

**STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH**



**PROPOSED
CALIFORNIA PISTACHIO
RESEARCH PROGRAM**

**Issued For An Industry Vote
November of 2007**

CALIFORNIA PISTACHIO RESEARCH PROGRAM

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS

As used in the Program, the following terms shall have the following meanings:

1. “Act” means the California Marketing Act, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code, as amended.
2. “Assessable weight” means pounds of inshell pistachios, free of internal defects as defined in the United States Standards for Grades of Pistachio Nuts in the Shell, 51.2547(e) and (f) with the weight computed at 5 percent moisture, received for processing by a handler within each production year, provided, that for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight.
3. “California Pistachio Research Program” or “Program” means, unless the context otherwise indicates, this Program which is issued by the Department pursuant to the provisions of the Act.
4. “California Pistachio Research Advisory Board”, “California Pistachio Board”, “Advisory Board”, and “Board” are synonymous and mean the California Pistachio Research Board created pursuant to Article II of this Program.
5. “Department” means the Department of Food and Agriculture of the State of California.
6. “Person” means an individual, partnership, firm, corporation, association, subsidiary, affiliate, trust, limited liability corporation, or other business unit.
7. “Pistachios” means the nuts of the pistachio tree (*Pistacia vera*) grown in California whether inshell or shelled.
8. “Processing,” means hulling and drying in preparation for market.
9. “Processor” and “first handler” are synonymous and mean any person engaged within this state in the process of hulling and drying pistachios in preparation for market that he or she has produced or purchased or acquired from a producer, or that he or she is hulling and drying on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.

10. "Producer" and "Grower" are synonymous and mean any person engaged within this state in the production of pistachios for sale in a quantity of 1,000 pounds or more assessable weight per year.
11. "Production year" is synonymous with fiscal year and marketing season and means the period beginning on August 1 and ending on July 31 of each year.
12. "Secretary" means the Secretary of Food and Agriculture.

ARTICLE II

CALIFORNIA PISTACHIO RESEARCH BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE

1. An advisory board to be known as the California Pistachio Research Board is hereby established to assist the Department in the administration of the program. The Board shall be composed of nine (9) members and four (4) alternates, all of whom shall be pistachio producers or authorized representatives of pistachio producers. The four (4) alternate members will be designated in priority to sit in the place of any absent members. One additional member and one alternate member may be appointed to the Board by the Secretary to represent the general public. Such public representatives shall not be affiliated in any way with the production, processing or marketing of pistachios and shall have all of the rights and privileges including voting, of any other member or alternate member of the Board.
2. Members and alternate members shall be appointed by the Department from nominations received for that purpose.
3. Membership on the Board shall be from California at large and shall not be designated by district, county, or other subdivision of the state. However, in making appointments to the Board, the Department will give consideration to representation from the state's various production areas.
4. The terms of office shall begin with the appointment of the first board and ending on May 31, 2011 and thereafter be three years. Members and alternates shall continue serving through May 31 of the respective third year or until the Department appoints replacements. There are no term limits.

Section B. NOMINATIONS AND APPOINTMENTS

1. All members and alternates of the Board shall serve at the pleasure of the Department.
2. Nominations for the initial pistachio producers or authorized representatives to serve on the Board may be submitted at the public hearing held to consider formulating this Program.
3. For the purpose of obtaining producer nominations to subsequent Boards, the Department shall cause to be held a meeting of pistachio producers every three years not later than February 28. Nominations may also be submitted by mail to the Department not later than February 28.
4. Subsequent to receiving nominations, the Department shall conduct a vote of all eligible producers as a means to obtain an indication of producer preference among the nominees. Producers will be asked to select up to nine nominees on the ballot. The Department will then tally the ballots without regard to producer volume and use the results to help guide the appointments of the nine producer members and four producer alternates. The Department shall prioritize the alternates as first, second, third and fourth.
5. Nominations for the public member and the alternate public member may be submitted to the Department by Board action.
6. Any person appointed by the Department shall qualify by executing and filing forms as required by the Department.

Section C. ALTERNATE MEMBERS

1. An alternate producer member shall sit in the place of an absent producer member and when doing so shall have all the rights, powers, duties, and privileges of the member. In the event of the death, removal, resignation or disqualification of a member, an alternate shall act in his or her place until a successor is appointed and has qualified. Alternates shall serve in the order of their assigned prioritization.
2. The alternate public member may sit in the place of the public member when the public member is absent.

Section D. VACANCIES

The Department shall fill any vacancy occasioned by the removal, death, resignation, or disqualification of any member or alternate member of the Board. In filling vacancies,

the Department may consider the prioritization of the current alternates and/or recommendations submitted by the remaining members of the Board.

Section E. MEETING PROCEDURES

1. The Board shall meet at least once each fiscal year.
2. The quorum and Board voting criteria shall vary depending upon whether the Board has a public member. When the Board does not have a public member, a quorum shall consist of five members (or alternates sitting in the place of members) and any action of the Board shall require the approval of at least five members (or alternates sitting in the place of members). When the Board has a public member, a quorum shall consist of six members (or alternates sitting in the place of members) and any action of the Board shall require the approval of at least six members (or alternates sitting in the place of members).

Section F. EX-OFFICIO MEMBERS

Each year the Board may recommend and the Department approve the participation of ex-officio members in any or all open session 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 Board actions.

Section G. OFFICERS AND COMMITTEES

1. The Board may select from its number a Chair, Vice-Chair and other officers deemed necessary to assist the Board in execution of its duties.
2. The Board may establish committees made up of members, alternates, and non-members as deemed necessary to assist the Board in execution of its duties.

Section H. EXPENSES OF MEMBERS

The members and alternates of the Board, including ex-officio members, and members of any committees provided herein above may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers, but no such member shall receive a salary or per diem in the performance of such duties.

Section I. DUTIES AND POWERS OF THE BOARD

The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

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 or violations of this Program.
4. To recommend to the Department amendments to this Program
5. To develop and administer an operating budget(s).
6. To assist the Department in the assessment of producers of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Program.
7. To assist the Department in the collection of such information as the Department or the Board may deem necessary to the proper administration of this Program.
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. Such 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 as may be deemed necessary and to fix their compensation and terms of employment.

Section J. LIMITATION OF LIABILITY OF MEMBERS OF THE ADVISORY BOARD

The members and alternate members of the Board, ex-officio members, or members of any committees duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any pistachio producer 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 such person or employee shall be held responsible individually for any act or omission of any other member of the Board, committee, or employee. The liability of the Board, its committees, or employees shall be several and not joint and no member shall be liable for the default of any other member.

ARTICLE III

GENERAL RESEARCH AND EDUCATION

Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES

The Advisory Board is authorized to undertake, or cause to be conducted, and to administer, research and development and survey programs affecting the propagation, production, harvesting, handling or preparation for market of any or all varieties of pistachios. 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 in the conduct of a pistachio research and development and survey program. This authority shall in no event be construed as authority to conduct marketing research or promote or advertise California pistachios.

Section B. EDUCATION AND OUTREACH

The Board is authorized to undertake or cause to be conducted, and to administer education programs to extend the results of pistachio research to the producers. With the approval of the Department, the Board may expend money, enter into contracts and do all things necessary and proper to publish the results of pistachio research undertaken by the Board and to make the information publicly available through printed reports, electronic publication and public meetings. This authority shall in no event be construed as an authority to prepare materials for marketing purposes or to promote or advertise California pistachios.

Section C. PROHIBITION OF ACTIVITIES NOT AUTHORIZED UNDER THIS PROGRAM

This Program does not authorize and expressly prohibits as activities: 1) advertising and sales promotions of pistachios, 2) research on the effects of pistachio consumption on human nutrition and health, 3) any control or regulation of volume, quantity, grade, size, or quality of pistachios which may be marketed during any marketing season. Nothing in this section shall be construed to restrict or prohibit the dissemination of research information authorized under Section B of this Article.

Section D. COORDINATION WITH OTHER STATE OR FEDERAL MARKETING ORDERS

Insofar as may be practicable, the administration of this Program may be coordinated with any other marketing order or agreement or program that may be effective for pistachios under either State or Federal statutes, or may be coordinated with State or Federal marketing orders or agreements or programs for any other commodity.

ARTICLE IV

BUDGETS AND RATES OF ASSESSMENT

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

The Board, not later than July 1 of each year, shall recommend to the Department a budget or budgets of estimated expenditures and reserves for the administration and enforcement of this Program and to carry out authorized activities based on the best production estimates available at the time. The Board shall also recommend a rate or rates of assessment calculated to provide adequate funds to defray the proposed expenditures and reserves as set in said budget or budgets. The annual assessment shall not exceed one-half cent per pound of assessable weight of pistachios. The Board may recommend revision of the assessment rate prior to October 15 of each year if it determines, based on information including crop volume, that the action is necessary, and if the revision does not exceed the assessment limitations specified in this section and the modification is made prior to the date established by the Board for payment of the assessment. The assessment does not apply to pistachios produced only for the producer's home use or where the pistachios are used only for ornamental purposes provided, that such producer shall file an affidavit with the Board establishing that these pistachios are not produced for commercial purposes. In any event, no production of pistachios in excess of 1,000 pounds of assessable weight of pistachios per year is exempt from the assessment under this article.

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, it may approve such budgets and rates; Provided that in no event shall such rates of assessment exceed the maximum rate authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS

1. Assessments shall be upon the producer. Every processor shall keep a complete and accurate record of all pistachios processed by him with the name of the producer whose pistachios were processed. Such records shall be in simple form and contain such information as the Board shall prescribe. Such records shall be preserved by the processor for a period of three years beyond the year of applicability and shall be offered and submitted for inspection at any reasonable time upon written demand of the Department or its duly authorized agent.

2. The processor or first handler of pistachios being assessed shall deduct the assessment from amounts paid by him or her to the producer or shall collect the assessment from the producer, and shall be a trustee of the funds until they are paid to the Board at the time and in the manner prescribed by the Board.
3. Every processor shall be personally liable for the payment of collected assessments, and failure of the processor to collect the assessment from any producer shall not exempt the processor from such liability.
4. Any assessment which is levied as provided in this article is a personal debt of every producer so assessed. Failure of a processor to make payment of the collected assessment to the Board shall not relieve the producer of this obligation.
5. Assessments are payable to the Board by December 15 of each fiscal year. Any producer or processor who fails to file reports required by the Board or pay any assessment by the date stipulated shall be subject to penalties and interest as provided in the Act.

Section D. INITIAL BUDGET AND ASSESSMENT FOLLOWING ENACTMENT
OF THE PROGRAM

The assessment rate for the 2007-2008 fiscal year shall be one-quarter (1/4) cent per pound assessable weight of pistachios and will be effective on the date the program is implemented. The due date for the initial assessment shall be determined by the Board but shall be no later than February 29, 2008.

Section E. REFUNDS

Any money collected as assessments during a marketing season and not expended in connection with this Program may, at the discretion of the Department, be refunded after the close of any fiscal year upon a pro rata basis to all persons from whom assessments were collected; or all or a portion of such money as may be recommended by the Board and approved by the Department may be carried over into the next fiscal year if the Department finds that such money may be required in defraying the costs of this Program in such succeeding year.

ARTICLE V

BOOKS AND RECORDS

Section A. REQUIRED BOOKS AND RECORDS

Any and all persons 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 representative, such information as may be, from time to time, required relating to operations under this Program and shall permit the inspection by the Department, or its duly authorized or designated representatives, of such portions of such 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 or the Board to give legal advice thereupon or by court order.

Section C. IMMUNITY

No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to a subpoena issued by the Department on the ground or reason that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transactions, matter or thing concerning which he or she may be so required to testify, or produce evidence, documentary or otherwise, before the Department on obedience to a subpoena issued by the Department.

ARTICLE VI

APPEALS

Section A. RIGHT TO APPEAL

Any person affected by this Program may petition the Department to review any order or decision of the Board or any of its committees. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL

Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of said Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any order or decision upon which an appeal is taken.

ARTICLE VII

AGENTS

Section A. AGENTS

The Secretary may, by designation in writing, name any person or persons, including officers or employees of the California Department of Food and Agriculture, to act as his or her agent or agents, with respect to any provision of this Program.

ARTICLE VIII

RELATION TO ANTI-TRUST LEGISLATION

Section A. ANTI-TRUST 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 or 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 this Program and in furtherance of the purposes and provisions of the Act, shall be a complete defense to such action or proceeding.

ARTICLE IX

SEPARABILITY

Section A. SEPARABILITY

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

ARTICLE X

EFFECTIVE TIME AND TERMINATION

Section A. INITIAL INDUSTRY REFERENDUM

This Program shall not go into effect without first being approved by referendum vote of pistachio producers. The approval criteria for the implementation referendum shall be that stated in Section 58993(c) of the Act.

Section B. EFFECTIVE TIME

This Program shall go into effect on the date specified by the Department and shall continue in full force and effect unless suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act.

Section C. CONTINUATION HEARING

In the fifth year following the effective date of this Program 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 Program 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 Program is meeting the objectives of the Act, it shall submit the question to a referendum vote of pistachio producers consistent with the provisions of the Act.

Section D. TERMINATION

Pursuant to the provisions of Section 59081 of the Act, the Department shall suspend or terminate this Program, or any provision thereof, whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 of the Act, that this Program, or any provisions, 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 therein imposed; provided, that such suspension or termination shall not become effective until the expiration of the then current fiscal year.. The Department shall also suspend the provisions or terminate this Program in accordance with the provisions of Section 59082, 59084 or 59085 of the Act.

Section E. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT

Unless otherwise expressly provided for in the notice of amendment, suspension, or termination, no amendment, suspension or termination of the Program by the Department shall either (a) 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 said 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 any person with respect to any such violation; or (d) affect any liabilities pursuant to the provisions of this Program.

After the effective date of termination of this Program, 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.