

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA CLING PEACH GROWERS
MARKETING ORDER

Effective May 20, 1996
Incorporating Amendments Effective through January 1, 2019

CLING PEACH GROWERS MARKETING ORDER

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Chronology of Amendments

The following amendments were made effective on or about January 1, 2019:

- Modification of the nomination procedures from mailed preference nominations and voting to nominations and voting through producer meetings

The following amendments were made effective on or about February 6, 2018:

- Modification of the nomination procedures from producer meetings to mailed preference nominations and voting

The following amendments were made effective on or about January 1, 2016:

- Modification of District and Zone Structure
 - Zone 1 and Zone 2 were combined and will henceforth be called Zone 1/2
 - Districts 2 and 3 were combined and will henceforth be called District 2/3
 - Zone 5 and 6 were combined and will henceforth be called Zone 5/6
 - Voting representation was combined where districts and zones were combined.

The following amendments were made effective on or about June 2, 2015:

- Modification of Month when New Board Members take Office from April 1st to March 1st aligning board operations with their marketing order
- Nomination meetings changed from March to February
- Modification of Public Member Status-A public member is now optional but the program is required to still seek a public member

The following amendments were made effective on or about December 10, 2007:

- Zones reduced from 11 to 9 by merging Zones 4 and 5, and Zones 10 and 11
- Reduced the number of board members from 18 to 15
- Quorum Requirement reduced from 13 to 10
- Passage criteria for board motions changed from 2/3rds of its members to simply 8 members

The following amendments were made effective on or about August 1, 2003:

- Clarified the authority for reimbursement payments to handlers
- Expanded the size of the executive committee from four to five members
- Extended the time period between referenda from 3 years to 5 years

The following amendments were made effective on or about September 7, 2001:

- Growers may submit nominations in writing to the board
- Following nomination meetings, CDFA will determine the need for mail balloting
- Balloting will be employed as a voting method only when more than one nominee is presented for a vote

The following amendments were made effective on or about March 17, 2000:

- For promotional purposes, the program will also employ the shortened name, “California Cling Peach Board”, in addition to the current names “California Cling Peach Growers Advisory Board” and “Board”

The following amendments were made effective on or about March 10, 1999:

- Alternate board members permitted to vote if board members from their same district are absent

The following amendments were made effective on or about January 21, 1998:

- Miscellaneous edits for clarification to marketing order including:
 - Fiscal Year, Marketing Season and Crop Season changed from July 1 to June 1 and ending changed from June 30 to May 31
 - Terms of office changed from the beginning of the marketing season to April 1st in the year of the member appointment
 - An addition of (d) under provision 3 in Article III providing authority for CDFA to issue written ballots to growers in districts where voting is being conducted with the allowance for write-in candidates

The following amendments were made effective on or about February 11, 1997:

- Beginning and ending date for terms of board members was changed to reflect new service period for board members beginning April 1 and continuing until March 31 of the third year following

ARTICLE I – MISSION STATEMENT, INTENT AND GENERAL PURPOSES

1. This Marketing Order is issued in furtherance of the desire of California's cling peach growers to create an environment which enhances the use of cling peaches through promotion, advertising, consumer education, production and marketing research, establishment of grades and standards, and compilation of industry statistics.

2. This Marketing Order and the establishment of the California Cling Peach Growers Advisory Board is necessary to the formation of a public sector - private sector partnership which can play a vital role in enabling the production of cling peaches to fulfill its potential as one of the leading segments of the state's agricultural industry.

3. The creation of the Advisory Board and issuance of this Marketing Order are necessary to effectively and efficiently enable growers to:

(a) Focus the consumer image of cling peaches as a healthy, fat-free food and to acquaint consumers with the benefits and convenience of processed fruit;

(b) Accelerate new frontiers for the uses of cling peaches through coordination with others in the marketing chain, including processors, packagers, food manufacturers and retailers; and,

(c) Enhance program evaluation and accountability by requiring establishment of measurable objectives, incorporating evaluation into every program and maximizing the Advisory Board's communication of objectives and results to growers and other interested persons.

4. This Marketing Order is intended to provide benefit to the entire cling peach industry and all of the people of California. Consistent with the Act, it is not intended to produce measurable benefit on an individual basis, and its successes should be evaluated accordingly by analyzing the extent to which the activities undertaken pursuant to this Order have improved the overall conditions for the cling peach industry.

5. The purpose of this Marketing Order is to increase overall demand for cling peaches. The Board created by this Order shall operate primarily for the purpose of creating a more receptive environment for cling peaches and for the individual efforts of growers, thereby complementing grower's individual, targeted and specific activities.

ARTICLE II – DEFINITIONS

Unless the context otherwise requires, the definitions in this Article and those appearing in Article I (commencing with Section 58601) of the Act shall govern the construction of this Marketing Order.

1. "Act" means the California Marketing Act of 1937, Chapter 1, Part 2, Division 21 of the Food and Agricultural Code.

2. "Books and records" means any books, records, contracts, documents, memoranda, papers, correspondence, or other written or recorded data relating to the activities subject to this Marketing Order.

3. "California Cling Peach Growers Advisory Board" or "California Cling Peach Board" or Board" means the administrative agency established pursuant to Article III of this Marketing Order.

4. "Cling peaches" means peaches, the pits or stones of which closely adhere to the flesh when the fruit is ripe.

5. "Districts" shall consist of the following:

(a) District 1 consists of those counties north of a line drawn along the southern boundaries of Marin, Sonoma, Napa, Solano, Sacramento, Amador and El Dorado Counties, divided into zones as follows:

(i) Zone 1/2 consists of those counties north of a line drawn along the southern boundaries of Mendocino, Lake, Colusa, Butte, Plumas and Lassen Counties and that portion of Sutter County north of Lincoln Road.

(ii) Zone 3 consists of Sonoma, Marin, Napa, Solano, and Yolo Counties and that portion of Sutter County west of the Feather River and south of Lincoln Road.

(iii) Zone 4 consists of Yuba, Sierra, Nevada, Placer, El Dorado, Amador, and Sacramento Counties and that portion of Sutter County east of the Feather River.

(b) District 2/3 consists of those counties north of a line drawn along the southern boundaries of Monterey, San Benito, Merced, Madera, and Mono Counties which are not included in Districts 1/2 and divided into zones as follows:

(i) Zone 5/ 6 consists of Alameda, Contra Costa, San Joaquin, Calaveras, and Alpine Counties, and that portion of Stanislaus County north of the Tuolumne River.

(ii) Zone 7 consists of that portion of Stanislaus County south of the Tuolumne River.

(iii) Zone 8 consists of those portions of District 2/3 not included in zones 5/6 or 7.

(c) District 4 consists of all counties in the State of California not included in Districts 1 or 2/3 which are those counties south of a line drawn along the northern boundaries of San Luis Obispo, Fresno, and Inyo Counties.

(i) Zone 9 shall be coterminous with District 4.

6. "Fiscal year" and "Marketing Year" and "Crop Year" mean the period commencing June 1st of any year and ending May 31st of the following year.

7. "Market" or "Marketing" means to sell or otherwise distribute cling peaches into commercial channels of trade.

8. "Marketing research" means any research related to the sale of cling peaches in any form.

9. "Producer" or "Grower" means any person within this state engaged in the business of producing or causing to be produced for market cling peaches.

ARTICLE III – ESTABLISHMENT, MEMBERSHIP AND TERM OF OFFICE

1. The California Cling Peach Growers Advisory Board is hereby established to assist the Department in the administration of this Marketing Order. The Board shall be composed of 15 voting grower members. The Board may recommend the appointment of one (1) voting public member in addition to the 15 voting grower board members, plus up to two (2) non-voting ex-officio members. In addition, there shall be five (5) grower alternate members on the Board. The terms of office for all members on the Board shall be three (3) years beginning March 1st in the year of their appointment or until qualified successors are appointed. The terms of office for the grower members shall be staggered. The terms of office for the grower member alternates shall be one (1) year.

2. The Department shall appoint members and alternates from nominations or preference voting by growers for that purpose. Members and alternates shall be nominated to represent districts and zones as set forth in this section.

(a) Prior to February 1st of each year for those zones in which Board member nominations are required, the Department shall cause one or more meetings to be held for the purpose of allowing growers to nominate persons eligible to serve as members of the Board. Nomination meetings shall be held every year for alternate board members. All growers of record with the Department of Food and Agriculture shall be notified by mail of the time and place of the meetings. If growers are not able to attend a meeting, they may submit names, in writing, to the Board office for two (2) weeks following the last scheduled nomination meeting.

(b) Growers within the respective zones shall nominate persons for the following number of Board members for appointment:

- (i) One (1) member from zone 7.
- (ii) Two (2) members per zone from zones 3, 4, 8, and 9.
- (iii) Three (3) members per zone from zones 1/2 and 5/6.

(c) Growers within the respective Districts shall submit nominations for the following number of alternate board members for appointment:

(i) A total of two (2) alternates to represent District One, (zones 1/2, 3, and 4) who shall serve one-year terms. Both will be considered "floating alternates" for these

zones.

(ii) A total of two (2) alternates to represent District 2/3, (zones 5/6, 7, and 8) who shall serve one-year terms. Both will be considered "floating alternates" for these zones.

(iii) A total of one (1) alternate to represent District Four, (zone 9) who shall serve a one-year term.

(d) Following the end of time for nominations, the Department will evaluate the need for mail balloting. If mail balloting is deemed necessary, the Department shall issue written ballots to growers in the specific zone(s) where voting needs to be conducted for Board members or alternates. Those receiving a majority of the ballots cast shall be recommended to the Department for appointment to the Board.

3. Board members and voting alternates appointed by the Department upon nomination as set forth in this Article may nominate, by majority vote, a public member appointed pursuant to Section 58843 of the Act and up to two (2) non-voting ex-officio members. Any such public member shall serve as a Board member with the right to vote, while any ex-officio member shall serve as a Board member without the right to vote.

4. Any persons appointed by the Department as a member or alternate of the Board shall qualify by filing and executing such forms as the Department may require.

5. At any Board meeting where a member is not present, the alternate from that District who resides closest to the absent member shall become the voting member for that meeting.

6. The quorum of the Board shall be ten (10) of its total voting membership. Any member who has a material financial interest in any matter to come before the Board at any meeting, or otherwise has a conflict of interest with respect to any such matter, may be counted in determining the presence of a quorum at the meeting but may not vote on such matter. The approval of any matter by a vote of at least eight (8) grower members who are present at a meeting at which there is a quorum shall constitute the act of the Board.

7. The members and alternates of the Board serve at the pleasure of the Department and may be removed by the Department at any time.

ARTICLE IV – QUALITY DETERMINATION REGULATIONS

1. In carrying out the provisions of this Marketing Order and to facilitate the enforcement and administration thereof, the Board may recommend and the Department may approve such grades and quality standards of cling peaches for processing as necessary.

2. In addition to the committees established pursuant to Article VII, paragraph 3, the Board may create a committee which may include non-members, including processors of cling peaches, to make recommendations to the Board regarding grades and quality standards. The Board may adopt the committee recommendations as its own and forward them to the Department for approval or reject the committee recommendations. The Board may not modify the committee's recommendations.

ARTICLE V – ADVERTISING AND SALES PROMOTION

1. The Board may establish advertising and sales promotion plans to maintain and expand existing markets and create new markets for cling peaches. The plans may include, in addition to activities which are ordinarily accepted as advertising and sales promotion, efforts to prevent, modify or remove trade barriers which obstruct the free flow of cling peaches produced in this state to any market such as the allowance of reimbursement payments to handlers to offset commodity transportation or other costs to selected domestic and foreign markets as provided in Sections 58604 and 58604.5 of the Marketing Act. Any activities set forth in the plans may be carried out by the Board acting alone or in concert with any other person, including other similar marketing and promotion programs established pursuant to state or federal law.

2. Annually and prior to the establishment of any plan pursuant to this Article, the Board shall prepare or cause to be prepared a report containing a review of all advertising and promotion plans implemented during the immediately preceding marketing year. The report shall include, but not be limited to, the following information:

- (a) An overview of all activities undertaken during the period covered by the report;
- (b) A summary of each plan element accompanied by the stated objective for the element;
- (c) A summary of all efforts implemented to measure the degree to which the stated objectives have been achieved;
- (d) An analysis of actions that can be taken to improve future performance;
- (e) An overview of activities initiated in response to previous year's recommendations, including an analysis of the extent to which these activities have produced the desired results; and,
- (f) An outline of anticipated activities for the coming marketing year.

ARTICLE VI - RESEARCH, STATISTICS AND ACREAGE SURVEYS

1. The Board may undertake, subject to the provisions of the Act, any necessary research studies and surveys relative to the production, processing, marketing, and distribution of cling peaches. Production research may include studies for the purpose of improving the quality of cling peaches and the development of more desirable varieties including those which reach maturity at a more desirable time. Such studies may also include research into the processing of cling peaches, changes in handling methods, or other topics of a similar nature.
2. The Board may, subject to the provisions of the Act, conduct or cause to be conducted a survey of the cling peach producing acreage within the state.

ARTICLE VII – POWERS AND DUTIES

1. Subject to the Department’s approval, the Board is authorized to:
 - (a) Enter into contracts or agreements;
 - (b) Employ necessary personnel, including attorneys engaged in the private practice of the law, to serve at the pleasure of the Board, and to fix their compensation and terms of employment;
 - (c) Incur such expenses, to be paid from assessments collected pursuant to Article IX, as are necessary and proper to enable the Board to perform its duties; and,
 - (d) Receive, invest, borrow and disburse funds.
 - (e) Engage in those activities set forth in Article 9 (commencing with Section 58881) of the Act, except those relating to the matters set forth in Sections 58882-58885 and 58887.
2. The duties of the Board shall be administrative only and shall include the following:
 - (a) To administer this Marketing Order subject to the approval of the Department;
 - (b) To recommend to the Department, administrative rules and regulations relating to this Marketing Order which upon approval shall be adopted according to the procedure set forth in Article XIII;
 - (c) To receive and report to the Department complaints of violations of this Marketing Order;
 - (d) To recommend to the Department amendments to this Marketing Order;
 - (e) To assist the Department in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the Secretary in the administration of this Marketing Order;

(f) To assist the Department in the collection of such information and data as the Department and Board may deem necessary to the proper administration of the Act and of this Marketing Order;

(g) To present facts and information to and negotiate with local, state, federal and foreign agencies, with prior approval of the Department, on matters which affect the cling peach industry.

(h) To keep minutes of its meetings and books and records of its business transactions. The books and records shall at all times be made available for inspection by the Secretary or his or her duly authorized representative and certified copies of the minutes of all meetings shall be filed with the Department. The books and records shall also be available for inspection at the office of the Board during regular business hours by any grower.

3. The Board shall create at least three committees as set forth below. The Board Chairperson may establish other committees that might be necessary for the effective functioning of the Board and the Board Chairperson shall appoint members to serve on all the committees and shall be an ex-officio member on all committees except the Executive Committee.

(a) An Executive Committee consisting of not more than five members shall include the Board Chairperson, Vice Chairperson and the Chairpersons of the Advertising and Promotion and Research Statistics and Acreage Survey Committees plus one other member of the Board.

(b) An Advertising and Promotion Committee.

(c) A Research, Statistics and Acreage Survey Committee.

4. The Board may, investigate the economic and marketing conditions affecting the cling peach industry and ascertain the views and opinions of growers, processors and the public through public meetings, referenda, and other means on matters affecting the cling peach industry. The Board chairperson shall appoint members to the committees and shall be an ex-officio member.

5. The members, employees of the Board, and members of any committees appointed pursuant to this Marketing Order shall not be held responsible individually in any way whatsoever to any grower or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No member, employee of the Board, or committee member shall be held responsible individually for any act or omission of any other member, employee of the Board, or committee member. The liability of the members, employees of the Board, and committee members shall be several and not joint and no person shall be liable for the default of any other person.

ARTICLE VIII – BOOKS AND RECORDS

1. All persons subject to the provisions of this Marketing Order shall maintain all books and records as required by the Act and shall make the books and records available for inspection by the Department upon request.

2. Proprietary information, including but not limited to, lists of growers obtained pursuant to the provisions of this Article shall be confidential and shall not be disclosed to any third person without the prior consent of the Department or upon the order of a court of competent jurisdiction.

ARTICLE IX – BUDGETS AND ASSESSMENTS

1. Prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall submit to the Department a budget of estimated expenses of the Board, its committees, and the Secretary.

2. The budget shall be itemized and funded from assessments collected as authorized by the Act and this Marketing Order. Additionally, the budget may propose funding from unexpended funds carried forward from prior years, funds received as the result of efforts to enforce the Act and this Marketing Order or any other source.

3. The Board shall recommend a rate of assessment and reserves calculated to provide adequate funds to defray the reasonable and necessary expenses incurred in administering and implementing this Marketing Order. In recommending assessments, the Board may specify specific uses for identified portions of the assessment.

4. Assessments shall be based upon any uniform basis authorized by law which the Department, upon recommendation of the Board, determines to be reasonable and equitable.

5. Upon a finding that the assessment recommended by the Board is proper and equitable and will provide sufficient funds for an annual program, the Department shall establish the rate of assessment.

6. Any assessment shall be levied upon the grower only and is a personal debt of every person assessed. To facilitate collection, the processor shall deduct the assessment from amounts paid to the grower, and shall be trustee of these assessments until they are remitted with assessment reports to the Board. Failure to collect the assessment from any grower shall not exempt the processor from liability.

7. The assessment established pursuant to this Article shall not exceed the limits set forth in Section 58926 of the Act.

ARTICLE X – DISPOSITION OF FUNDS

1. 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 Article IX.

ARTICLE XI – COMPLIANCE

1. Any person who violates any provision of the Act, this Marketing Order or any rule or regulation adopted thereunder shall be liable for the penalties prescribed by law. All remedies provided in law or equity shall be available to enforce the provisions of this Marketing Order. All money recovered as a result of efforts to enforce the provisions of this Marketing Order or any rule or regulation adopted hereunder on behalf of the Board shall be paid to the Board and deposited and disbursed as provided in Article VII, Section 1.

ARTICLE XII – APPEALS

1. Any grower believing that he or she has been aggrieved by any act or determination of the board may appeal through the process outlined in the CDFA Policy Manual for Marketing Orders and Councils.

ARTICLE XIII – RULES AND REGULATIONS

1. Upon recommendation by the Board, the Department may, in accordance with the provisions of Article 19, Division 21, Chapter 1 of the Food and Agricultural Code, issue and make effective seasonal marketing regulations as needed to carry out the purposes and attain the objectives of the Act and this Marketing Order. Notice of any seasonable marketing regulations shall be given to all growers in the manner and within the time specified in this Article.

2. Upon recommendation by the Board, the Department may, without prior notice and hearing, establish administrative rules and regulations for this Marketing Order reasonably necessary to facilitate the administration and enforcement of the Marketing Order. The rules and regulations shall be established in accordance with the provisions of the Act. The Board shall make any recommendation pursuant to this section prior to May 1 of any year. If the Board fails to do so, the administrative regulations in effect for the immediately preceding marketing season will be deemed to apply for the current marketing season. Pursuant to this section, the Board may recommend that no administrative regulations be in force for that marketing season.

ARTICLE XIV – EFFECTIVE DATE AND TERMINATION

1. This Marketing Order shall become effective upon a declaration to that effect by the Department. The Marketing Order shall continue in force and effect until suspended or terminated by the Department or by operation of law in accordance with the provisions of the Act or this Marketing Order.

2. During the 2003-2004 fiscal year, and at least once every five years thereafter, the Department shall submit this Marketing Order to a referendum vote for re- approval by the cling peach growers of record with the Department of Food and Agriculture to determine whether this Marketing Order shall be continued. The Marketing Order shall continue upon a finding that at least a majority of the growers voting cast their votes in favor of continuation.

3. Unless otherwise expressly provided in a notice of termination, suspension or amendment, no termination, suspension, or amendment of this Marketing Order shall either: (1) Affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of this Marketing Order not so terminated, suspended, or amended; (2) Release or forgive any violation of this Marketing Order occurring prior to the effective time of the termination, suspension, or amendment; or (3) Affect or impair any rights or remedies of the Secretary, Board, or of any other person with respect to any violation.

4. For purposes of winding up its affairs, the Board, its committees and employees shall continue to have the authority notwithstanding any termination or suspension of this Marketing Order to engage in those activities reasonably necessary to fulfill any obligations existing at the time of termination or suspension. Any acts required shall be performed by the Board, its committees or employees in place at the effective time of termination or suspension unless the Department, in writing, designates otherwise.

5. After the effective date of termination of this Marketing Order, the operation of the Advisory Board shall be concluded and all monies held by the Advisory Board not required to defray the expenses of concluding and terminating operations of the Board shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the Board finds that the amounts returnable are so small as to make impractical the computation and remitting of the prorated refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program conducted or used to fund activities related to the goals and objectives of this Marketing Order.

ARTICLE XV – RELATION TO OTHER LEGISLATION

1. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700, et seq., of the Business and Professions Code), 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 the provisions of the Act and this Marketing Order in furtherance of the purposes and provisions of the Act and this Marketing Order shall be a complete defense to such action or proceeding.

ARTICLE XVI – SEPARABILITY

1. If any section, sentence, clause, or part of this Marketing Order or the applicability thereof to any person, circumstance or thing is held to be invalid, the decision shall not affect the remaining portions of this Marketing Order.