

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA CHERRY MARKETING PROGRAM

Effective April 23, 1993

Incorporating Amendments through October 17, 2001

CALIFORNIA CHERRY MARKETING PROGRAM, AS AMENDED

ARTICLE I

DEFINITIONS

DEFINITION OF TERMS. For the purpose of this Marketing Program, the following definitions apply:

1. “Act” means the California Marketing Act of 1937, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code, as amended, or as the same may be hereafter amended.

2. “Department” means the Department of Food and Agriculture of the State of California.

3. “California Cherry Marketing Program”, “Cherry Program”, or “Program” means unless the context indicates otherwise, this marketing order directly affecting packers of cherries, which is issued by the Department, pursuant to the provisions of the Act.

4. “Cherry Advisory Board”, “California Cherry Board”, “Advisory Board”, or “Board” are synonymous and mean the administrative body established in accordance with Article II of this Program.

5. “Person” means any individual, partnership, corporation, association, or other business unit.

6. “California Sweet Fresh Cherries”, “Sweet Cherries”, or “Cherries”, for the purposes of this program, include Bing, Van, Lambert, and Rainier varieties which are marketed in fresh form.

7. “Producer” or “Grower” means any person who is engaged within this state in the business of producing or causing to be produced for fresh market, cherries, and who upon request, provides proof of commodity sale during the preceding crop year. A person or entity producing 1,000 standard containers or less of cherries per year shall not be deemed to be a producer.

8. “Packer” means any person engaged in the business of packing or causing to be packed, fresh cherries for commercial sale. A “Packer” may also be a “Producer” or “Grower”. A person or entity packing 1,000 cartons or less of cherries per year shall not be deemed to be a packer.

9. “Pack” or “Packing” means to accept cherries from a grower, and to place them into commercial shipping containers. “Packing” may also include sorting and sizing of cherries.

10. "Marketing Season" or "Fiscal Year" means the period beginning April 1 of any year and ending March 31 of the following year. (Amended 12/08/93)

11. Spurs and doubles are defined as cherries that have attempted to develop two pieces of fruit from the same pit. (Amended 12/08/93)

ARTICLE II

CHERRY ADVISORY BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. A Board to be known as the Cherry Advisory Board is hereby established and shall consist of twelve members, six of whom shall be packers of cherries as herein defined and six of whom shall be growers of cherries as herein defined, to assist the Department in the administration of this Program. Additionally, no more than three of the grower members may have a financial interest in packing or marketing; and at least three of the packer members must have financial interest in marketing of cherries. (Amended 12/08/93)

2. There shall be an alternate for each member and ex-officio member of the Board. The alternate shall be selected in the same manner and for the same term as the member.

3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.

4. The regular term of office of the members shall be two (2) years beginning with the effective date of this Program and ending the last day of October of the applicable marketing season. However, to provide for staggered terms of office for the appointees to the initial Board: three (3) packer and three (3) grower members shall serve a one-year term; and three (3) packer members and three (3) grower members shall serve a two year term. (Amended 10/17/2001)

5. Representation on the Board shall be by districts as herein described, or as such district representation may be changed by recommendation of the Board and approval of the Department, to maintain equitable representation in accordance with areas of production. Any such change of boundary lines of said districts or change in district representation shall be deemed a minor amendment to this Program. (Amended 12/08/93)

Said districts are as follows:

District Number 1, the "Central" District, shall be represented by five packer members and five grower members and shall consist of the following counties: San Joaquin, Sacramento, Stanislaus, Merced, Contra Costa, Mariposa, Mono, Yolo, El Dorado, Calaveras, Alpine, Tuolumne, Solano, Lake, Mendocino, Napa, Sonoma, Del Norte, Humboldt, Trinity, Modoc, Lassen, Plumas, Nevada, Placer, Sierra, Amador, Sutter, Yuba, Colusa, Glenn, Butte, Tehama, Shasta, Siskiyou, Inyo, Fresno, Kings, Tulare, Madera, Kern, Ventura, Orange, Los Angeles, San Bernardino, Riverside, San Diego, and Imperial. Not less than four packer members and four grower members from District 1 shall be from San Joaquin County. (Amended 12/08/93)

District Number 2, the "Western" District, shall be represented by one packer member and one grower member and shall consist of the following counties: San Francisco, Marin, San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara. (Amended 12/08/93)

6. Packer and grower alternate members on the Cherry Advisory Board, in the event that their respective members are in attendance at a duly noticed Board meeting, may serve in the place of other members representing the same District. Decisions as to which alternate and the absent member, with the alternate serving for the absent member whose business is of closest proximity to the alternate's business location. In no event can a packer alternate serve in the place of a grower member, and in no event can a grower alternate serve in the place of a packer member. Also, in no event shall this seating of alternates allow two voting members who are affiliated financially. (Amended 12/08/93)

Section B. NOMINATION OF MEMBERS OF THE CHERRY ADVISORY BOARD.

1. Nominations of persons eligible to serve on the initial Cherry Board shall be received at the public hearing held on this Program.

2. The Department shall appoint the initial members and their alternates from nominations received at such public hearing.

3. Procedures for the nomination of subsequent Board members and alternates may be developed by the Nominating Committee and recommended by the Board to the Department for approval.

4. Each packer member and alternate member of the Board shall be, during his or her term of office, a packer or an employee of a packer of cherries.

5. Each grower member and alternate member of the Board shall be, during his or her term of office, a grower or an employee of a packer of cherries.

Section C. FAILURE TO NOMINATE.

In the event nominations are not made pursuant to Section B of this Article, the Department may appoint the members and alternates to the Board without regard to nominations, from persons who are qualified as provided for in Section A and B of this Article.

Section D. QUALIFICATION.

Any person appointed by the Department as a member or alternate member of the Board shall qualify by filing with the Department a written acceptance and such other documents as may be required.

Section E. ALTERNATE MEMBERS.

An alternate member of the Board shall, in the absence of one of the members for whom he or she is alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meeting.

In the event of the death, removal, resignation, or disqualification of a member, the alternate for his or her position shall act in his or her place and stead until a successor to such member is selected and has qualified.

Section F. VACANCIES.

The Department shall fill any vacancies occasioned by the removal, death, resignation, or disqualification of any member or alternate member of the California Cherry Board. In making such selection, the Department may take into consideration any reserve nominations made by the remaining members of the Board.

Section G. ORGANIZATION.

As prescribed by law, a simple majority of the voting members of the Board shall constitute a quorum. Any recommendation of the Board to the Secretary shall require an affirmative vote of a majority of the voting members present or alternates present and acting in the place and stead of members.

Section H. EX-OFFICIO MEMBERS.

Each year the Board may recommend, and the Department may approve, the participation of ex-officio members in any or all deliberations of the Board: provided, that such participants shall not be counted in determining the presence of a quorum nor may they participate in voting on matters under consideration by the Board.

Section I. COMMITTEES.

1. A committee is hereby established to assist the Board and the Department in formulating procedures for the nomination of members and alternate members to the Cherry Board. The Nominating Committee may develop procedures for nomination of industry members to the Board, and may make nominations of persons eligible to serve on the Board when regular terms of office expire.

2. The Board may recommend, and the Department may appoint, such additional committees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Program. All Board committees shall have grower as well as packer membership.

Section J. EXPENSES.

The members and alternate members of the Board, including ex-officio members, and of any committees established pursuant to Section I above, may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in exercise of their powers hereunder.

Section K. DUTIES AND POWERS OF THE BOARD.

1. To administer the provisions of this Program.
2. To recommend to the Department administrative rules and regulations relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department amendments to this Program.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board of the Department in the administration of this Program.

6. To assist the Department in the collection of such necessary information and data as the Department or the Board may deem necessary to the proper administration of this Program and of the Act.

7. To select a chairman and vice chairman from its membership and to select such other officers and adopt such rules for the conduct of its business as the Board may deem advisable.

8. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions and to provide the Department with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall, at all times, be subject to examination by the Department or its duly authorized representatives.

9. To employ such personnel or administrative agencies as may be deemed necessary, including private counsel, and to determine the salaries and define the duties of such personnel subject to the approval of the Department.

10. To negotiate and enter into contracts of agreements for such goods and services as may be necessary to carry out the purposes and objectives of the Program.

11. To recommend to the Department the establishment of any of the administrative rules and regulations authorized under Article III of this Program.

12. To receive, invest, borrow and disburse funds pursuant to the provisions of Article 10 of the Act.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD.

The members and alternate members of the Cherry Advisory Board, ex-officio members, or members and alternate members of any committees hereunder duly appointed by the Department, and the employees of such Board shall not be responsible individually in any way whatsoever to any producer or any other person of 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 such person or employee shall be held responsible individually for any act or omission of any other member or the Board, committee, or employee.

The liability of the Board, its committees, or employees shall be several and not joint and no member or alternate member shall be liable for the default of any other member or alternate member.

ARTICLE III

ADMINISTRATION AND MARKETING POWERS

Section A. ADMINISTRATIVE RULES AND REGULATIONS.

1. Administrative rules and regulations, as necessary to carry this Article into effect, may be recommended by the Board and approved by the Department.

2. Any person who violates the provisions of this Marketing Program, or Orders of the Department issued pursuant hereto, or administrative rules and regulations made effective hereunder, shall be subject to the penalties prescribed by the Act.

Section B. MARKETING POWERS.

In carrying out the provisions of this Marketing Program, the Advisory Board will not be empowered to enact any form of quality and/or grade standards. Furthermore, the Advisory Board will not be empowered to enact any form of price or volume controls on the industry.

ARTICLE IV

SALES PROMOTION AND MARKET DEVELOPMENT

Section A. SALES PROMOTION AND MARKET DEVELOPMENT PROGRAM.

1. The Board is hereby authorized to prepare plans and administer programs and expend moneys, subject to the approval of the Department, for promoting the sale of fresh cherries as defined in this Program, for the purpose of maintaining existing markets or creating new and larger markets for cherries, or for the prevention, modification, or removal of trade barriers which obstruct the free flow of cherries to any market; provided, that any such plans so developed and conducted shall be directed toward promoting the sale of cherries without reference to a particular private brand name or trade name, except as authorized by the Act, and provided, further, that such plans or programs make no false or unwarranted claims on behalf of cherries, nor disparage the quality, value, sale or use of any other agricultural commodity.

2. In carrying out any sales promotion or market development programs or other activities authorized in this Article, the Board, subject to the approval of the Department, may undertake any activities provided by all of the authority for advertising and sales promotion contained in the Act, which the Board and the Department determine to be appropriate.

3. In addition to the foregoing and as part of its sales promotion and market development authorization, the Board may present facts to, and negotiate with state, federal, or foreign governmental agencies on matters which affect the marketing of cherries produced within the State of California.

4. The Board may, with the approval of the Department, undertake programs to educate and instruct the public with respect to the uses and value of California cherries.

5. The Board may recommend and the Department may approve provisions for the establishment of, regulations for, and rules for permissive use of an official board brand, trade name, or label, or other distinctive designation of California cherries.

6. In order to carry out programs or activities authorized in this Article, the Board, subject to the approval of the Department, may enter into contracts with any person qualified to render services in formulating and conducting said plans or programs, and prepare a statement of the cost of such plans and programs.

Section B. APPROVAL BY THE SECRETARY.

Upon recommendation by the Board of any sales promotion or market development plans or activities authorized by this Article, and upon recommendation of the expenditures required by such programs, the Department may approve such programs and may authorize the Board to incur expenditures in connection therewith.

ARTICLE V

RESEARCH AND SURVEYS

Section A. MARKETING RESEARCH.

The Cherry Board may conduct or arrange for any necessary and proper research studies or investigations relating to the marketing of cherries. Marketing research may include any activity intended to increase the marketability of cherries.

Section B. PRODUCTION AND POST-HARVEST RESEARCH.

1. In addition to marketing research, the Board may undertake research relating to the production and post-harvest handling of cherries. Production research may include, but not be limited to, varietal development, cultural practices, harvesting methods and practices, and the preparation of cherries for entry into marketing channels. Post-harvest handling research may include any research activity relating to the handling or packaging of cherries after they have been harvested.

2. The Board may carry on any other appropriate research activity relating to the production, handling, transportation or utilization of cherries.

3. The Board may contract with other appropriate agencies for the conduct of research. The Board may contract with the California Cherry Growers & Industries Foundation for research projects.

Section C. SURVEYS.

The Board may arrange for or undertake acreage surveys for cherries, or surveys of the estimated annual production of cherries, or other surveys deemed appropriate by the Board.

Section D. DISSEMINATION OF RESEARCH INFORMATION.

The Board, with the approval of the Department, may release, distribute, and disseminate the result of research, to appropriate parties.

ARTICLE VI

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD.

1. At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. In allocating funds to its activities in different foreign national markets, the Board shall take into consideration the proportional assessment value collected in these different markets. The Board shall also recommend a rate or rates of assessment to be levied upon packers and growers of California cherries upon a uniform basis, sufficient to provide adequate funds to defray the proposed expenditures and reserves as set forth in said budget or budgets.

2. The rate or rates of assessment which the Board may recommend shall not exceed fifty cents per package on all shipments, with one-half of the assessment paid by the packer and one-half paid by the grower. Spurs and doubles are exempted from assessment. (Amended 12/8/93)

Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT BY THE DEPARTMENT.

If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Program, he/she may approve such budgets and rates; provided, however, that in no event shall said rates of assessment exceed the maximum authorized in this Program.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS.

1. The obligation to pay assessments under this Program shall apply equally to packers and growers on all cherries packed. To facilitate collection, each packer of cherries shall pay the entire applicable assessment on all cherries he or she packs at the rates approved by the Department pursuant to the provisions of this Program. He or she shall deduct the grower portion of the assessment from amounts paid to the grower, and shall be a trustee of these assessments until they are remitted with assessment reports to the Board. The Department shall verify that proper payment has been made by the packer. (Amended 12/8/93)

2. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In any event of failure of any person to pay any assessment payable hereunder, the Department may file a complaint against such person in a State court of competent jurisdiction for the collection thereof, pursuant to the applicable provisions of the Act.

3. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent of such unpaid assessment plus accrued interest as authorized in the Act.

Section D. REFUNDS.

Any monies collected as assessments during a marketing season and not expended in connection with the respective marketing operations may be refunded, upon a pro rata basis to all persons from whom assessments were collected, or such portions of such monies as may be recommended by the Board and approved by the Department may be carried over in reserve into the next succeeding marketing season whenever the Department finds that such monies may be required to assist in defraying costs of operating this Marketing Program in such succeeding marketing season; provided, that upon termination by the Department of this Marketing Program, any and all monies remaining and not required by the Department to defray the expenses of this Marketing Program shall be returned by the Department upon a pro rata basis to all persons from whom such funds were collected; provided, further, however, that if the Department finds that the amounts so returnable are so small as to make impracticable the computation and remitting of such pro rata refund to such persons, the Department may use such funds to defray the expenses incurred by it in the formulation, insurance, administration of enforcement of any subsequent marketing order for cherries produced within the area.

Thereafter, if there are any monies remaining which have not been used by the Department as herein above provided, such monies shall be withdrawn from the approved depository and paid into the State Treasury as unclaimed trust monies.

ARTICLE VII

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS.

Any and all packers subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or its duly authorized or designated representatives, such information as may be, from time to time, requested by them relating to their operations under this Program, and shall permit the inspection by said Department or its duly authorized or designated representatives of such portions of their books and records as relate to operations under this Program.

Section B. CONFIDENTIAL INFORMATION.

Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him or her to any other person, save to a person with like right to obtain the same or any attorney employed by the Department to give legal advice thereupon, or by court order.

Section C. IMMUNITY.

No person shall be excused from attending and testifying or from producing evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her tends to incriminate said person or subjects said person to a 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 documentary or otherwise, before the Department in obedience to a subpoena by it.

Section D. APPEALS.

Any packer, regulated by this Program may petition the Department to review any order or decision of the Cherry Board. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section E. EFFECT OF APPEAL.

Pending the disposition of any appeal set forth in Section D of this Article, the parties shall abide by the order or decision of the Advisory Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any such petition and may review or revise in any manner whatsoever any order or decision upon which an appeal is taken.

Section F. AGENTS.

The Department may designate and authorized any person or persons including officers or employees of the Department of Food and Agriculture to act as its agent or agents with respect to any provision of this Program.

ARTICLE VIII

SEPARABILITY

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

ARTICLE IX

GENERAL PROVISIONS

Section A. DEPARTMENT'S APPROVAL OF BOARD ACTIONS.

The exercise of any powers granted to the Cherry Board under this Marketing Program shall be subject to the approval of the Department of Food and Agriculture.

Section B. POOLING OF FUNDS FOR PROMOTION.

In the event funds collected under any marketing program or order for the promotion of cherries are made available for inclusion in a pool of funds for the promotion of fresh cherries, promotion funds collected under this Marketing Program may also be included in said pool of funds.

Section C. RELATION TO ANTITRUST LAWS.

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act, Section 16600 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 provisions of this Marketing Program and in furtherance of the purpose and provisions of the Act, shall be a complete defense to such action or proceeding.

ARTICLE X

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME.

1. This Program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department or by operation of law in accordance with the provision of the Act. The Department shall conduct a public hearing in 1997 to determine whether the Program is effectuating the purposes and provisions of the Act.

Thereafter, in accordance with Section 59086 of the Act a public hearing would be required once every five years. (Amended 12/8/93)

Section B. TERMINATION.

Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Department shall suspend or terminate this Program, or any provisions thereof, whenever it finds, after public hearing duly noticed and held in accordance with the provisions of Article 6 of Chapter 1, Division 21 of said Food and Agricultural Code, that this Program, or any provisions thereof, is contrary to or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restrictions herein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department shall also suspend the provisions or terminate this Program in accordance with the provisions of Sections 59082, 59084, or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT.

Unless otherwise expressly provided in the notice of amendment, suspension, or termination no amendment, suspension, or termination of the Program issued by the Department shall (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other Program not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Department or of any person with respect to any such violation; (d) affect any liabilities pursuant to the provisions of this Program.