner.

### PROMOTION PROGRAMS AND DISBURSEMENT OF FUNDS

#### § 40.31 Advertising, promotion, education and publicity of dairy products.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to carry on or cause to be carried on such advertising, promotion, education and publicity programs as he may believe will create new markets for the milk of producers as defined in this Part or maintain present markets therefor. For such purposes, he may expend such monies or any part thereof as may be available pursuant to this Part. No advertising, promotion or publicity programs shall be conducted pursuant to this Part which make reference to any particular brand or trade name.

#### § 40.32 Marketing and product research.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to carry on or cause to be carried on milk marketing and/or dairy product research and to expend such monies as may be available pursuant to this Part for such purpose.

#### § 40.33 Information services.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to provide for informational services designed to keep producers and others informed on milk marketing and dairy product research, promotion, advertising, education and publicity programs and any other dairy industry information deemed important, and to expend such monies as may be available and required pursuant to this Part to obtain and disseminate such information.

#### § 40.34 Disbursement of funds.

The monies deposited in the dairy promotion fund shall be disbursed by the commissioner with the advice and assistance of the advisory board for the necessary expenses incurred with respect to this Part. All such disbursements shall be made in the manner prescribed by the act and the provisions of this Part and shall be in accordance with any rules and regulations promulgated by the commissioner to effectuate the provisions and intent thereof. The expenses incurred with respect to this Part shall be audited by the State Comptroller at least annually and a copy of the audit report shall be made available to any producer for inspection.

#### § 40.35 Report of the commissioner.

The commissioner, with the advice and assistance of the advisory board, shall prepare and publish a report each year for the benefit of producers which shall contain information on the promotion programs carried on during the preceding year, the expenditure of funds for each such program and such other information with respect to this Part as may be of benefit to producers.

### MISCELLANEOUS AND GENERAL PROVISIONS

#### § 40.36 Effective date.

The provisions of this Part or any amendments thereto shall become effective at such time as the commissioner may declare and shall continue in force until suspended or terminated by him in accordance with the act. This Part shall continue in effect on and after May 1, 1984 if not amended or otherwise voted upon within a period of three years therefrom.

#### § 40.37 Amendment, suspension or termination.

The commissioner may amend, suspend or terminate any or all provisions of this Part in accordance with the provisions of the act and any rules and regulations promulgated by him to effectuate the provisions and intent thereof.

§ 40.38 Continuing power and duty.

If, upon amendment, suspension or termination of any or all provisions of this Part, there are any obligations arising hereunder the final accrual or ascertainment of which requires further acts by any milk dealer, or by the commissioner, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such amendment, suspension or termination.

§ 40.39 Continuing obligation of milk dealers.

Unless otherwise provided by the commissioner in any notice of amendment, suspension or termination of any or all of the provisions hereof, such amendment, termination or suspension shall not:

- (a) affect, waive or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provision of this Part;
- (b) release or waive any violation of this Part occurring prior to the effective date of such amendment, termination or suspension; or
- (c) affect or impair any right or remedies of the commissioner or of any other person with respect to any such violations.

§ 40.40 Liquidation.

Upon the termination of this Part, the commissioner shall dispose of all funds received hereunder in an equitable manner, together with claims to any such funds which are unpaid and owing at the time of termination and which are in accordance with the intent of the act and the provisions of this Part.

§ 40.41 Rate of assessment.

The rate of assessment to be paid pursuant to this Part is hereby established as follows: 7 1/2 cents per hundredweight for the period May 1, 1988, through April 30, 1989, on all milk received from producers, including each milk dealer's own production of milk handled for sale.

## **Appendix 3: Public Officers Law – Ethics Law Section 74**



# Public Officers Law §74

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## Code of Ethics.

### 1. Definition.

As used in this section: The term "**state agency**" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "**legislative employee**" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

### 2. Rule with respect to conflicts of interest.

No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest.

### 3. Standards.

- a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties.
- b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority.
- c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.
- d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

- e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties.
  - f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.
  - g. An officer or employee of a state agency should abstain from making personnel investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.
  - h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.
  - i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.
4. Violations.

In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

## **Appendix 4: Advisory Board Appointment Acceptance**

**New York Dairy Promotion Advisory Board  
Appointment Acceptance**

**TO: Richard A. Ball, Commissioner  
NYS Department of Agriculture and Markets  
10B Airline Drive  
Albany, NY 12235**

I, \_\_\_\_\_, having been appointed a member of the New York Dairy Promotion Advisory Board, do hereby notify you that I accept such appointment and agree to serve on said Advisory Board at your pleasure, without salary except actual expenses incurred while performing my duties as such member, as authorized in §16-x of the New York State Urban Development Corporation Act.

I, \_\_\_\_\_, have read and understood the Dairy Promotion Order Handbook.

I, \_\_\_\_\_, have declared all organizations to be potential conflicts within my duties as a member of the New York Dairy Promotion Advisory Board. Additionally, if at any time it should come to my attention that any potential conflicts of interest exist that may affect my duties on the Advisory Board, I will inform the Department immediately and work to resolve any such conflicts of interest.

**Name (print):** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Cell phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Appendix 5: Conflict of Interest Disclosure Statement with NYS Ethics Law  
Section 74**

## Conflict of Interest Disclosure Statement

Section 74 of the Public Officer's Law includes the prohibition of any interest, financial or otherwise, direct or indirect or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

Additionally, an officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

Therefore, I, \_\_\_\_\_ (name) declare the following organizations to be potential conflicts within my duties as a member of the Commissioner's Dairy Promotion Advisory Board. If any other potential conflicts come to my attention, I shall notify the Commissioner immediately, and recuse myself from the related discussions. Additionally, I will disclose to the Commissioner if I receive compensation or expense reimbursement from any other source related to my duties on the Advisory Board.

_____ Signature	_____ Date
Organization	Nature of potential conflict
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Name of Organization Providing Compensation or Expense Reimbursement related to my duties on the Advisory Board

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PUBLIC OFFICERS LAW**  
**ARTICLE 4. POWERS AND DUTIES OF PUBLIC OFFICERS**  
**NY CLS Pub § 74**

**§ 74. Code of ethics**

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in

decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation

**Appendix 6: Public Officers Law - Open Meetings Law**

## **PUBLIC OFFICERS LAW, ARTICLE 7**

### OPEN MEETINGS LAW

[Section 100. Legislative declaration.](#)

[Section 101. Short title.](#)

[Section 102. Definitions.](#)

[Section 103. Open meetings and executive sessions.](#)

[Section 104. Public notice.](#)

[Section 105. Conduct of executive sessions.](#)

[Section 106. Minutes.](#)

[Section 107. Enforcement.](#)

[Section 108. Exemptions.](#)

[Section 109. Committee on open government.](#)

[Section 110. Construction with other laws.](#)

[Section 111. Severability.](#)

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#### **§100. Legislative declaration.**

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

**§101. Short title.** This article shall be known and may be cited as "Open Meetings Law".

**§102. Definitions.** As used in this article:

1. "Meeting" means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body.
2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.
3. "Executive session" means that portion of a meeting not open to the general public.

#### **§103. Open meetings and executive sessions.**

- (a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article.
- (b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.
- (c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates.
- (d) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.

1. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. As used herein the term "broadcast" shall also include the transmission of signals by cable.
  2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.
- (e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.
- (f) Open meetings of an agency or authority shall be, to the extent practicable and within available funds, broadcast to the public and maintained as records of the agency or authority. If the agency or authority maintains a website and utilizes a high speed internet connection, such open meeting shall be, to the extent practicable and within available funds, streamed on such website in real-time, and posted on such website within and for a reasonable time after the meeting. For the purposes of this subdivision, the term "agency" shall mean only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor. For purposes of this subdivision, the term "authority" shall mean a public authority or public benefit corporation created by or existing under any state law, at least one of whose members is appointed by the governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

#### **§104. Public notice.**

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.
3. The public notice provided for by this section shall not be construed to require publication as a legal notice.
4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.
5. If a meeting will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.
6. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body's internet website.

#### **§105. Conduct of executive sessions.**

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for

the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

- a. matters which will imperil the public safety if disclosed;
  - b. any matter which may disclose the identity of a law enforcement agent or informer;
  - c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
  - d. discussions regarding proposed, pending or current litigation;
  - e. collective negotiations pursuant to article fourteen of the civil service law;
  - f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
  - g. the preparation, grading or administration of examinations; and
  - h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.
2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

#### **§106. Minutes.**

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.
3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

#### **§107. Enforcement.**

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article. If the court determines that a public body has violated this article, the court may require the members of the public body to participate in a training session concerning the obligations imposed by this article conducted by the staff of the committee on open government. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.
2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. If a court determines that a vote was taken in material violation of this article, or that substantial deliberations relating thereto occurred in private prior to such vote, the court shall award costs and reasonable attorney's fees to the successful petitioner, unless there was a reasonable basis for a public body to believe that a closed session could properly have been held.
3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive

session shall commence to run from the date the minutes of such executive session have been made available to the public.

**§108. Exemptions.** Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;
2. a. deliberations of political committees, conferences and caucuses.  
b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to
  - (i) the subject matter under discussion, including discussions of public business,
  - (ii) the majority or minority status of such political committees, conferences and caucuses or
  - (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and
3. any matter made confidential by federal or state law.

**§109. Committee on open government.** The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

**§110. Construction with other laws.**

1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.
2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.
3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article

**§111. Severability.** If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

## **Appendix 7: Conducting Public Meetings and Public Hearings**



**Division of Local  
Government Services**

# **Conducting Public Meetings and Public Hearings**

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**JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES**

**A Division of the New York Department of State**

**Andrew M. Cuomo, Governor**

**Rossana Rosado, Acting Secretary of State**

NEW YORK STATE DEPARTMENT OF STATE  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001  
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*“Democracy, like a precious jewel, shines most brilliantly  
in the light of an open government.”<sup>1</sup>*

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# INTRODUCTION

Nearly all of a municipal board's work is performed in meetings or hearings that are open to the public. Such meetings are subject to several state and local procedural requirements, as well as the political climate of the locality. Taken together, these requirements can confuse, intimidate and stymie even the most experienced of boards. For this reason, it is the intent of this publication to educate and refresh municipal officials on several of the procedures governing public meetings and hearings. Only with a working knowledge of state procedural requirements will municipal officials be free to focus on the current issues and political needs of their communities.

The Division of Local Government Services wishes to express its gratitude to the New York State Committee on Open Government and its Executive Director, Robert Freeman, Esq., for their assistance in the preparation of this publication.

## PART ONE: MEETINGS

### THE OPEN MEETINGS LAW

*It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.<sup>2</sup>*

This legislative declaration clearly sets forth the intent of the Open Meetings Law (OML) and the State's idealistic goals for local government. The Open Meetings Law was designed to facilitate public observance of the workings of government and to prevent the deliberate exclusion of the public from being able to observe the governmental process. To local governments, the OML requires that they examine their processes in order to determine whether the public is actually, or even perceptually, being unduly excluded.

**What is a Meeting?** — The Open Meetings Law defines a “meeting” as “the official convening of a public body for the purpose of conducting public business.”<sup>3</sup> A “public body” is “any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation....or committee or subcommittee or other similar body of such public body.”<sup>4</sup> The following organizations, among others, are thus subject to the requirements of the OML: city councils, town boards, village boards of trustees, planning boards, zoning boards of appeals, volunteer fire companies, boards of fire commissioners, boards of trustees of volunteer fire companies, municipal water boards, school boards, as well as their

committees and subcommittees. The comprehensive definitions of the OML essentially mean that any group organized to perform a governmental function must make all of its meetings open to the public and must give proper notice of such meetings.

The statute defines a “meeting”, not by the nomenclature attached to it, but by the facts: any time a public body gathers for the purpose of conducting public business (regardless of whether the body *intends* to take any action) the proceeding must be convened open to the public. Characterizing meetings as “work sessions”, or using similar wording, does not relieve the body of the need to comply with the OML. On the other hand, the OML does not apply to social gatherings or chance meetings, even where some item of public business may be mentioned in passing. It also does not apply whenever less than a quorum of the members of a public body get together, since no substantive public business may be done under those circumstances.

**Who May Attend?** — The Open Meetings Law requires that meetings held by public bodies must be “open to the general public”<sup>5</sup>, i.e., that the body must accord access (including media access) to every meeting. Where a public body uses videoconferencing to conduct a meeting, it must also provide for public access at any location from which any member of the body participates.<sup>6</sup> It does not require the public body to offer the public an opportunity to be heard. The right to participate (that is, to speak) at a meeting may be limited to the members of the public body itself. A public body may, however, permit public participation and may provide rules for speakers to follow at meetings.<sup>7</sup> Also included among the OML’s requirements is that “all reasonable efforts” be made to ensure that the meeting venue is accessible to the physically handicapped.<sup>8</sup>

**Executive Sessions** — An “executive session” is a portion of an open meeting during which the public may be excluded.<sup>9</sup> The public body’s authority to conduct an executive session is limited to those purposes enumerated in the Open Meetings Law.<sup>10</sup> In summary, a public body may only go into executive session if the matters to be discussed:

- will imperil public safety if disclosed;
- may disclose the identity of a law enforcement agent or informer;
- relate to a current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- relate to proposed, pending, or current litigation;
- relate to public employee collective-bargaining negotiations;
- involve the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;
- pertain to the preparation, grading, or administration of examinations; or
- relate to the proposed acquisition, sale, or lease of real property, or the proposed acquisition, sale, or exchange of securities, but only when publicity would substantially affect their value.

There are also instances where a public body may conduct business that is totally exempt from compliance with the Open Meetings law.<sup>11</sup> These exemptions include:

- judicial or quasi-judicial proceedings (except for proceedings of a zoning board of appeals);
- deliberations of political committees, conferences and caucuses; and
- any matter made confidential by federal or state law. (The Committee on Open Government has held that this latter exemption includes the attorney-client privilege: thus, a public body may meet with its attorney, for the purpose of soliciting and receiving legal advice, without the need to comply with the Open Meetings Law.<sup>12</sup>)

It should be emphasized that the executive session, as well as the attorney-client privilege, are *privileges* of the public body. Unless another statute actually *requires* that a matter be discussed in private, the public body is under no obligation to exclude the public: it simply may do so at its option.

A public body may only go into executive session following the introduction, during an open meeting, of a resolution that is then approved by a majority of the fully-constituted body. This resolution must generally identify the area(s) of the subject(s) to be considered in the executive session.<sup>13</sup> As an example, a resolution might state “The Board resolves to enter into an executive session to discuss the qualifications of several candidates for the position of secretary to the Board.” There is no need to include names, or to include greater specificity in such a resolution.

Where a public body makes an official decision or takes action during an executive session, it must record or summarize that action and must record the date and the vote taken in its minutes.<sup>14</sup> If no votes are taken during an executive session, no minutes of the executive session need to be prepared. A public body may not, however, vote in executive session to appropriate public funds.<sup>15</sup>

When a public body lets citizens know when they are meeting and the issues to be addressed, it takes an important first step in establishing a climate of government based on respect for constituents' judgment. By facilitating public attendance at its meetings, the body can ensure the circulation of first-hand information about why it acted as it did, and prevent the spread of misinformation. Although concerned citizens may not have been permitted to participate in the debate on a particular issue, and may in fact not agree with the board's decision, they will nonetheless have had the opportunity to witness the decision-making process, and, it is hoped, to hear the true rationale behind the decision.

## **PREPARING A PUBLIC NOTICE**

The Open Meetings Law requires that notice of the time and place of all meetings of a public body be given prior to every meeting. The notice must include reference to the date, time and location of the meeting.<sup>16</sup> General considerations of due process indicate that the notice should also include the name of the public body. It is further recommended that the notice identify a contact person or office for the dispensing of additional information. A notice need not include an agenda, nor does it have to be published as a “legal notice.”

The length of time the notice must precede the meeting varies, depending on when the meeting is scheduled:

- Meetings scheduled a week or more in advance must be preceded by posted notice given to the public, and by direct notification given to the news media, not less than 72 hours prior to the meeting.<sup>17</sup>
- Meetings scheduled less than a week in advance must be preceded by the same forms of notice given “to the extent practicable” at a reasonable time prior to the meeting.<sup>18</sup>

If inadequate notice is given, the municipality risks the chance that an aggrieved person will challenge the validity of the meeting in court. This raises the possibility that any or all actions taken by the public body at the meeting may be invalidated.<sup>19</sup> While the OML recognizes a court’s authority to invalidate the action of a public body that is taken in the absence of compliance with its terms, nonetheless the Law provides that an *unintentional* failure to comply cannot, in and of itself, become grounds for invalidation of an action.<sup>20</sup>

## **PLANNING A MEETING**

Public meetings are more effective if they are planned properly and organized several days in advance. The following questions should be considered in advance when planning for meetings:

- Is a meeting necessary? Why meet?
- Who should be involved in the meeting?
- What subjects must be covered? Should other subjects be considered at this meeting?
- What resources will be necessary for conducting this meeting?
- What kind of ground rules will be needed?
- Is a public *hearing* required to discuss any of the subjects that must be covered?

## **ORGANIZING FOR THE MEETING**

Time spent organizing in advance of meetings can improve the quality of the meeting and facilitate the proper conveyance of information to the public. Discussions at well-planned meetings are usually more focused, resulting in shorter meetings. In addition, fewer meetings may be needed to finish business because the right information and the right people are brought together the first time. The following are a few topics and questions to consider when organizing a meeting:

**Preparing an Agenda** — Making a list of topics for discussion, planning a specific amount of time for each item, and distributing the agenda before the day of the meeting helps board members to think about matters in advance.

**Inviting Experts and Public Officials** — Which outside experts need to be invited for assistance on the scheduled topics: an attorney; an engineer; a county or State planner? Should public officials from other units of government be invited to attend?

**Preparing Background Information** — What information must be prepared before the meeting? Who will prepare it for the board?

**Distributing Information in Advance** — Distribute needed information to members in advance of the meeting so they can become familiar with the matters they will need to decide.

**Space for the Meeting** — What kind of meeting space is required? Who will arrange for the facility, open and set it up in advance?

**Special Equipment** — Arrange for equipment such as microphones, amplifier/speaker systems, tape recorders, projectors, power cords, equipment stands, charts, markers, and other items to be available as needed. Where are the electrical outlets needed to operate power equipment?

**Other Needs** — Must someone be contacted in order to obtain permission to use the meeting space? Is it necessary to secure a key to open the room? Is anything else necessary?

**Confirm that Members Will Attend** — Contact members of the body to confirm they will attend the meeting.

**Review Ground Rules** — Members should each review the ground rules needed to run the meeting.<sup>21</sup> The board's rules of procedure (if there are any) should be checked and the procedures required therein should be followed during the meeting. Business will flow faster and more smoothly when all participants are familiar with the rules.

## **AT THE MEETING**

Many of the steps outlined below are probably well known to the experienced board member, but not to newer members. This section was designed to help the latter group become familiar with the order of a typical meeting.

**Setting Up** — The secretary, clerk, or someone designated for the purpose, should plan to arrive at the meeting place a few minutes ahead of time to open the room and to (re)arrange the furniture, set up special equipment, welcome experts, and greet members of the public.

**Roll Call and Quorum** — When the members of the body have arrived and the time has come to open the meeting, the chair should call the meeting to order. Roll call of the members is taken, and quorum is confirmed. Generally, the number of members necessary for a quorum is an absolute majority of the total membership, regardless of vacancies and absences.<sup>22</sup> If a quorum is not present, no official business can be conducted until more members arrive. Informal discussion can, however, legally take place, or the meeting can be adjourned (less than a quorum may adjourn).<sup>23</sup>

**Minutes** — Ideally, the task of taking minutes is permanently assigned to a secretary or clerk. In the absence of such a support person, the task may be assigned to a board member having sufficient skill. The chairperson, being responsible for conducting the meeting, should *not* take the minutes.

**Opening Statement** — If a quorum is present, the chair may make an opening statement, welcoming the public and any invited guests to the meeting, and explain the rules to be followed during the meeting.

**Order of Business** — The chair guides the meeting through the order of business. A typical order of business might be:

- reading of the minutes of the previous meeting<sup>24</sup>; amendment and approval;
- hearing the reports of standing committees;
- hearing of the reports of select committees;
- consideration of unfinished business;
- consideration of new business;
- approval of bills for payment;
- setting the time and place for the next meeting;
- setting the preliminary agenda for the next meeting; and
- adjournment.

**Follow-up** — After the meeting, minutes will need to be prepared. Depending on local procedural rules, perhaps a draft will be distributed for comments and corrections. An agenda should be set up for the next meeting. Assignments to get information or to follow up on action agreed to at the meeting should also be made. The cycle of giving notice and setting up the next meeting begins anew.

## **PART TWO: PUBLIC HEARINGS**

### **HEARINGS REQUIRED BY LAW**

New York law empowers all local governments to enact local laws governing many aspects of their property and affairs.<sup>25</sup> State law requires the adoption of local laws (as well as ordinances, in towns) be preceded by a public hearing.<sup>26</sup> In addition, many particular functions of public bodies--such as the adoption of a budget, or the issuance of a land use approval--must be preceded by a hearing. Where local officials require guidance on particular public hearing and notice requirements associated with municipal business, they should contact the municipal attorney for advice.

Section 20 of the Municipal Home Rule Law prescribes a five-day newspaper notice period for a public hearing on a local law. This period may, however, be shortened (to as few as three days) or lengthened, at the option of the local government, via the adoption of its own local law pertaining to notice.<sup>27</sup> As this notice period is long enough to meet the requirements of the OML, a single notice could suffice for both the hearing and the meeting itself, though it should be remembered that posted notice remains necessary to satisfy the OML.

**What Are Public Hearings?** — A public hearing is an official proceeding of a governmental body or officer, during which the public is accorded the right to be heard. It bears emphasizing

that any hearing held by a public body will necessarily constitute “conducting public business” within the meaning of the Open Meetings Law. The body must therefore have a quorum present, and must comply with the requirements of the OML as well as with the specific requirements found elsewhere that relate to the hearing itself. Many public hearings are required by law on particular matters, such as those that must be held prior to adoption of a local law<sup>28</sup>, or prior to a determination by a planning board on a subdivision plat application.<sup>29</sup> Many others need only be held at the option of a public body, because it may desire merely to gauge public opinion on a matter. Where a public hearing is required by law, the particular statute governing the subject matter usually sets forth the applicable procedural requirements (refer to other publications in this Technical Series for the particular requirements relating to public hearings held with regard to the subjects treated therein).

**Contents of a Public Notice** — While particular statutory requirements may vary, all notices of public hearings must, at a minimum, include:

- the date, time and place of the hearing; and
- a brief statement of its purpose (e.g., “hearing on proposed Local Law No. 1 of 2008”, or “hearing on a proposed Special Use Permit for a home occupation at 24 Elm Street”).

While usually not legally required, it may be helpful also to include with such notice:

- the name and contact information for a person or office that can provide additional information about the hearing;
- information as to where a copy of any relevant documents can be accessed;
- information on how individuals or groups may testify at the hearing; and
- a suggestion or request that persons testifying at the hearing provide written copies of their testimony.

## **CONDUCTING A PUBLIC HEARING**

The following is a list of steps and suggestions to help in preparing for a public hearing.

**1. Determine Hearing and Notice Requirements** — The board should consult with its attorney in order to determine what hearing and notice requirements must be satisfied, as well as the possible necessity of sending special notices to specific individuals, other municipalities, boards or other levels of government affected by the proposed action.

**2. Adopt a Resolution** — If the matter concerns the adoption of local legislation, the governing body should adopt a resolution proposing the law, ordinance, rule or regulation in question. The resolution should appear in the minutes of a meeting, and should state the date, time, place and subject of the hearing. The board should also instruct the clerk to prepare and place the required public notice.

**3. Give Public and Special Notice** — Legal notice of the hearing should be published in the official newspaper, if there is one, or in a newspaper having general circulation within the municipality, as required by law. A public notice should be posted on the official bulletin board

or signboard, and in other places as required by law. It is advisable that the clerk file an affidavit of publication after publishing the notice, in order to prove that the request for publication was made. The news media should be notified, and special notice should be given to individuals and governmental bodies as may be specially required. (Remember, the notice and access provisions of the Open Meetings Law--including posted notice--will also apply to any convening of a public body at which it intends to hold a hearing.)

**4. Collect Information** — The board should designate a contact person (perhaps the clerk of the board) for the collection of further information about the public hearing. That person collects information, maps, records, and other items for public examination prior to the hearing.

**5. Utilize the Municipal Attorney** — The municipal attorney should be consulted as to whether an official transcript of the proceedings is required. If so, the board should arrange for a court stenographer to record and transcribe the official proceedings. If the board determines that the hearing will require the services of the municipal attorney, then it should arrange for the attorney to attend the hearing. If special legal procedures must be followed at the hearing, the board may want to request that the municipal attorney tutor the chair in advance.

**6. Determine the Need for Expert Witnesses** — A determination should be made by the board as to the need for having expert witnesses attend and give testimony at the hearing. If expert witnesses are needed, then appropriate arrangements to secure their services should be made.

**7. Arranging For Space and Equipment** — Space, furnishings and equipment needs should be assessed as soon as possible, and arrangements made according to the following needs:

- amount of space;
- number of chairs and tables;
- lectern for the witnesses to testify from (having a single location for the witnesses is important if the hearing is being recorded);
- special equipment, such as microphones, amplifiers, loudspeakers, power cords, easels, chart paper, computer and audiovisual equipment, and recording devices; and
- water pitchers and cups located conveniently for witnesses and board members.

**8. Hearing Procedures** — Hearing procedures are important for the smooth procession of witnesses and testimony. The chair should familiarize himself or herself with any applicable legal procedures and any locally-required procedures, as well as any special “ground rules” established for the event. It is also useful for the board to consider in advance:

- the legal time constraints on making a decision;
- how the information collected at the hearing will be used in reaching a decision; and
- when the board will meet to make its actual decision.

**9. Registration of Persons Wishing to Testify** — The clerk should record the names of those persons wishing to testify at the hearing. Participants should be invited to sign in as they enter the hearing room. This is especially useful where a record is desired of individuals and groups who are interested in testifying. Witnesses should be arranged to testify according to a pre-

determined order. It is recommended that expert witnesses and public officials testify first, then persons representing organizations, followed by individuals. (An alternative system would follow a first-come, first-served order, using a sign-in roster.)

**10. Opening the Hearing** — After the hearing is called to order, the chair should welcome the public to the hearing and should introduce the members of the board. An opening presentation should be made by or on behalf of the board, stating what the board hopes to gain from listening to the public and what the next step in the process will be. The chair should note that the resolution of the board authorizing the public hearing and the affidavit of publication of the official notice have been entered into the record. While it is unnecessary to read such documents aloud, the chair or the board may wish to have the clerk briefly summarize their contents for the audience. The chair (or alternatively, the board's attorney) should clearly state the rules of procedure to be followed by the board at the hearing. These rules should include reference to, and the rationale behind, the order in which witnesses will be called. Such explanation will help the public to understand and accept the procedure.

**11. Accepting Testimony** — In addition to accepting oral testimony of witnesses, the board may also want to accept written comments. If written comments will be accepted, the board should notify the public as to how many copies will be needed for the board, and if deemed necessary, for distribution to the media and others present at the hearing.

If the board anticipates a large number of witnesses wishing to testify, it may want to limit the time for each witness' testimony. Limiting statements to 3-5 minutes encourages witnesses to be focused and direct, and permits more people to testify. More lengthy comments can be accepted in written form after the hearing is closed. Provisions may be made so that extra time may be given, should the board consider it necessary.

The chair should call the witnesses in the determined order, and invite them to present written copies of their testimony to the board. When a witness testifies, it is the chair's responsibility to prevent the witness from straying too far from the subject, and to remind the witness to speak clearly or to speak into the microphone. The chair should instruct the witness to present his/her testimony to the board, not to the public. The chair should also prevent others from interrupting the testimony.

The board members may want to ask questions of witnesses in order to clarify facts and opinions presented in their testimony. In addition to questioning witnesses, the board may permit members of the public to question witnesses at the hearing. If it does so, the board should be careful not to turn the hearing into a debate. Open debates of public issues tend to raise people's emotional levels, diminish the board's control over the hearing, and tend to discourage some witnesses from testifying.

If witnesses are being called from a witness list, the board will find that some witnesses will elect not to testify on the grounds that their views were expressed by a previous witness. Also, some prospective witnesses will leave the hearing early. When the list of witnesses is exhausted, the chair should ask if anyone remaining wishes to be heard. As time permits, these persons should be invited to speak.

In hearings where certain facts must be established, the chair may need to ask for further testimony by the actual parties if those facts have not been presented. This situation is most likely to arise with a planning board hearing, a board of appeals hearing, a board of assessment review proceeding, or other hearings involving either a permit or an appeals process.

**12. Adjournment** — The board may desire to adjourn and reconvene the hearing at a later time. This may occur for any of a number of reasons: it may wish to reconvene at a different location (for example, a project site); the hour may be late and the board may desire to continue the following day; or it may wish to adjourn for a longer period—say, a week or longer, or perhaps until its next regularly-scheduled meeting, in order to allow more time for the gathering and presenting of information. In any case, the chair should secure agreement as to the place and time at which the board will reconvene, and should announce it before adjourning. While it is generally not necessary to place a new newspaper notice of the hearing’s continuation, the original hearing notice could reference the possibility of an adjournment (see Sample Notice).

**13. Closing the Hearing** — A public hearing is concluded when all attendees desiring to speak have been heard. A vote is not needed to close the hearing; provided no board members object, the chair simply gavels the hearing to a close. When the oral portion of the hearing is finally closed, the board may wish to “hold the record open” for a stated time period for the receipt and inclusion of additional written testimony. This may be appropriate to allow people to respond to testimony given orally. In such case the board will of course delay any final action on the matter until the latter deadline has passed. Regardless, any legal time period for a decision must begin when the *oral* public hearing is closed.

The chair should thank the public and witnesses for attending, and should explain the steps the board will take to use the information gathered to make a decision.

## CONCLUSION

Actions taken at meetings at which the Open Meetings Law is not complied with are at serious risk of being overturned in court. Fortunately, the goal of most local governments is service to the community, not the mere avoidance of legal hassles. For this reason, municipal officials should regard open meeting procedures as serving more than just the State's objective of keeping local government business open to the public. These procedures give the public the full opportunity to observe and to participate in its own governance, and they help confirm the local government's accountability to its constituents. In addition, fairness in applying hearing procedures results in proper accord for the rights of all parties, a better airing of public opinion on community issues, and ultimately greater public confidence in the decisional process.

It is hoped that this publication has clarified both the purpose and the detail of the procedures required in the Open Meetings Law, and has been of assistance to all local officials involved in the organization of public meetings as well as hearings.

## **IF YOU NEED MORE INFORMATION**

For information relating specifically to the Open Meetings Law, contact: Robert Freeman, Esq., Executive Director, Committee on Open Government, (518) 474-2518.

Freeman, Chester, *Parliamentary Procedure — Teach Yourself*, Cornell Cooperative Extension, pub., available at <http://theuniversityfaculty.cornell.edu/meetings/ParProc-Freeman.pdf>.

Robert, H.M., *Robert's Rules of Order, Newly Revised*, copyright Robert's Rules Association. Available online at many websites, e.g., <http://www.rulesonline.com>. This is a standard reference of Parliamentary Procedure. Local officials should, however, be aware that it does not closely follow New York law in a number of subject areas. Moreover, *Robert's Rules* is far more complex than most local governments need.

*Your Right to Know*. Available from the Committee on Open Government, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, or at [http://www.dos.ny.gov/coog/Right\\_to\\_know.html](http://www.dos.ny.gov/coog/Right_to_know.html)

# SAMPLE RESOLUTION FOR PUBLIC HEARING

**Proposed Town Local Law:**

At a regular meeting of the Town Board of the Town of \_\_\_\_\_, \_\_\_\_\_ County, New York, held at the Town Hall, \_\_\_\_\_ Road, in said Town of \_\_\_\_\_, on the \_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_ o'clock \_\_.M., there were:

**PRESENT:**

**ABSENT:**

Mr./Ms. \_\_\_\_\_ offered the following resolution and moved its adoption:

*WHEREAS,*

\_\_\_\_\_

[State the issue here, e.g., “numerous complaints have been received by this Board with reference to persons congregating at the Town Park on Mountain Road after 9:00 P.M. and generally causing a nuisance to owners of nearby private property], and

*WHEREAS,* this Board has been requested to adopt a local law \_\_\_\_\_ [e.g., prohibiting said congregating at and use of the Town Park during certain hours] for the purpose of protection and preservation of the property of the Town and all its inhabitants and of peace and good order therein; and

*WHEREAS,* this Board has been presented with and has introduced a draft Local Law No. 4 of 20\_\_ to resolve said issue, titled “Restricting the Hours of Operation and Use of the Town Park”; *NOW, THEREFORE, BE IT RESOLVED* that, pursuant to Section 20 of the Municipal Home Rule Law of the State of New York, a public hearing on said proposed Local Law No. 4 shall be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_ o'clock \_\_.M. Eastern \_\_\_\_\_ Time, at the Town Hall, \_\_\_\_\_ Road in the Town of \_\_\_\_\_, New York, and that notice of the time and place of such hearing describing in general terms the proposed local law, be published once on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the \_\_\_\_\_, a newspaper circulating in said Town of \_\_\_\_\_.

Seconded by Mr./Ms. \_\_\_\_\_ and duly put to a vote, which resulted as follows:

\_\_\_\_\_ AYES

\_\_\_\_\_ NAYS

# SAMPLE PUBLIC NOTICE

## NOTICE OF PUBLIC HEARING ON A PROPOSED LOCAL LAW OF THE TOWN OF \_\_\_\_\_, AS SET FORTH HEREIN

**LEGAL NOTICE IS HEREBY GIVEN** that pursuant to Section 20 of the Municipal Home Rule Law of the State of New York, and pursuant to a resolution of the Town Board of the Town of \_\_\_\_\_, adopted \_\_\_\_\_, 20\_\_, the said Town Board will hold a public hearing at the Town Hall, \_\_\_\_\_ Road, Town of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock \_\_.M., Eastern \_\_\_\_\_ Time, to hear all interested parties and citizens regarding the adoption of proposed Local Law No. 4 of 20\_\_, titled "Restricting the Hours of Operation and Use of the Town Park". Said hearing may be adjourned from time to time as necessary.

Further information, including access to a copy of said proposed Local Law, may be obtained at the Town Clerk's Office, \_\_\_\_\_ Road, \_\_\_\_\_ New York \_\_\_\_\_.

TOWN BOARD OF THE TOWN OF \_\_\_\_\_

By \_\_\_\_\_, Town Clerk

## Endnotes

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- <sup>1</sup> *Daily Gazette Co., Inc. v. Town Board, Town of Cobleskill*, 111 Misc.2d 303(305).
- <sup>2</sup> Pub. Off. L. §100.
- <sup>3</sup> Pub. Off. L. §102(1).
- <sup>4</sup> Pub. Off. L. §102(2). This provision refers to General Construction Law §66 for the definition of “public corporation”. The latter statute defines that term to include counties, cities, towns, villages, school districts and fire districts, among other types of local public entities.
- <sup>5</sup> Pub. Off. L. §103(a). See also, *Comm. on Open Govt. AO No. 2436*. A meeting otherwise required to be open to the public may not be restricted only to persons in a narrower category, e.g., residents or taxpayers of the community, or persons only of a particular age.
- <sup>6</sup> Pub. Off. L. §103(c).
- <sup>7</sup> *Committee on Open Govt. AO Nos. 1281, 2120*.
- <sup>8</sup> Pub. Off. L. §103(b).
- <sup>9</sup> Pub. Off. L. §102(3).
- <sup>10</sup> Pub. Off. L. §105(1).
- <sup>11</sup> Pub. Off. L. §108.
- <sup>12</sup> *Committee on Open Govt. AO No. 2428*.
- <sup>13</sup> Pub. Off. L. §105(1). The motion to enter into executive session must describe with some degree of particularity the matter(s) to be dealt with therein. “It is insufficient to merely regurgitate the statutory language...”[see *Daily Gazette Co., Inc*, supra, at 304]. While this does not, for example, require the body to disclose the identity of a person whose history will be discussed, it does obligate the body to disclose in its motion any information (such as the title of a court case) that is already public. See also, *Comm. on Open Govt. AO No. 2451*.
- <sup>14</sup> Pub. Off. L. §106(2).
- <sup>15</sup> Pub. Off. L. §105(1).
- <sup>16</sup> Pub. Off. L. §104(1), (2).
- <sup>17</sup> Pub. Off. L. §104(1).
- <sup>18</sup> Pub. Off. L. §104(2).
- <sup>19</sup> See Pub. Off. L. §107(1), dealing with judicial enforcement, which reads, in part: “In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part.”
- <sup>20</sup> Pub. Off. L. §107(1).
- <sup>21</sup> These should include: the need for a quorum; the order of business; the rules for discussion; public participation (if any); and voting procedures.
- <sup>22</sup> Gen. Constr. L. §41.
- <sup>23</sup> It should be noted that the time and place of any future meeting can only be established either by a majority of the body, or by protocol already established by the public body.
- <sup>24</sup> Reading the minutes of the prior meeting can be, and usually is, waived via motion and majority vote of the body.
- <sup>25</sup> Constitution, Art. IX §2(c); Mun. Home Rule L. §10.
- <sup>26</sup> Mun. Home Rule L. §20(5); Town L. §130.
- <sup>27</sup> Mun. Home Rule L. §20(5).
- <sup>28</sup> Municipal Home Rule Law §20 sets forth the general procedural requirements for hearings on the adoption of local laws. The reader is also referred to the Department of State’s J.A. Coon Technical Series publication *Adopting Local Laws in New York State* for a more thorough treatment of local law adoption procedures.
- <sup>29</sup> Gen. City L. §32; Town L. §276; Vil. L. §7-728.

**Appendix 8: NYS Travel Voucher**

State  
of  
New York

# CLAIM FOR TRAVEL REIMBURSEMENT BY A NON-EMPLOYEE

Agency traveled for

Vendor ID

Vendor Name

Last Name

First Name

MI

Suffix

Address

City

State

Zip

Business Purpose

Travel Destination

Travel Start Date and Time

Travel End Date and Time

Travel Description

**Indicate All Expenses** – If more space is required in any section, use the associated detail form (number shown in parentheses below)

**Totals**

Lodging

Transportation (AC3259-S)

Meals (AC3258-S)

Mileage Claimed (AC160-S)

miles @

¢ per mile =

Incidental Expenses – List (AC3259-S)

**Total Amount Claimed****Vendor's Certification**

I certify that the above bill is just, true and correct; that no part thereof has been paid except as stated and that the balance is actually due and owing, and that taxes from which the State is exempt are excluded.

Signature

Title

Date

**Appendix 9: Form ST-129 – Tax Exempt Certificate**



**This form may only be used by government employees of the United States, New York State, or political subdivisions of New York State.**

Name of hotel or motel		Dates of occupancy	
		From:	To:
Address (number and street)		City	State ZIP code Country

**Certification:** I certify that I am an employee of the department, agency, or instrumentality of New York State, the United States government, or the political subdivision of New York State indicated below; that the charges for the occupancy of the above business on the dates listed have been or will be paid for by that governmental entity; and that these charges are incurred in the performance of my official duties as an employee of that governmental entity. I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document, and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that the vendor is a trustee for, and on account of, New York State and any locality with respect to any state or local sales or use tax the vendor is required to collect from me; that the vendor is required to collect such taxes from me unless I properly furnish this certificate to the vendor; and that the vendor must retain this certificate and make it available to the Tax Department upon request. I also understand that the Tax Department is authorized to investigate the validity of tax exemptions claimed and the accuracy of any information entered on this document.

Governmental entity (federal, state, or local)		Agency, department, or division	
Employee name (print or type)	Employee title	Employee signature	Date prepared

## Instructions

### Who may use this certificate

If you are an employee of an entity of New York State or the United States government and you are on official New York State or federal government business and staying in a hotel or motel, you may use this form to certify the exemption from paying state-administered New York State and local sales taxes (including the \$1.50 hotel unit fee in New York City).

New York State governmental entities include any of its agencies, instrumentalities, public corporations, or political subdivisions.

Agencies and instrumentalities include any authority, commission, or independent board created by an act of the New York State Legislature for a public purpose. Examples include:

- New York State Department of Taxation and Finance
- New York State Department of Education

Public corporations include municipal, district, or public benefit corporations chartered by the New York State Legislature for a public purpose or in accordance with an agreement or compact with another state. Examples include:

- Empire State Development Corporation
- New York State Canal Corporation
- Industrial Development Agencies and Authorities

Political subdivisions include counties, cities, towns, villages, and school districts.

The United States of America and its agencies and instrumentalities are also exempt from paying New York State sales tax. Examples include:

- United States Department of State
- Internal Revenue Service

Other states of the United States and their agencies and political subdivisions **do not** qualify for sales tax exemption. Examples include:

- the city of Boston
- the state of Vermont

### To the government representative or employee renting the room

Complete all information requested on the form. Give the completed Form ST-129 to the operator of the hotel or motel upon check in or when you are checking out. You must also provide the operator with proper identification. Sign and date the exemption certificate. You may pay your bill with cash, a personal check or credit/debit card, or a government-issued voucher or credit card.

**Note:** If you stay at more than one location while on official business, you must complete an exemption certificate for each location. If you are in a group traveling on official business, each person must complete a separate exemption certificate and give it to the hotel or motel operator.

### To the hotel or motel operator

Keep the completed Form ST-129 as evidence of exempt occupancy by New York State and federal government employees who are on official business and staying at your place of business. The certificate should be presented to you when the occupant checks in or upon checkout. The certificate must be presented no later than 90 days after the last day of the first period of occupancy. If you accept this certificate after 90 days, you have the burden of proving the occupancy was exempt. You must keep this certificate for at least three years after the later of:

- the due date of the last sales tax return to which this exemption certificate applies; or
- the date when you filed the return.

This exemption certificate is valid if the government employee is paying with one of the following:

- cash
- personal check or credit/debit card
- government-issued voucher or credit card

Do not accept this certificate unless the employee presenting it shows appropriate and satisfactory identification.

**Note:** New York State and the United States government are not subject to locally imposed and administered hotel occupancy taxes, also known as *local bed taxes*.

**Substantial penalties will result from misuse of this certificate.**

## **Appendix 10: NYS Travel Guidelines**

## Summary of Travel Guidelines for DPO Advisory Board Members

**Mileage** – The estimated or actual number of miles driven by you in your personal vehicle to and from your destination. This may include the meeting location and / or the airport. The IRS rate per mile will be used for reimbursement.

**Parking** – all receipted parking charges.

**Airfare** – all receipted airfare to the destination. Only coach fares will be reimbursed.

**Taxi** – All receipted taxi fares, including a reasonable gratuity.

**Hotel** – The receipted hotel charges.

Please be aware that hotel charges are generally limited to the IRS rate for the state / county that the hotel is located in. Please make every effort to pay a rate (excluding of taxes) that is at or below this rate. [https://www.gsa.gov/node/86696?utm\\_source=OGP&utm\\_medium=print-radio&utm\\_term=portal/category/21287&utm\\_campaign=shortcuts](https://www.gsa.gov/node/86696?utm_source=OGP&utm_medium=print-radio&utm_term=portal/category/21287&utm_campaign=shortcuts)

Hotel taxes should be avoided by providing a tax-exempt certificate to the hotel upon registration. This exempt certificate is not usable outside of NYS, so taxes WILL be reimbursed for out-of-state lodging.

**Tolls** – all receipted tolls. EZ Pass statement are acceptable receipts.

**Meals while traveling overnight** – The IRS permits a fixed allowance for all meals for each overnight stay based on the state / county destination. (See above link) This allowance is in lieu of actual meal receipts. However, if the meeting or conference includes either breakfast or dinner, then this allowance is reduced by the portion of the allowance that was intended to cover that meal.

**Meals while traveling for just the day** – The State Comptroller permits an allowance of \$25.00 to cover “meals and incidental” expenses for traveling for the day. This is in addition to receipted travel costs and any lunch provided during the DPO meeting. Please be aware that this will be considered taxable income.

**Extending travel for personal reasons, or adding a guest to the trip:** If the traveler extends the trip for personal reasons or travels with a guest, then all associated costs will be excluded from reimbursement.

**Appendix 11: NYSDAM – Legal Opinion regarding Conflicts of Interest**



**MEMORANDUM**

**TO:** Dan McCarthy  
**FROM:** Chris Cuddeback  
**DATED:** February 15, 2018  
**SUBJECT:** Dairy Promotion Advisory Board – Conflict of Interest

You requested a legal opinion regarding possible conflicts of interest of various members of the Dairy Promotion Order Advisory Board ("Advisory Board"). These possible conflicts of interest may arise due to various members of the Advisory Board also serving on other boards or having a relationship with various not-for-profits that are funded by or do business with the Advisory Board.

**QUESTION**

Whether an Advisory Board member may take any official action that directly concerns their affiliated board or organizations.

**ANSWER**

An Advisory Board member may not take any official action, including voting on funding, that would directly affect their respective board or organization.

**DISCUSSION**

In Advisory Opinion No. 98-07, the Ethics Commission, the predecessor to JCOPE, considered the application of Public Officers Law § 74 to State advisory boards. The Commission noted that "in many instances appointees to advisory boards will be selected *because of* their institutional affiliations or perspectives" (italics added), and "it is reasonable to assume that their opinions will be affected by their background and experience." Advisory board members are often selected to provide industry experience and expertise in decision-making. Thus, the mere fact of such an institutional affiliation is not, by itself, a conflict, and a rule that required recusal each time the board considered a matter that could affect such an affiliated institution would be unworkable. However, under Public Officers Law § 74, State officers and employees, including those who serve in unpaid or *per diem* status, must avoid a conflict between their private interests and their public duties. The risk that such a conflict will arise depends on the influence of the Board. Where decisions of an advisory board invariably become the

decisions of the agency, the risk that interests or activities of a member will conflict with the proper discharge of the member's duties will be "substantial". Where advisory board decisions merely inform a policy maker's decisions, the risk of conflict is less substantial.

The Ethics Commission concluded that there are too many advisory boards with widely varying functions, to allow the Commission to set forth detailed rules that could apply to all boards in all instances. However, advisory board members clearly cannot engage in acts which represent direct conflicts of interest. An example of a prohibited action is the acceptance by a board member of a gift from any party interested in the outcome of a subject the board is considering. Another example of a prohibited act by an advisory board member is voting on a matter that directly affects his or her specific employer, as opposed to the general area of interest that the member represents. Other potential conflicts must be examined in light of the powers and functions of the board and all other relevant factors in the particular situation.

The Advisory Board members may not take any official action, including voting on funding, that directly affect their respective boards or organizations. Such action would be a direct conflict of interest. If for example, funding is being considered or discussed for their respective board or organization, the Advisory Board member should recuse him or herself from those discussions and voting on such funding.



# Public Officers Law §74

## Code of Ethics.

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### 1. Definition.

As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

### 2. Rule with respect to conflicts of interest.

No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest.

### 3. Standards.

- a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties.
- b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority.
- c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.
- d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

## Public Officers Law §74

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- e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties.
  - f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.
  - g. An officer or employee of a state agency should abstain from making personnel investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.
  - h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.
  - i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.
4. Violations.

In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

## Appendix 12: JCOPE – Legal Opinion regarding recusal

**From:** [Cuddeback, Chris \(AGRICULTURE\)](#)  
**To:** [McCarthy, Dan \(AGRICULTURE\)](#)  
**Subject:** RE: Request  
**Date:** Tuesday, March 06, 2018 1:43:54 PM

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Hi Dan,

See response from JCOPE below.

Regards,

Chris

**Chris Cuddeback**

Associate Attorney

**Department of Agriculture and Markets**

10B Airline Drive, Albany, NY 12235

(518) 457-6468 | [Chris.Cuddeback@agriculture.ny.gov](mailto:Chris.Cuddeback@agriculture.ny.gov)

<http://www.agriculture.ny.gov>

**From:** Sande, Michael (JCOPE)

**Sent:** Tuesday, March 06, 2018 12:43 PM

**To:** Cuddeback, Chris (AGRICULTURE) <[Chris.Cuddeback@agriculture.ny.gov](mailto:Chris.Cuddeback@agriculture.ny.gov)>

**Subject:** RE: Advisory Board Members

Hi Chris –

An advisory board member with a direct conflict of interest in a matter before the board must disclose the conflict to the board and remove him- or herself from the room during any discussion or vote, or any other activity or action taken by the board with respect to that matter. There should be no attempt to address the matter with other board members, informally or otherwise, outside the board meetings.

Best,

Michael

Michael E. Sande

Deputy Director of Advice and Guidance

NYS Joint Commission on Public Ethics

Direct Line: (212) 480-7434

Fax: (212) 480-7749

[michael.sande@jcope.ny.gov](mailto:michael.sande@jcope.ny.gov)

**From:** Cuddeback, Chris (AGRICULTURE)

**Sent:** Tuesday, March 06, 2018 12:34 PM

**To:** Sande, Michael (JCOPE) <[Michael.Sande@jcope.ny.gov](mailto:Michael.Sande@jcope.ny.gov)>

**Subject:** RE: Advisory Board Members

Michael,

I have been asked to follow up regarding recusal vs. abstention. What is required if an advisory board member has a direct conflict interest with a matter before the board? Is the member required to disclose the conflict and leave the room or may the conflicted board member remain in the room and simply not vote?

Thank you,

Chris

**Chris Cuddeback**

Associate Attorney

**Department of Agriculture and Markets**

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<http://www.agriculture.ny.gov>

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**From:** McCarthy, Dan (AGRICULTURE)

**Sent:** Monday, February 26, 2018 4:22 PM

**To:** Cuddeback, Chris (AGRICULTURE)

**Subject:** Request

Hi Chris,

If you recall our brief conversation about a week ago...

Regarding the requirement that the DPO Advisory Board Members recuse themselves (and physically leave the room) during a discussion and vote on a contract, I believe that you offered to confirm with JCOPE that this is indeed the case.

Deputy Commissioner Trodden would like to avail ourselves of this option so that there can be no question.

Did I understand this discussion correctly, and can we do this?

Thanks

**Dan McCarthy**

**Program Manager, Dairy Services**

New York State Department of Agriculture and Markets

10B Airline Drive, Albany NY 12235

(518) 457-4921 | Fax (518) 485-8730

[Dan.McCarthy@Agriculture.NY.Gov](mailto:Dan.McCarthy@Agriculture.NY.Gov)

**Appendix 13: NYSDAM – Legal Opinion regarding Open Meetings**



MEMORANDUM

**TO:** Dan McCarthy  
**FROM:** Chris Cuddeback  
**DATED:** February 15, 2018  
**SUBJECT:** Dairy Promotion Advisory Board – Open Meetings Law

You have requested a legal opinion on whether the meetings of the Dairy Promotion Advisory Board (“Advisory Board”) are required to be open the public.

**QUESTION**

Whether meetings of the Dairy Promotion Advisory Board are required to be open to the public pursuant to § 103 of the Public Officers Law (the “Open Meetings Law”).

**ANSWER**

The meetings of the Board are required to be open under Public Officers Law § 103(a).

**DISCUSSION**

Public Officers Law (POL) § 103(a) requires that “[e]very meeting of a public body shall be open to the general public...” Section 102(2) of the POL defines public body as “any entity for which a quorum is required in order to conduct public business, which consists of two or more members and which performs a governmental function for the state or for an agency or department thereof ... or committee or subcommittee or other similar body of such public body.”

There are some judicial decisions that indicate that advisory bodies that have no power to take final action and are advisory only, may not be performing a governmental function within the meaning of the Open Meetings Law.

However, an entity may be considered a public body if “[i]t has officially established duties and organizational attributes of a substantive nature which fulfill a governmental function for public benefit.” (Canandaigua Messenger, Inc. v. Wharmby, Supreme Court, Ontario County, May 11, 2001) or if it “performs a necessary step in the process of decision making”. MFY Legal Services v. Toia [402 NYS 2d 510 (1977)].

The courts have considered various criteria in determining whether an entity is performing a governmental function, including the authority under which the entity was created, the power

distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies. *Snyder v. Third Dept. Judicial Screening Committee* (3 Dept. 2005) 18 AD3d 1100.

The New York Committee on Open Government has consistently held that statutorily created advisory bodies are subject to the Open Meetings Law. (See, OML-AO-4232, OML-AO-4558, OML-AO-4848).

Since the Board is established under Agriculture and Markets Law, and its membership composition, as well as board member duties and responsibilities, including preparing and submitting a budget, are statutorily provided, it is a public body subject to the Open Meetings Law.

## **PUBLIC OFFICERS LAW, ARTICLE 7**

### **OPEN MEETINGS LAW**

Section 100. Legislative declaration.

Section 101. Short title.

Section 102. Definitions.

Section 103. Open meetings and executive sessions.

Section 104. Public notice.

Section 105. Conduct of executive sessions.

Section 106. Minutes.

Section 107. Enforcement.

Section 108. Exemptions.

Section 109. Committee on open government.

Section 110. Construction with other laws.

Section 111. Severability.

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#### **§100. Legislative declaration.**

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

**§101. Short title.** This article shall be known and may be cited as "Open Meetings Law".

**§102. Definitions.** As used in this article:

1. "Meeting" means the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body.
2. "Public body" means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.
3. "Executive session" means that portion of a meeting not open to the general public.

#### **§103. Open meetings and executive sessions.**

- (a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article.
- (b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.
- (c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates.
- (d) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.

1. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. As used herein the term "broadcast" shall also include the transmission of signals by cable.

2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.

(e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.

(f) Open meetings of an agency or authority shall be, to the extent practicable and within available funds, broadcast to the public and maintained as records of the agency or authority. If the agency or authority maintains a website and utilizes a high speed internet connection, such open meeting shall be, to the extent practicable and within available funds, streamed on such website in real-time, and posted on such website within and for a reasonable time after the meeting. For the purposes of this subdivision, the term "agency" shall mean only a state department, board, bureau, division, council or office and any public corporation the majority of whose members are appointed by the governor. For purposes of this subdivision, the term "authority" shall mean a public authority or public benefit corporation created by or existing under any state law, at least one of whose members is appointed by the governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

#### **§104. Public notice.**

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.
3. The public notice provided for by this section shall not be construed to require publication as a legal notice.
4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.
5. If a meeting will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.
6. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body's internet website.

#### **§105. Conduct of executive sessions.**

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for

the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:

- a. matters which will imperil the public safety if disclosed;
  - b. any matter which may disclose the identity of a law enforcement agent or informer;
  - c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
  - d. discussions regarding proposed, pending or current litigation;
  - e. collective negotiations pursuant to article fourteen of the civil service law;
  - f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
  - g. the preparation, grading or administration of examinations; and
  - h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.
2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

#### **§106. Minutes.**

1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.
3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

#### **§107. Enforcement.**

1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article. If the court determines that a public body has violated this article, the court may require the members of the public body to participate in a training session concerning the obligations imposed by this article conducted by the staff of the committee on open government. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.
2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. If a court determines that a vote was taken in material violation of this article, or that substantial deliberations relating thereto occurred in private prior to such vote, the court shall award costs and reasonable attorney's fees to the successful petitioner, unless there was a reasonable basis for a public body to believe that a closed session could properly have been held.
3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive

session shall commence to run from the date the minutes of such executive session have been made available to the public.

**§108. Exemptions.** Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals;

2. a. deliberations of political committees, conferences and caucuses.

b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to

(i) the subject matter under discussion, including discussions of public business;

(ii) the majority or minority status of such political committees, conferences and caucuses or

(iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations; and

3. any matter made confidential by federal or state law.

**§109. Committee on open government.** The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law.

**§110. Construction with other laws.**

1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

**§111. Severability.** If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

**Appendix 14: NYSDAM – Legal Opinion regarding voting in-person**

**From:** [Swartz, Larry \(AGRICULTURE\)](#)  
**To:** [McCarthy, Dan \(AGRICULTURE\)](#)  
**Cc:** [Markham, Lesley \(AGRICULTURE\)](#)  
**Subject:** RE: Electronic meetings, votes question - DPO  
**Date:** Monday, July 11, 2016 1:28:17 PM

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Hi Dan – The question set forth in your email is best sent to the person to whom you sent it to (i.e., me). I understand that the Dairy Promotion Order’s Advisory Board (“Board”) would like to conduct its meetings by “electronic means”, of whatever type. 1 NYCRR section 40.20 seems to contemplate that the duties and responsibilities entrusted to the Board, as set forth in 1 NYCRR section 40.19, must be carried out “[a]t assembled meetings [where] all votes shall be cast in person”. (Emphasis added) The definition of the term “in person” is not set forth 1 NYCRR Part 40 but it is commonly understood to mean that a person “[meets] with someone [else] rather than talking on the phone, emailing, or writing to the person” (see Cambridge Dictionary, on-line, for the definition of that term). Saying that, however, another meaning of that term is that a person acts “without the help or interaction of others” (see Collins Dictionary, on-line). I cannot contend that the most commonly understood meaning of that term should be disregarded, as an anachronism that is inconsistent with the intent underlying 1 NYCRR Part 40, because 1 NYCRR section 40.20 was made effective on March 15, 1972, a time when fax machines, emails, text messaging, etc. did not exist but the telephone certainly did. I would, however, not be totally uncomfortable if the less commonly understood meaning of that term were adopted in this context, as long as an independent means of verifying that the person voting by “electronic means” was actually a member of the Board and not someone, authorized or unauthorized, acting in his/her stead (which safeguard would, I believe, vindicate the purpose of the “in person” requirement).

If you are uncomfortable “pushing the envelope” so dramatically, I am of the opinion that the 1 NYCRR section 40.20 may, at least arguably, be amended without the necessity of holding a hearing to consider amending it, notwithstanding the provisions of A&ML section 258-aa (c)(2)(b) that provides that “[t]he commissioner may . . . call a hearing to amend [an] order, and any such amendment . . . shall be effective only upon approval of fifty-one per centum of the producers of milk for the area regulated participating in a referendum vote . . . .” (this provision is somewhat ambiguous – it can be argued that it allows the commissioner to amend an order, without having to hold a hearing and without the producers regulated thereby having the power to express their approval or disapproval thereof - I don’t mean to suggest that this is a preferred construction but raise it only to illustrate the imprecision of the terms of the provision). It has been the Dep’t’s long-standing position that the commissioner need not hold a hearing prior to adopting a “technical” amendment to the Dairy Promotion Order but, rather, may promulgate such an amendment pursuant to consensus rulemaking, as authorized in the State Administrative Procedure Act. An amendment to 1 NYCRR section 40.20 to allow for participation and voting by “electronic means” is, obviously, not the equivalent of correcting a typographical error but, also, does not affect substantive provisions of an order but, rather, addresses a relatively insignificant procedural requirement (at least as compared to, say, the procedural requirement that an order, to be effective, must be approved by fifty one percent of the producers that would be regulated [see A&ML section 258-bb (c)(2)(a)]).

Please contact me if you’d like to discuss this matter. Larry

**Larry A. Swartz, Esq.**  
**Department of Agriculture and Markets**

10B Airline Drive, Albany, NY 12235  
(518) 457-1059 | [Larry.Swartz@agriculture.ny.gov](mailto:Larry.Swartz@agriculture.ny.gov)  
<http://www.agriculture.ny.gov>

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**From:** McCarthy, Dan (AGRICULTURE)  
**Sent:** Monday, July 11, 2016 10:45 AM  
**To:** Swartz, Larry (AGRICULTURE)  
**Cc:** Caputo, Frank (AGRICULTURE)  
**Subject:** Electronic meetings, votes question - DPO

Hi Larry,

Who would this question best be sent to?

Our DPO Advisory Board would like to know if they can transact any business or meet "by electronic means" in the future. Specifically by conference call, video meeting and / or vote by email.

Below are the relevant parts that I think may address this question.

I am hopeful that this can be some kind of routine change that may not need a referendum vote.

Thanks

1 NYCRR

**§ 40.20 Quorum and vote majority.**

majority of the advisory board members shall be necessary to constitute a quorum. A simple voting majority present shall be required to pass any motion or approve any advisory board action. **At assembled meetings all votes shall be cast in person.**

(Can I infer that if the meeting is not an 'assembled meeting' then the vote need not be 'cast in person'?)

(Is there any law or regulation that gives blanket authority to include electronic meetings?)

Article 21 AA

(b) The commissioner may, and upon written petition of not less than ten per centum of the producers in the area, either as individuals or through cooperative representation, shall, call a hearing to amend or terminate such order, and any such amendment or termination shall be effective only upon approval of fifty-one per centum of the producers of milk for the area regulated participating in a referendum vote as provided pursuant to paragraph two of subdivision (c) of this section.

**Dan McCarthy**

Program Manager, Dairy Services

**New York State Department of Agriculture and Markets**

10B Airline Drive, Albany, NY 12235

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**Appendix 15: NYSDAM – Legal Opinion regarding payment of honoraria**



**MEMORANDUM**

**TO:** Jennifer Trodden  
**FROM:** Chris Cuddeback  
**DATED:** April 30, 2018  
**SUBJECT:** Dairy Promotion Advisory Board

You requested a legal opinion regarding the propriety of the Dairy Promotion and Advisory Board ("Advisory Board") members receiving "honoraria".

*Whether the Advisory Board members may receive reimbursements for their actual travel expenses and a "honoraria" for \$200 per day that they work on Dairy Promotion Order business.*

Agriculture and Markets Law provides that "[n]o member of an advisory board shall receive a salary but shall be entitled to his actual and reasonable expenses incurred while performing his duties as authorized herein." AML § 258-aa(j)(2). It seems that the legislative intent in establishing the Advisory Board under Agriculture and Markets Law § 258-aa(j) was to only allow the Advisory Board members to receive compensation exclusively for the reimbursement of actual and reasonable expenses.

The Advisory Board members are only entitled to reimbursement of actual expenses under the statute.

**Appendix 16: NYSDAM – Legal Opinion regarding payment of expenses to replace the board member on the farm**



**MEMORANDM**

**TO:** Scott Wyner  
**FROM:** Chris Cuddeback  
**DATED:** May 16, 2018  
**SUBJECT:** Dairy Promotion Advisory Board

You requested a legal opinion regarding whether or not members of the Dairy Promotion and Advisory Board ("Advisory Board") could receive payment for the expense of paying someone else to "fill in" or perform tasks for the member while they were conducting Advisory Board duties.

*Whether the cost of paying someone else to operate the business or carryout the normal job duties of the Advisory Board member while he or she is away performing Advisory Board functions is a reimbursable actual and reasonable expense incurred while performing Dairy Promotion Order business.*

Agriculture and Markets Law provides that "[n]o member of an advisory board shall receive a salary but shall be entitled to his actual and reasonable expenses incurred while performing his duties as authorized herein." AML § 258- aa(j)(2). I found nothing during my research that would support the interpretation that the cost of lost time, earnings or profit, while serving on a volunteer board is a permissible reasonable actual reimbursable expense. I believe the intent of the statute is to provide for out-of-pocket expenses of travel to the meeting and performing board business, such as travel, lodging and meals.

I asked for Lisa Brooks, Director Fiscal Management and Adam Roberts, Director of Internal Auditor to provide their opinion on this question. Both agreed that actual and reasonable expenses are provided to alleviate some burden on travel and miscellaneous costs associated with serving on the board. I contacted State Expenditures, Office of the New York State Comptroller ("OSC") and was informed that such a payment would not be considered a reasonable reimbursable expense incurred while the board member is performing board duties. I also contacted Kevin J. King, Associate Counsel, OSC, who informed that it was commonly understood that the term "actual and reasonable expenses" is meant to refer to the costs associated with travel while serving on various State boards and commissions.

Finally, to receive reimbursement each member of the Advisory Board is required complete form AC3257-S, "Claim for Travel Reimbursement by a Non-employee". This form requires the claimant to identify all expenses from the following categories: lodging, transportation, meals, mileage claimed and incidental expenses. OSC's "Travel Manual" identifies nonreimbursable miscellaneous expenses as non-business related expenses such as: speeding fines, parking tickets, laundry, entertainment (e.g., theatre tickets, in-room movies), and other personal charges. The expense of paying of someone to carry out your personal business while conducting board business would be classified as a personal charge under the Travel Manual.

The Advisory Board members are not entitled to reimbursement for the expense of paying someone else to operate their business or perform their normal job duties as an actual and reasonable expense under the statute.

**Appendix 17: NYSDAM – Legal Opinion regarding producers directing funds**

**From:** [Swartz, Larry \(AGRICULTURE\)](#)  
**To:** [Knirk, Maria \(AGRICULTURE\)](#)  
**Cc:** [McCue, Casey \(AGRICULTURE\)](#); [Wyner, Scott \(AGRICULTURE\)](#); [McCarthy, Dan \(AGRICULTURE\)](#)  
**Subject:** FW: Assistance with DPO funds  
**Date:** Thursday, September 03, 2015 2:40:20 PM  
**Attachments:** [00.02.02\\_western\\_ny\\_request.pdf](#)  
[00.04.05\\_counsel\\_response.pdf](#)  
[00.07.31\\_commissioner\\_directive.pdf](#)  
[00.08.03\\_commissioner\\_response.pdf](#)  
[93.04.12\\_internal\\_memo.pdf](#)  
[Checkoff\\_sent\\_directly\\_to\\_MFH.docx](#)

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Maria – In response to questions #'s 1 and 2, neither an individual producer nor a cooperative would be able to direct his/her/its assessment to a particular promotion activity. To begin with, a producer and a cooperative dealing only in the milk of its own members (and, if it does deal only in the milk of its own members, if it is not an operating cooperative – see the Western New York Milk Marketing Order [1NYCRR section 21.10(d)]) does not, him/her/itself, remit assessments to the DPO; rather, the milk dealer to whom the producer or cooperative sells milk remits the appropriate assessment to the commissioner for deposit in the DPO's account. Furthermore, 1 NYCRR section 40.32 provides, in appropriate part, that “[n]o advertising, promotion or publicity programs shall be conducted pursuant to [the DPO] which make reference to any particular brand or trade name” and section 40.34 provides, in appropriate part, that “[t]he monies deposited in the [DPO] shall be disbursed by the commissioner with the advice and consent of the advisory board . . . .” – it would be contrary to the relatively plain language, and certainly to the intent, of these provisions if an individual producer or a cooperative could cause an assessment to be directed to “a particular promotion activity”.

In response to question #3, the commissioner is authorized, pursuant to 1NYCRR section 40.32, “. . . to contract with any person . . . to carry on or cause to be carried on milk marketing and/or dairy product research . . . .”; the commissioner is, therefore, authorized to approve “particular promotion activity” assuming that it can be characterized as affecting milk marketing or related to dairy product research, and assuming that it arguably promotes the interests of the milk industry as a whole (compare [Johanns v. Livestock Marketing Assn.](#), 544 U.S. 550 [2005]).

Please contact me if you'd like to discuss this matter. Thank you. Larry

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**From:** McCarthy, Dan (AGRICULTURE)  
**Sent:** Thursday, September 03, 2015 12:54 PM  
**To:** Knirk, Maria (AGRICULTURE) ; Wyner, Scott (AGRICULTURE) ; Swartz, Larry (AGRICULTURE)  
**Cc:** McCue, Casey (AGRICULTURE)  
**Subject:** RE: Assistance with DPO funds  
I found these documents.

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**From:** Knirk, Maria (AGRICULTURE)  
**Sent:** Thursday, September 03, 2015 12:40 PM  
**To:** Wyner, Scott (AGRICULTURE) <[Scott.Wyner@agriculture.ny.gov](mailto:Scott.Wyner@agriculture.ny.gov)>; McCarthy, Dan (AGRICULTURE) <[Dan.McCarthy@agriculture.ny.gov](mailto:Dan.McCarthy@agriculture.ny.gov)>  
**Cc:** McCue, Casey (AGRICULTURE) <[Casey.McCue@agriculture.ny.gov](mailto:Casey.McCue@agriculture.ny.gov)>  
**Subject:** Assistance with DPO funds

Scott,

Not sure who the right contact is in Counsel's: could you have someone help figure out the answer to a few questions related to article 21-AA, section 258aa for the Dairy Promotion Act:

1. Would an individual producer be eligible to direct their individual assessment to a particular promotion activity?
2. Would an individual cooperative be eligible for the same?
3. Or Conversely, does the commissioner have the authority to approve of this type of activity?

I have a call with a farmer tomorrow morning and I'd like to have a little bit more to share with him about whether we have a review on this. I am told there may also be an opinion about this that has been written before.

Dan,

Can you please attach the opinion that Charlie mentioned last week on this topic as it is supposed to be in your shared drive in dairy?

Thanks,

MK

**Appendix 18: NYSDAM – Legal Opinion regarding Funding a specific project**

**From:** [Swartz, Larry \(AGRICULTURE\)](#)  
**To:** [McCarthy, Dan \(AGRICULTURE\)](#)  
**Cc:** [Markham, Lesley \(AGRICULTURE\)](#)  
**Subject:** FW: Request for an Opinion - Dairy Promotion Order - Proposed project for funding  
**Date:** Tuesday, May 30, 2017 3:14:02 PM

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Dan – As you may be aware, chapter 58 of the laws of 2016 repealed Article 21-AA of the A&ML, headed “Dairy Promotion Act” (which was the statutory authority for the Dairy Promotion Order, set forth in 1NYCRR Part 40) and enacted section 6266-x of the Unconsolidated Laws, headed the same as was Article 21-AA of the A&ML”; that chapter amendment, however, also enacted section 6266-z of the Unconsolidated Laws that provides, in part, that “[t]he marketing [order] . . . set forth in title one of the official compilation of codes, rules and regulations of the state of New York [part] 40 . . . shall remain in full force and effect until amended or repealed pursuant to the statutory authority set forth in [certain section of the unconsolidated laws] . . .” Because the urban development corporation has not caused the repeal of the Dairy Promotion Order (“the “Order” or “the DPO”), the Order remains extant.

The DPO was promulgated , in short, to promote the consumption of milk and milk products, to encourage the development of new milk and milk products, and to ensure an adequate supply of milk and milk products (see former A&ML section 258-aa [a]). It appears that “Project 9: Development of Cornell Undergraduates for Leadership Roles in the Dairy Food System” (“the project”) is designed to provide Cornell students with certain skills that will make them more employable in, and of greater value to, the dairy industry (I don’t construe the penultimate line in the first paragraph under the heading “Project Rationale” in the project document, which provides that project graduates will be able to “. . . make a positive impact in the food industry . . .” [emphasis added], to mean that the project might prepare graduates to, say, participate in the canned beet industry – the rest of the project document indicates that the project is designed to serve the dairy industry only).

Even though the project is designed to serve the dairy industry, I don’t believe that it can be funded through the DPO. The DPO, in sections 40.31, 40.32, and 40.33 of 1NYCRR, allows the commissioner to enter into contracts, using DPO funds, for particular purposes. 1NYCRR section 40.31 allows the commissioner to enter into a contact “. . . with [a] person . . . to carry on . . . advertising, promotion, education and publicity programs as he may believe will create new markets for the milk of producers . . . or maintain present markets therefor”. It seems to me that the commissioner cannot fund the project pursuant to 1NYCRR section 40.31 even though Cornell is carrying on an “education” program, of a type – the project is not designed to “create new markets for . . . milk . . . or maintain present markets therefor” but, rather, to achieve a totally different objective, as set forth the project document.

1NYCRR sections 40.32 and 40.33 also do not provide a basis for the commissioner to fund the project using DPO funds; those sections allow the commissioner to enter into contracts to “. . . carry on . . . milk marketing and/or dairy product research” and to “. . . provide informational services designed to keep producers . . . informed on milk marketing dairy product research, promotion, advertising , education and publicity program . . .” – the project is not designed to achieve either of those objectives.

I hope that the preceding answers your question you posed to Mr. Wyner on 5/25/17; please contact me if you’d like to discuss this matter. Thank you. Larry

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**From:** Wyner, Scott (AGRICULTURE)

**Sent:** Thursday, May 25, 2017 2:08 PM

**To:** Swartz, Larry (AGRICULTURE) <[Larry.Swartz@agriculture.ny.gov](mailto:Larry.Swartz@agriculture.ny.gov)>

**Cc:** McCarthy, Dan (AGRICULTURE) <[Dan.McCarthy@agriculture.ny.gov](mailto:Dan.McCarthy@agriculture.ny.gov)>; McCue, Casey (AGRICULTURE) <[Casey.McCue@agriculture.ny.gov](mailto:Casey.McCue@agriculture.ny.gov)>; Markham, Lesley (AGRICULTURE) <[Lesley.Markham@agriculture.ny.gov](mailto:Lesley.Markham@agriculture.ny.gov)>

**Subject:** FW: Request for an Opinion - Dairy Promotion Order - Proposed project for funding  
Could you consider and advise Dan.

**Scott H. Wyner**

Counsel

**Department of Agriculture and Markets**

10B Airline Drive, Albany, NY 12235

(518) 457-2449 | [Scott.Wyner@agriculture.ny.gov](mailto:Scott.Wyner@agriculture.ny.gov)

<http://www.agriculture.ny.gov>

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**From:** McCarthy, Dan (AGRICULTURE)

**Sent:** Thursday, May 25, 2017 1:59 PM

**To:** Wyner, Scott (AGRICULTURE) <[Scott.Wyner@agriculture.ny.gov](mailto:Scott.Wyner@agriculture.ny.gov)>

**Cc:** McCue, Casey (AGRICULTURE) <[Casey.McCue@agriculture.ny.gov](mailto:Casey.McCue@agriculture.ny.gov)>

**Subject:** Request for an Opinion - Dairy Promotion Order - Proposed project for funding  
Hi Mr. Wyner,

We are requesting an opinion as to whether a certain proposed research project can be funded by the Dairy Promotion Order.

Cornell researchers proposed a project to assist in operating a program to support university student internship placements. A full description of their proposal is attached for further reference.

An excerpt of the relevant regulation:

Regulations – Part 40

§ 40.31 Advertising, promotion, education and publicity of dairy products.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to carry on or cause to be carried on such advertising, promotion, education and publicity programs as he may **believe will create new markets for the milk of producers as defined in this Part or maintain present markets therefor**. For such purposes, he may expend such monies or any part thereof as may be available pursuant to this Part. No advertising, promotion or publicity programs shall be conducted pursuant to this Part which make reference to any particular brand or trade name.

§ 40.32 Marketing and product research.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to carry on or cause to be carried on **milk marketing and/or dairy product research** and to expend such monies as may be available pursuant to this Part for such purpose.

§ 40.33 Information services.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to provide for informational services designed to keep producers and others informed on milk marketing and dairy product research, promotion, advertising, education and publicity programs and any other dairy industry information deemed important, and to expend such monies as may be available and required pursuant to this Part to obtain and disseminate such information.

§ 40.34 Disbursement of funds.

The monies deposited in the dairy promotion fund shall be disbursed by the commissioner with the advice and assistance of the advisory board for the necessary expenses incurred with respect to this Part. **All such disbursements shall be made in the manner prescribed by the act and the provisions of this Part and shall be in accordance with any rules and regulations promulgated by the commissioner to effectuate the provisions and intent thereof.** The expenses incurred with respect to this Part shall be audited by the State Comptroller at least annually and a copy of the audit report shall be made available to any producer for inspection.

Please let me know if additional information is needed.

Thank You

**Dan McCarthy**

Program Manager, Dairy Services

**New York State Department of Agriculture and Markets**

10B Airline Drive, Albany, NY 12235

(518) 457-4921 | Fax 518-485-8730

[Dan.McCarthy@agriculture.ny.gov](mailto:Dan.McCarthy@agriculture.ny.gov)

<http://www.agriculture.ny.gov>

## **Appendix 19: USDA Approval – Approval of Faculty Position program funding**



1400 Independence Avenue, SW.  
Room 2958-S, STOP 0233  
Washington, DC 20250-0233

June 26, 2013

Mr. Darrel J. Aubertine  
Commissioner  
State of New York  
Department of Agriculture and Markets  
10B Airline Drive  
Albany, New York 12235

*Thank you  
for your attention  
to my request*

Dear Mr. Aubertine:

This is in response to your May 15, 2013, letter requesting project approval for a new faculty member position to conduct research in the area of dairy fermentation at Cornell University's Department of Food Science. Upon review of your submitted project proposal and after discussions with Dr. Martin Wiedmann, professor and Director of Graduate Studies for Cornell University's Department of Food Science, Dairy Programs has determined that your project is approved. All salaries and expenses associated with the new faculty member will support only dairy-related research and no project costs are associated with construction or the acquisition of equipment or other facilities.

The National Dairy Promotion and Research Program, authorized by the Dairy Production Stabilization Act of 1983, and implemented through the Dairy Promotion and Research Order (Order), provides authority for dairy producers and importers to develop and finance promotion, research, and nutrition education programs designed to maintain and expand markets and uses for fluid milk and dairy products. The Order defines three categories of acceptable expenditures - promotion, research, and nutrition education. Specifically, section 1150.115 defines research as "studies testing the effectiveness of market development and promotion efforts; studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products."

Sincerely,

Whitney A. Rick, Director  
Promotion, Research, and Planning Division  
Dairy Programs



I, \_\_\_\_\_(print) Advisory Board Member, have read and understood the Dairy Promotion Order Handbook.

Signed \_\_\_\_\_

Date \_\_\_\_\_

