

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

CALIFORNIA GARLIC AND ONION
RESEARCH PROGRAM

Effective January 1, 2005 and
Including Amendments through November 3, 2010

CALIFORNIA GARLIC AND ONION RESEARCH PROGRAM

Contents

PREAMBLE 1

ARTICLE I - DEFINITIONS 1

ARTICLE III – GENERAL RESEARCH AUTHORITY..... 5

ARTICLE IV – FINANCIAL PROVISIONS 5

ARTICLE V -- COMPLIANCE..... 6

ARTICLE VI -- BOOKS AND RECORDS 6

ARTICLE VII -- APPEALS 7

ARTICLE VIII -- RELATION TO ANTITRUST LAWS 7

ARTICLE IX – DURATION OF IMMUNITIES 7

ARTICLE X – AGENTS..... 7

ARTICLE XI – DEROGATION 8

ARTICLE XII -- EFFECTIVE TIME AND TERMINATION 8

ARTICLE XIII -- SEPARABILITY 9

CALIFORNIA GARLIC AND ONION RESEARCH PROGRAM

PREAMBLE

The purpose of the California Garlic and Onion Research Program is to maintain and expand California's position as a leader in the production, processing and distribution of garlic and onions through adequate funding of research and survey studies relating to the production, processing, and distribution of garlic and onions. It is intended that such activities of the Program include, but not be limited to, research and survey programs relating to disease prevention, pest management, tillage, irrigation and harvesting.

ARTICLE I - DEFINITIONS

Section A. DEFINITION OF TERMS.

As used in this marketing order, unless the context otherwise requires, the following terms shall have the following meanings:

1. “Act” means Chapter 1 (commencing with Section 58601) of Part 2 of Division 21 of the California Food and Agricultural Code, as it may be amended.
2. “Board” means the California Garlic and Onion Research Board created pursuant to Article II of this marketing order.
3. “California Garlic and Onion Research Program” means this marketing order which is issued pursuant to the provisions of the Act and directly affects producers and handlers of garlic and onions.
4. “Department” means the California Department of Food and Agriculture.
5. “Dehydrator” means any person engaged within California in the business of dehydrating at least 250,000 pounds garlic or onions per year.
6. “Fiscal Year” or “Marketing Season” means a twelve-month period beginning March 1. (Amended April 16, 2007)
7. “Garlic” means all garlic grown in California without regard to whether it is marketed fresh, dehydrated or processed in some other fashion.
8. “Handler” means any person engaged in the marketing of garlic and onions which the person has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer whether as owner, agent, employee, broker, or otherwise. “Handler does not include any person who handlers less than 250,000 pounds of garlic and onions in a fiscal year.
9. “Onion” means only those onions grown in California for the purpose of dehydration.
10. “Producer” means any person in this state who grows a combination of 250,000 pounds or more of assessable garlic and onions.

11. “**Person**” includes individuals, partnerships, limited liability partnerships, corporations, limited liability corporations and other associations or entities doing business in California.

12. “**Secretary**” means the Secretary of the California Department Food and Agriculture.

ARTICLE II - CALIFORNIA GARLIC AND ONION RESEARCH BOARD

Section A. ESTABLISHMENT AND ORGANIZATION.

1. The California Garlic and Onion Research Board is hereby established to assist the Department in administration of this marketing order. The Board shall be composed of 12 industry members and their respective alternates. Six (6) of these members shall be actively engaged in the growing of onions and/or garlic in the State of California and six (6) shall be actively engaged in the handling and/or processing of garlic and onions in the State of California. One (1) additional member and one (1) alternate member may be appointed to the Board by the Secretary to represent the general public.

2. With regard to the producer positions, there shall be three districts with representation as follows:

Northern California – Shall be composed of the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama and Plumas. Representation shall be one (1) member and one (1) alternate.

Southern California – Shall be composed of the counties of Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial. Representation shall be one (1) member and one (1) alternate.

Central California – Shall be composed of all those counties not included in Northern California and Southern California as defined above. Representation shall be four (4) members and (1) alternate.

3. With regard to the handler positions, there shall be three (3) members and three (3) alternates representing dehydrators along with three (3) members and three (3) alternates representing non-dehydrator garlic handlers.

4. It is recognized that board representation may need to be modified if the structure of the industry changes significantly. Such modifications may be treated as minor amendments.

5. The terms of office shall be three years beginning February 1. The terms shall not be staggered. (Amended November 3, 2010)

Section B. Nominations and Appointments.

1. All members and alternate members of the Board shall serve at the pleasure of the Department and may be removed by the Department at any time.

2. Nominations for the initial producer and handler members and alternates of the Board may be received at the public hearing held on this program.

3. The Department shall appoint subsequent members and alternates from nominations received from producers for the producer seats, and from handlers for the handler seats.

a. Nomination Procedures for Producer Positions - Every third year, a letter shall be sent to all garlic and onion producers soliciting nominations of producers in each district for appointment by the Department for the upcoming new term. The Department may issue ballots for preference voting if there are more nominations than available positions in a particular district. (Amended November 3, 2010)

b. Nomination Procedures for Dehydrator Handler Positions - As long as there are three dehydrators in the state, each dehydrator shall be responsible to provide nominations for one member and one alternate representative from their respective firm.

c. Nomination Procedures for Non-Dehydrator Handler Positions - Every third year, a letter shall be sent to all non-dehydrator garlic handlers soliciting nominations of non-dehydrator garlic handlers for appointment by the Department for the upcoming new term. The Department may issue ballots for preference voting if there are more nominations than available positions.

4. Any person appointed shall qualify by executing and filing forms as required by the Department.

Section C. ALTERNATES.

1. An alternate member, in the absence of the member for whom he or she is alternate, shall act in place of that member. In the absence of both a producer member and the producer alternate for that respective district, any other present producer alternate designated by the chairman may act in place of that member. In the absence of both a non-dehydrator garlic handler member and his or her alternate, any present non-dehydrator handler alternate designated by the Chairperson may act in place of that member. When an alternate sits in the place of a member, he or she shall have all rights, powers, duties and privileges of the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act in his or her place until a permanent successor to the member is appointed and has qualified.

Section D. VACANCIES.

1. The Department shall fill any vacancy occasioned by the death, resignation or disqualification of any member or alternate member of the Board. Any vacancy shall be filled with a person qualified to represent the same group as the person vacating the seat.

2. Any member or alternate member who ceases to meet the qualifications for his or position shall be disqualified and his or her seat declared vacant.

3. In filling vacancies, the Department may consider recommendations submitted by the Board.

Section E. OFFICERS AND COMMITTEES.

1. The Board shall select from its number a Chair, Vice Chair and other officers deemed necessary and advisable to assist the Board in the execution of its duties under this marketing order.

2. The Board may appoint committees made up of members and non-members as deemed necessary and advisable to assist the Board in the execution of its duties under this marketing order.

Section F. MEETING PROCEDURES.

1. The Board shall meet at least once each fiscal year.
2. A quorum of the Board shall be seven (7) members consisting of at least 3 growers and 3 handlers. Provided a quorum is established, the vote of a majority of the members present shall constitute an act of the Board.

Section G. EXPENSES OF MEMBERS.

The members, alternate members and committee members shall serve without compensation but may be reimbursed for reasonable and necessary expenses incurred by them in the performance of their duties.

Section H. LIMITATION OF LIABILITIES.

The members, alternate members, employees and committee members shall not be individually liable for errors in judgment, mistakes or other acts, either of omission or commission as principal, agent or person, except for their own individual acts of dishonesty or crime.

Section I. POWERS AND DUTIES.

The Board shall have the following powers and duties subject to the Department's approval:

1. To administer the provisions of this marketing order.
2. To receive and report to the Department complaints of violations of this marketing order.
3. To recommend to the Department rules and regulations relating to this marketing order.
4. To recommend to the Department amendments to this marketing order.
5. To keep minutes, books and records; which will clearly reflect all its meetings, acts and transactions. Copies of all meeting minutes shall be provided to the Department and minutes, books and records shall at all times be subject to examination by the Department or its duly authorized representative.
6. To assist the Department in the collection of data deemed necessary to the proper administration of this marketing order.
7. To employ personnel as may be deemed necessary and to fix their compensation and terms of employment.
8. To assist the Department in the collection of assessments from those directly affected by this marketing order to cover the expenses incurred in the administration and operation of this marketing order.
9. To receive, invest, borrow and disburse funds in accordance with the terms of the Act and consistent with the guidance and policies of the Department.
10. To incur expenses to be paid from assessments, as necessary and proper to enable the Board to perform its duties.
11. To enter into contracts or agreements for such goods and services as may be necessary to carry out the purposes and objectives of this marketing order.

ARTICLE III – GENERAL RESEARCH AUTHORITY

Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES.

The Board is authorized, subject to the approval of the Department, to undertake or cause to be conducted, to administer, and to expend monies for research and survey studies relating to the p be limited to research and survey programs relating to disease prevention, pest management, tillage, irrigation, and harvesting. With the approval of the Department, the Board may expend money, enter into contracts with qualified research agencies, and do all things necessary and proper to the conduct of garlic and onion research and survey activities, limited only by the provisions of Sections 58892 and 58802.1 of the Act.

Section B. DISSEMINATION OF RESEARCH INFORMATION.

The Board, with the approval of the Department, may release, distribute, and disseminate the results of research studies and surveys and information obtained as of a result of such activities to appropriate parties.

ARTICLE IV – FINANCIAL PROVISIONS

Section A. RECOMMENDATION OF BUDGETS AND RATES OF ASSESSMENTS.

1. At the beginning of each fiscal year and as may be necessary thereafter, the Board shall recommend to the Department a budget of estimated income, expenditure and reserves for the administration and enforcement of this program and activities authorized hereunder. Except for the first and second year of operation as described below, the Board shall also recommend a rate of assessment for onions and a rate of assessment for garlic to be levied upon applicable producers and handlers of garlic and onions calculated to provide adequate funds to defray the proposed expenditures and reserves as set forth in said budget.

2. The assessment rate set for garlic shall be twice the assessment rate set for onions.

3. During the first year of this program's operation, the assessment rate for onions shall be \$0.0125 per cwt. and the assessment rate for garlic shall be \$0.025 per cwt., shared equally between producers and handlers. Thereafter, the assessment rate for onions shall not exceed \$0.025 per cwt. and the assessment rate for garlic shall not exceed \$0.05 per cwt., shared equally between producers and handlers.

4. The assessment shall be applied on all applicable garlic and onions received by handlers from producers.

5. Upon a finding that the recommended budget and assessment rates are proper and equitable and calculated to provide the funds necessary to provide for the proper administration of this marketing order, the Department may approve the budget and assessment rates.

Section B. PAYMENT OF ASSESSMENTS.

1. The obligation to pay assessments under this marketing order shall apply to each applicable producer and handler of garlic and onions.
2. Assessments levied pursuant to this marketing order shall be the personal debt of every person directly affected by this marketing order and shall be due and payable at the time and in the manner specified by the Board.
3. To facilitate collection, each handler of garlic and onions shall pay both the producer and handler assessment. The handler may deduct any assessment paid for and on behalf of a producer from any money owed by the handler to the producer. The Department may verify that the handlers have made proper payment.

Section C. DISPOSITION OF FUNDS.

All funds collected or received by the Board shall be deposited in accordance with the provisions of the Act. The funds so deposited may be disbursed by the Board for reasonable and necessary expenses consistent with the budget established pursuant to this Article.

ARTICLE V -- COMPLIANCE

Any person who violates any provision of this marketing order or any rule or regulation adopted hereunder shall be liable for the penalties prescribed in by law. All remedies provided in law or equity shall be available to enforce the provisions of this marketing order.

ARTICLE VI -- BOOKS AND RECORDS**Section A. REQUIRED BOOKS AND RECORDS.**

All persons subject to this marketing order shall maintain books and records reflecting their operations under this marketing order and shall furnish to the Department information relating to this marketing order as requested, and shall permit inspection of the books and records relating to this marketing order by the Department.

Section B. CONFIDENTIAL INFORMATION.

All information obtained pursuant to the provisions of this Article is confidential and shall not be disclosed except as provided under the Act. Proprietary information obtained in confidence shall be maintained in confidence.

Section C. IMMUNITY.

No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence required may tend to incriminate or subject the person to a penalty or forfeiture. No natural person shall be prosecuted or subjected to any penalty or forfeiture

for, or on account of any transaction, matter, or thing concerning which he or she may be required to testify or produce evidence before the Department in obedience to a subpoena of the Department.

ARTICLE VII -- APPEALS

Section A. RIGHT TO APPEAL.

Any person directly affected by this marketing order may petition the Department to review any act or determination of the Board. Any petition filed pursuant to this provision must be in writing and set forth the facts upon which it is based.

Section B. EFFECT OF APPEAL.

Pending the disposition of any appeal pursuant to this Article, the parties shall abide by the act or determination of the Board, unless the Department rules otherwise. The Department may grant any such petition and may revise any order or decision upon which an appeal is taken.

ARTICLE VIII -- RELATION TO ANTITRUST LAWS

In any civil or criminal action or proceeding for violations of the Cartwright Act, the Unfair Practices Act, or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with, and in furtherance of the provisions of the Act and this marketing order, shall be a complete defense. This marketing order is intended to be a program operating under state law as contemplated by Congress in the enactment of 7 U.S.C. 610(i).

ARTICLE IX – DURATION OF IMMUNITIES

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

ARTICLE X – AGENTS

The Department may designate and authorize any person, including officers or employees of the Department of Food and Agriculture to act as the Department's agents.

ARTICLE XI – DEROGATION

Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Department of or the State to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XII -- EFFECTIVE TIME AND TERMINATION

Section A. INITIAL INDUSTRY REFERENDA.

The program shall not go into effect without first being approved by producers and handlers in industry votes conducted by the Department. Specifically, there shall be a separate referendum for the garlic industry and a separate referendum for the onion industry. Depending upon the outcome of the separate referenda, the program may go into effect for both industries, for the garlic industry only, for the onion industry only, or not go into effect at all. In the event that only one of the industries approves of the program, it is understood that several minor amendments may be needed in order to properly adapt the program to a single commodity format.

Section B. EFFECTIVE TIME.

This program shall become effective on the date specified by the Department and shall continue in force and effect unless suspended or terminated by the Department, or by operation law, in accordance with the provisions of the Act.

Section C. Continuation Hearing.

In the fifth year following the effective date of this marketing order and five years following any reapproval thereafter, the Department shall hold a hearing to ascertain whether or not the Program is meeting the declared objectives of the Act. If based on the testimony and evidence presented at the hearing, the Department determines that the marketing order is meeting the objectives of the Act, the Department may order its continuation. If the Department determines that a substantial question exists as to whether the marketing order is meeting the objectives of the Act, it shall submit the question to a referendum consistent with the provisions of the Act.

Section D. TERMINATION.

1. Termination of this marketing order by any means specified in the Act shall not become effective until the end of the then current marketing season.
2. Unless otherwise expressly provided in a notice of termination, or suspension, no termination or suspension shall:
 - a. Affect, waive or terminate any right, duty, obligation or liability which shall have arisen prior to the termination or suspension, or may thereafter arise in connection with any other provisions of this marketing order not terminated or suspend;
 - b. Release or forgive any violation of this marketing order occurring prior to the effective time of the termination or suspension; or,

c. Affect or impair any rights or remedies of the Department, Board or of any other person with respect to any violation of this marketing order or the Act.

3. After the effective date of termination of this marketing order, operation of the Board shall be concluded and all moneys held by the Board and not required to defray the expenses of concluding and terminating operations shall be disbursed as provided in the Act.

ARTICLE XIII -- SEPARABILITY

If any provision of this marketing order, or the application thereof to any person, circumstance, or thing is declared to be invalid, the validity of the remainder of the marketing order or the application thereof to any other person, circumstance, or thing shall not be affected thereby.