

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

CALIFORNIA
CITRUS NURSERY
RESEARCH AND EDUCATION PROGRAM

Effective October 8, 2005
Incorporates amendments through December 12, 2008

CALIFORNIA CITRUS NURSERY RESEARCH AND EDUCATION PROGRAM

ARTICLE I

DEFINITIONS

SECTION A. DEFINITION OF TERMS. As used in this Program, the following terms shall have the following meanings:

1. "Act" means the California Marketing Act of 1937, Chapter 1 of Part 2, Division 21 of the 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 Citrus Nursery Program", "California Citrus Nursery Research Program", "California Citrus Nursery Research and Education Program", "California Citrus Improvement Program" or "Program" means, unless the context otherwise indicates, this Program which is issued by the Department pursuant to the provisions of the Act. *(Amended 12/12/08)*
4. "California Citrus Nursery Board", "California Citrus Nursery Advisory Board," "Advisory Board," and "Board" are synonymous and mean the California Citrus Nursery Research and Education Advisory Board created pursuant to Article II of this Program. *(Amended 12/12/08)*
5. "Person" means an individual, partnership, firm, corporation, association, subsidiary, affiliate or other business unit.
6. "Citrus" for the purpose of this Program, means edible fruits of the family Rutaceae, commonly called citrus, and including all hybrids thereof which are produced for commercial purposes within the State of California.
7. "Citrus Nursery" means any handler entity or person licensed within the state to do business propagating and marketing citrus trees, and who marketed 1,000 or more citrus trees in a given marketing season. *(Amended 12/12/08)*
8. "Propagating" means to produce a citrus tree asexually including budding, grafting, cuttings, or tissue culture. *(Amended 12/12/08)*
9. "Citrus Tree" for the purpose of this Program means any tree, except rootstocks, of the sub family aurantiadeae (edible citrus) of the family Rutaceae produced by a citrus nursery.
10. "Market", unless the context indicated otherwise, shall be synonymous with the phrase "to market" or "marketing" or "marketed" and shall mean to sell, ship, distribute, or otherwise handle. *(Amended 12/12/08)*
11. "Fiscal Period" or "Marketing Season" means the period from January 1 through December 31, of any given year.

ARTICLE II

CALIFORNIA CITRUS NURSERY ADVISORY BOARD

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

1. An advisory board to be known as the California Citrus Nursery Board is hereby established to assist the Department in the administration of this Program. The Board shall be composed of seven members and three alternates (a 1st alternate, a 2nd alternate and a 3rd alternate), all of whom shall be citrus nursery persons. 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 respect to the propagation or marketing of citrus trees and shall have all of the rights and privileges, including voting, of any other member or alternate member of the Board. *(Amended 12/12/08)*
2. Members and alternate members shall be appointed by the Department from nominations received for that purpose.
3. Nursery person representation on the Board shall be without regard to districts, but insofar as may be practicable shall include representation from all of California's primary citrus nursery production regions.
4. The terms of office shall be three years beginning December 1. The terms shall not be staggered.

Section B. NOMINATIONS AND APPOINTMENTS.

1. All members and alternates 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 nursery persons on the Board may be submitted at the public hearing held for formulating this Program.
3. For the purpose of obtaining nursery person nominations to subsequent Boards, the Department shall cause to be held a meeting of citrus nursery persons every three years not later than October 15th.
4. Nominations for the public member and the public alternate member may be submitted to the Department via a Board action of the nursery persons on the Board.
5. Any person appointed by the Department shall qualify by executing and filing forms as required by the Department.

Section C. ALTERNATE MEMBERS.

1. A nursery person alternate shall sit in the place of an absent nursery person 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. The 1st nursery person alternate shall have priority over the 2nd nursery person alternate in serving and the 2nd nursery person alternate shall have priority over the 3rd nursery person alternate in serving.
2. The public alternate 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 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 or not the Board has a public member. When the Board does not have a public member, a quorum shall consist of four members or alternates sitting in place of members and any action of the Board shall require the approval of at least four members of the Board. When the Board has a public member, a quorum shall consist of five members or alternates sitting in place of members and any action of the Board shall require the approval of at least five members or alternates sitting in place of members.

Section F. 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 advisory Board; provided, that such participants shall not be counted in determining the presence of a quorum nor may they participate in the voting.

Section G. 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 execution of its duties under this marketing order.
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 under this marketing order.

Section H. EXPENSES. The members of the Board, including ex officio members, and of any committees provided for 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 hereunder, but no such member shall receive a salary 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 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 and 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 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.

8. 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 of the Board, ex officio members, or any committees hereunder duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any citrus nursery person 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

VARIETY IMPROVEMENT RESEARCH PROGRAM

Section A. VARIETY IMPROVEMENT, REGISTRATION, AND CERTIFICATION.

The Board is hereby authorized to carry on or support a program of variety improvement to assure the continued freedom of citrus nursery stock from pathologically harmful viruses and other economically undesirable citrus diseases and mutations. The Board may assist or otherwise support citrus registration and certification programs.

ARTICLE IV

GENERAL RESEARCH

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 citrus trees as defined. 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 citrus nursery research and development and survey program limited only by the provisions of Section 58892 of the Act. This authority shall in no event be construed as an authority to conduct marketing research or to promote or advertise California citrus trees.

ARTICLE V

BUDGETS AND RATE OF ASSESSMENT

Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD. 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 expenditures and reserves for the administration and enforcement of this Program and the activities authorized hereunder. 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 forth in said budget or budgets. The annual assessment shall not exceed 1 percent of the invoiced sales price of all citrus trees, propagated and marketed by any citrus nursery. Royalties, delivery charges and rootstocks are not assessable. The assessment is only collected once, the first time a citrus tree is marketed by the citrus nursery. *(Amended 12/12/08)*

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, however, that in no event shall such rates of assessment exceed the maximum rate authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS. The obligation to pay assessments under this Program shall apply to each citrus nursery on sales of citrus fruit trees as outlined in Section A. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable at the time and in the manner specified by the Board. The Board and/or the Department may conduct audits to verify that proper payment has been made by citrus nurseries. In the event of failure by 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 Section 58929 of the Act. The Department may add to any unpaid assessment an amount to defray the cost of enforcing the collection of such unpaid assessment and a penalty on the unpaid balance pursuant to Section 58930 of the Act.

Section D. 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 marketing season 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 marketing season if the Department finds that such money may be required in defraying the costs of this Program in such succeeding season.

Section E. BONDS. The Department may require that any and all persons handling substantial funds collected pursuant to the provisions of this Program shall execute and deliver to the Department a bond or bonds in such amount as the Department may designate with surety thereon satisfactory to the Department conditioned upon the faithful performance of the duties of such person pursuant to the provisions of this Citrus Improvement Program.

ARTICLE VI

BOOKS AND RECORDS

Section A. 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, requested by them relating to operations under this Program and shall permit the inspection by said Department, or its duly authorized or designated representatives, of such portions of such books and records as relate to operations under said 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 Advisory 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 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 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 or 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 VII

APPEALS

Section A. APPEALS. Any person affected by this Program may petition the Department to review any order or decision of the Advisory Board or any of its subcommittees. 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 Advisory 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 VIII

AGENTS

Section A. AGENTS. The Secretary of the Department 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 its agent or agents, with respect to any provision of this Program.

ARTICLE IX

RELATION TO OTHER 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 X

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. The Department and the signatories to the assents to this Program hereby declare that it would have issued this Program and each sentence, section, clause, or part thereof, and each of the signatories to the assents would have assented to each sentence, section, clause, or part thereof, despite the fact that one or more sections, sentences, clauses, or parts thereof be declared invalid or unconstitutional.

ARTICLE XI

EFFECTIVE TIME AND TERMINATION

Section A. INITIAL INDUSTRY REFERENDUM. This Program shall not go into effect without first being approved via a referendum vote of citrus nurseries.

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

Section D. TERMINATION. Pursuant to the provisions of Section 59081 of the Agricultural Code, 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 Chapter 1, Part 2 of Division 21 of said 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 therein 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 Section 59082, 59084 or 59085 of the Act.

Section C. 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 issued 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 of 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 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.