

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA GARLIC AND ONION
DEHYDRATOR INSPECTION PROGRAM

Effective February 1, 1999
Incorporating Amendments through December 15, 2006

California Garlic and Onion Dehydrator Inspection Program

Contents

CHRONOLOGY OF AMENDMENTS	i
PREAMBLE	1
ARTICLE I - DEFINITIONS.....	1
ARTICLE II - CALIFORNIA GARLIC AND ONION DEHYDRATOR ADVISORY BOARD	2
ARTICLE III - UNIFORM GRADING AND INSPECTION	5
ARTICLE IV – FINANCIAL PROVISIONS	7
ARTICLE V -- COMPLIANCE	8
ARTICLE VI -- BOOKS AND RECORDS	8
ARTICLE VII -- APPEALS	9
ARTICLE VIII -- RELATION TO ANTITRUST LAWS.....	9
ARTICLE IX – DURATION OF IMMUNITIES	9
ARTICLE X – AGENTS	9
ARTICLE XI – DEROGATION	10
ARTICLE XII -- EFFECTIVE TIME AND TERMINATION	10
ARTICLE XIII -- SEPARABILITY	11

Chronology of Amendments To the California Garlic and Onion Dehydrator Inspection Program

The following amendments were made effective **May 1, 1999**:

- Specific nomination procedures were established.
- Dehydrators were directed to pay inspection fees on a weekly basis.

The following amendments were made effective **October 1, 2006**:

- Language added to reflect flexible number of dehydrator members depending upon the number of California dehydrators operating.
- Dehydrators authorized to have up to two alternates instead of just one
- Language added to clarify that CDFA has discretion to determine whether grower election ballots should be issued.
- Clarifying language added to specify that in such circumstances when a producer member and his or her assigned alternate are both absent from a meeting, the chairman may designate another producer alternate to serve at such meeting.
- Language added to provide guidance on how the Department is to acquire nominees for vacant positions.
- Language added to better clarify the quorum and board action requirements for meetings.

The following amendment was made effective **December 15, 2006**:

- The beginning of the fiscal year was changed from March 1 to April 1.

PREAMBLE

The purpose of this California Garlic and Onion Dehydrator Inspection Program is to define quality standards for garlic and onions suitable for dehydration purposes and to conduct an efficient and effective inspection program. The standards shall be used for the purposes of providing a uniform basis for payment to producers by dehydrators. It is not the intent of this Program to establish minimum quality standards.

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 Dehydrator Advisory Board created pursuant to Article II of this marketing order.
3. “California Garlic and Onion Dehydrator Inspection Program” means this marketing order which is issued pursuant to the provisions of the Act and directly affects producers of garlic and onions for dehydrating and dehydrators of garlic and onions.
4. “Dehydrating garlic or onions” means garlic or onions produced in California that are suitable for dehydration purposes.
5. “Dehydration purposes” means the commercial dehydration of garlic and onions.
6. “Dehydrator” means any person engaged within California in the business of dehydrating garlic or onions.
7. “Department” means the California Department of Food and Agriculture.
8. “Fiscal Year” or “Marketing Season” means a twelve-month period beginning on April 1.
9. “Garlic and Onion Dehydrator Advisory Committee” means the committee referred to in Article 8 (commencing with Section 41861) of Chapter 5 of Division 16 of the Food and Agricultural Code.
10. “Person” includes individuals, partnerships, limited liability partnerships, corporations, limited liability corporations and other associations or entities doing business in California.
11. “Producer” means any person engaged within California in the business of producing, or causing to be produced, garlic or onions for dehydration by someone other than himself.
12. “Secretary” means the Secretary of the California Department Food and Agriculture.

ARTICLE II - CALIFORNIA GARLIC AND ONION DEHYDRATOR ADVISORY BOARD

Section A. Establishment and Organization.

1. The California Garlic and Onion Dehydrator Advisory Board is hereby established to assist the Department in administration of this marketing order. The total size of the Board shall vary depending upon the number of dehydrators operating within the state. The Board shall always have five (5) members and five (5) alternates who shall be producers of garlic or onions for dehydrating. The Board shall also have one (1) member and up to two (2) alternates for each dehydrator of garlic or onions operating within the state.

2. Except for the initial board, the terms of office for all members shall be three years from the beginning of the calendar year in the year of their appointment and continuing until successors are appointed and qualified.

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 members of the Board and recommendations for assigning the initial term lengths shall be received at the public hearing held on this program. The Department shall appoint the initial members and alternates from the nominations received at such public hearing.

3. The Department shall appoint subsequent members and alternate members from nominations received from producers for the producer seats, and from dehydrators for the dehydrator seats.

a. **Producer Nomination Procedures** – Each year, the Department shall send a letter to all growers soliciting nominations for grower positions that have a term expiring. Following the nomination period, the Department will evaluate the need for mail balloting. If mail balloting is deemed necessary, the Department shall issue ballots to all growers so that they may indicate their preferences among the growers nominated. In making appointments to the Board, the Department may consider the geographical distribution of Board representation with the general goal of having one member and one alternate from Northern California, one member and one alternate from Southern California, and three members and three alternates from the remainder of the State.

b. **Dehydrator Nomination Procedures** – Each dehydrator shall be responsible to provide nominations for one (1) member and up to two (2) alternate representatives from their respective firm. If a dehydrator chooses to have two (2) alternates, the dehydrator shall designate one as the primary alternate and one as the secondary alternate.

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 his or her alternate, the chairman may designate any other producer alternate to 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. In filling a producer vacancy, the Department may consider, among other things, a recommendation submitted by the Board or a letter of interest submitted by a qualified producer. In filling a dehydrator vacancy, the Department shall seek a nomination from the respective dehydrator.

2. Any member or alternate member who ceases to be a producer of garlic or onions for dehydrating or a dehydrator of garlic or onions shall be disqualified and his or her seat declared vacant.

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 the call of its chair, or at the request of any three members, but not less frequently than once each fiscal year.

2. A quorum of the Board shall be three (3) producer members and a majority of the dehydrator members. The concurring vote of a majority of the dehydrator members and a majority of the producer members present at a meeting at which there is a quorum shall constitute an act of the Board.

Section G. Expenses.

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 administrative 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 inspection fees from those directly affected by this marketing order and in the collection of the inspection fees to cover the expenses incurred in the administration 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 inspection fees, 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 - UNIFORM GRADING AND INSPECTION

Section A. Declaration of an Unfair Trade Practice.

It is hereby declared that the practice of dehydrators purchasing dehydrating garlic and onions from producers without a third party inspection is unfair and detrimental to the effectuation of the declared purposes of the Act. Therefore, such a practice is declared to be an unfair trade practice.

Section B. Inspection Requirement.

1. In order to address the aforementioned unfair trade practice, all dehydrating garlic and onions, except that product specifically exempted by this marketing order, is required to be inspected and certified by an authorized inspection agency in accordance with inspection rules and regulations recommended by and the Board and approved by the Department.

2. The Board may provide for inspection and certification by an established and experienced inspection agency or, with the approval of the Department, hire its own inspectors.

Section C. Voluntary Inspections.

The Board may provide inspection of garlic and onions exempted by this marketing order or may provide inspection for conditions not mandated by regulation, provided the Board is properly reimbursed for such inspections by the party or parties requesting such inspections.

Section D. Exempted Product.

The following garlic and onions shall not be subject to mandatory inspection under this marketing order:

1. Garlic or onions grown and dehydrated by a common principal owner;
2. Garlic or onions produced outside of California and delivered for dehydration in California;
3. Garlic or onion cull-outs from production for fresh market consumption. "Cull-outs" means garlic or onions undesirable for commercial fresh marketing channels; or
4. A load or lot of mixed ownership where each producer has received a certified weight certificate and the purchase price is not based on percentage of defects.

//

Section E. Quality Standards.

1. The Board may recommend and the Department may approve definitions of quality standards for dehydrating garlic and onions as necessary. Such standards are intended to provide a basis for uniform grading and inspections and are not intended to serve as minimum standards.
2. Until the initial Board can meet and recommend quality standards pursuant to this paragraph, the most recent quality standards adopted by the Department on the recommendation of the Garlic and Onion Dehydrator Advisory Committee shall remain in full force and effect.

Section F. Rules and Regulations.

1. The Board may recommend seasonal rules and regulations as necessary to carry out the purposes and attain the objectives of this marketing order and the Act. Such regulations may include, but are not limited to, the following:
 - a. Methods and procedures of selecting samples of lots, loads, or containers of dehydrating garlic and onions.
 - b. Methods and procedures for determination of moisture content.
 - c. Methods and procedures for inspection of various product conditions and defects.
 - d. Regulations concerning the place of inspection and location of inspection stations.
2. The Board may recommend administrative rules and regulations as may be necessary to carry out the purposes and attain the objectives of this marketing order and the Act. Notice of administrative rules and regulations shall be given as required by the Act.

ARTICLE IV – FINANCIAL PROVISIONS

Section A. Adoption of Budgets and Inspection Fees.

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 of this marketing order. The Board shall also recommend inspection fees calculated to provide adequate funds to defray the necessary expenses incurred in administration of this marketing order. Inspection fees levied pursuant to this marketing order shall be borne equally by both the producer and the dehydrator. These inspection fees constitute the entire “assessment” as that term is used in the Act.

2. Upon a finding that the recommended budget and inspection fees 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 inspection fees. In no case may the inspection fees exceed the maximum allowed under the Act.

Section B. Payment of Inspection Fees.

1. The obligation to pay inspection fees under this marketing order shall apply to each producer and dehydrator of garlic or onions delivered or received for dehydrating purposes.

2. Inspection fees 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 dehydrator shall pay the entire applicable inspection fee on a weekly basis for all garlic and onions inspected. The dehydrator may deduct any inspection fee paid for and on behalf of the producer from any money owed by the dehydrator to the producer. The Department may verify that proper payment has been made by dehydrators for and on behalf of producers.

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. 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 B. Reapproval 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 C. 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.