

# CALIFORNIA AVOCADO PEST & DISEASE PREVENTION ACT OF 2007

Part 7 (commencing with Section 8901) is added to Division 4 of the Food and Agricultural Code, to read:

## **PART 7. CALIFORNIA AVOCADO PEST AND DISEASE PREVENTION ACT OF 2007**

### **CHAPTER 1. General Provisions**

#### **Article 1. Declarations and Legislative Intent**

8900. This chapter shall be known, and may be cited as, the California Avocado Pest and Disease Prevention Act of 2007.

8901. The production and handling of avocados constitutes an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens. The California avocado industry has the potential to be one of the leading segments of the state's agricultural industry. To realize this potential, there is a need to ensure that the integrity and healthful properties of avocados produced in this state are preserved and protected from pest infestation and disease.

8902. Destructive pests and diseases pose a significant and imminent threat to California agriculture, including its important avocado industry, and serious damage could occur if measures are not taken to mitigate this threat. If the threat is not mitigated, progress made by the avocado industry in the adoption of integrated pest management and sustainable farming practices may be adversely affected, the use of pesticides may increase, and the quality of California's avocados may be harmed by these destructive pests and diseases.

8903. The program established pursuant to this chapter is essential to ensure that avocados produced or handled in this state are pest and disease free so that consumer confidence in California's avocados is maintained throughout the nation and the world.

8904. This chapter is declared to be enacted in the public interest and in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

#### **Article 2. Definitions**

8911. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

8912. "Avocado" means any variety of avocado, wherever grown.

8913. "Records" means books, records, contracts, documents, memoranda, papers, correspondence, or other data, whether in written, magnetic, or electronic form, that pertain to matters relating to this chapter.

8913.5. "Chapter" means any provision of this act or regulations adopted pursuant thereto.

8914. "Commission" means the California Avocado Commission created pursuant to Chapter 5 (commencing with Section 67001) of Part 2 of Division 22.

8915. "Committee" refers to the committee established in Section 8921.

8915.5. "Department" refers to the Department of Food and Agriculture.

8916. "Handler or handling" means any person engaged in the business of receiving, purchasing, importing, transporting, shipping, grading, packing, storing, selling, marketing, distributing, or changing the form of avocados in any manner for commercial purposes.



# CALIFORNIA AVOCADO PEST & DISEASE PREVENTION ACT OF 2007

8917. "Person" means any individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or any other entity doing business in California.

8918. "Producer" means any person who produces avocados, or causes avocados to be produced.

8919. "Secretary" means the Secretary of Food and Agriculture.

## Article 3. Administration

8921. The secretary shall appoint a committee from nominations received from the commission to administer this chapter. The committee shall consist of four producers, four handlers, and one representative from the University of California. If the secretary finds any of those nominated to be unacceptable, he or she shall notify the commission and request that another person be nominated. The commission may appoint any other ex officio members deemed reasonably necessary to implement this chapter.

8922. (a) The committee shall meet periodically for the purposes specified in Article 4 (commencing with Section 8931).

(b) A majority of the membership of the committee shall constitute a quorum of the committee. The vote of a majority of the members present at which there is a quorum shall constitute an act of the committee. The committee may continue to transact business at a meeting at which a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

(c) As a committee of the commission, the committee shall conduct itself according to the bylaws and procedures of the commission or any successor entity, except that the chair of the committee shall be nominated by the commission and appointed by the secretary.

(d) Sections 67051.5, 67059.5, 67062 and 67107 of the Code shall apply to the committee.

8923. All funds received from the assessments levied under this chapter shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents as it may designate for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in the state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

8924. (a) Upon receipt of a recommendation from the committee for the promulgation of regulations, the secretary shall within 30 working days do one of the following:

(1) Initiate the rulemaking process to adopt the regulations as recommended by the committee.

(2) Decline to initiate the rulemaking process and provide the committee with a written statement of reasons for the decision.

(3) Request that the committee provide additional information regarding the recommended regulations.

(b) All regulations adopted pursuant to this chapter shall be adopted in compliance with the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and may be subsequently repealed or amended as provided for in that chapter.



# CALIFORNIA AVOCADO PEST & DISEASE PREVENTION ACT OF 2007

8925. No member or agent of the committee or the commission be personally liable for the actions of the committee, the commission, or the department. No member or agent of the committee or the commission is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as a principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or agent of the committee or the commission is responsible individually for an act or omission of any other member or agent of the committee, the commission, or the department. Liability is several and not joint, and no member or agent of the committee or the commission is liable for the default of any other member or agent of the committee, the commission, or the department.

## Article 4. Powers and Duties

8931. The powers and duties of the committee shall include, but not be limited to the following:

(a) Designation of pests and diseases that pose a threat to the avocado industry, public health and safety, or the environment.

(b) Removal of designated pests and diseases that no longer pose a threat to the avocado industry, public health and safety, or the environment.

(c) Designation of areas inside and outside of California that contain designated pests and diseases.

(d) Removal of designated areas inside and outside of California that no longer contain designated pests and diseases.

(e) Establish a process for any person located within a designated area to petition the committee to be exempt from regulations adopted pursuant to this chapter. The process shall include, but not be limited to, the providing of evidence that no designated pests or diseases are present on the person's property and that the person's cultural practices are likely to prevent the introduction of a designated pest or disease.

(f)(1) Recommend to the secretary the adoption of regulations establishing terms and conditions for handling avocados from designated areas inside and outside of California to prevent the introduction and spread of designated pests and diseases.

(2) In determining whether to recommend to the secretary the adoption of regulations, the committee shall consider available scientific information and other relevant factors including, but not limited to, the following:

(A) The possibility that designated pests and diseases will be introduced into the state or spread beyond designated areas within the state.

(B) The possibility that the designated pests and disease will cause harm if introduced into the state or spread beyond designated areas within the state.

(g) Periodically review the efficacy of the terms and conditions using the most current industry standards and generally accepted scientific principles.

(h) Provide recommendations to the secretary on all matters pertaining to this chapter unless specific authority is reserved to the commission.

8932. The committee shall recommend to the secretary that regulations be adopted by the secretary that accomplish all of the following purposes:

(a) Maintain the integrity of avocados produced in this state.



# CALIFORNIA AVOCADO PEST & DISEASE PREVENTION ACT OF 2007

(b) Prevent the introduction and spread of designated pests and diseases.

(c) Ensure that persons handling avocados from designated areas notify the commission of the origin of the avocados prior to, and upon being handled in the state, and comply with all terms and conditions imposed pursuant to this chapter in order to prevent the introduction or spread of designated pests and diseases.

(d) Ensure the health and safety of California producers, consumers and the environment.

## Article 5. Entry and Handling of Avocados from Designated Areas

8941. No avocados originating from designated areas outside of California may enter this state except in compliance with this chapter.

8942. No avocados originating from designated areas within California may be transported in this state except in compliance with this chapter.

8943. No person may handle avocados in this state that were produced in designated areas except in compliance with this chapter.

## Article 6. Assessments

8951. (a) The first in-state handler of avocados originating from a designated area, shall report the receipt of avocados and pay an assessment to the commission in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_) per \_\_\_\_\_ of avocados.

(b) Assessments not paid when due and reports not submitted when required shall be subject to a penalty of 10 percent of the assessment and interest at the rate of 1 percent per month.

(c) The report and payment shall be made in the time and manner specified by the commission.

8952. No assessment shall be paid by any person for any avocados for which the assessment specified in Section 8951 has been previously paid.

8953. The commission shall use all funds received for the purposes of this chapter.

8954. The commission shall publish an annual report of its activities including an accounting of the use of all assessments collected pursuant to this chapter. The report, in aggregate form, shall be made available to any person upon request.

## Article 7. Violations

8961. (a) It is unlawful for any person to:

- (1) Handle avocados in violation of this chapter;
- (2) Willfully render or furnish a false report, statement, or record required by this chapter;
- (3) Fail to obtain, render, retain, or furnish a report, statement, or record required by this chapter;
- (4) Secrete, destroy, or alter records required to be maintained pursuant to this chapter; or
- (5) Fail or refuse to pay any assessments levied pursuant to this chapter.



# CALIFORNIA AVOCADO PEST & DISEASE PREVENTION ACT OF 2007

(b) Notwithstanding subdivision (a), a person engaged in business as a retailer of avocados who in good faith sells or offers for sale any avocados in reliance on the representations of a producer or handler that the avocados may be sold, shall not be found to violate this chapter, except under any of the following circumstances:

- (1) The retailer knew or should have known that the sale of avocados was in violation of this chapter.
- (2) The retailer was engaged in producing or handling avocados.

8962. It is unlawful for any person to fail or refuse to pay any assessments levied pursuant to this chapter.

8963. All remedies provided by this chapter are cumulative and not exclusive of any other remedy, whether initiated by the commission or the department.

## Article 8. Investigations and Actions by the Commission

8971. The commission may receive and investigate complaints regarding alleged violations of this chapter. The commission may refer cases to the department for action.

8971.5. (a) The commission may issue a notice of violation to any person alleged to have violated this chapter. The notice of violation may include, but not be limited to, the following:

- (1) A summary of findings from the investigation.
- (2) Conditions that the person shall comply with, which may include, but not be limited to, cessation of any existing violations, refraining from any future violations, and submitting to periodic inspections without notice.

(b) Aggrieved individuals may request an informal hearing before the commission. The commission shall establish procedures for conducting informal hearings pursuant to Section 67112 of this code. The individual may seek a review of the commission's decision by the secretary and thereafter may seek judicial relief.

8972. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and for obtaining a writ of attachment, injunctive relief or specific performance regarding this chapter. The commission may seek a writ of attachment or injunctive relief, including, but not limited to, a temporary restraining order, preliminary injunction, or a permanent injunction, in order to prevent any violation or threatened violation of this chapter.

(b) The commission shall provide notice to the person alleged to have violated this chapter prior to commencing a civil action.

(c) A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated, or has threatened to violate, this chapter. No bond shall be required to be posted by the commission as a condition for the issuance of the requested writ of attachment or injunctive relief.

(d) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.101) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure shall not be required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure shall not be required.

(e) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding avocados until there is full compliance and satisfaction of the judgment. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal place of business of the commission. The commission may be sued only in the county of its principal office.

8973. The commission shall be entitled to receive reimbursement for any reasonable attorneys' fees and other related costs, including, but not limited to, investigative costs, involved in enforcement of this chapter.



# CALIFORNIA AVOCADO PEST & DISEASE PREVENTION ACT OF 2007

## Article 9. Investigations and Action by the Department

8981. The department may investigate complaints referred to it by the commission regarding alleged violations of this chapter. The department may enter and inspect the premises of any person subject to this chapter for the purpose of inspecting avocados or avocado handling activities governed by this chapter. If the department determines that violations have occurred, the department may take action authorized by this chapter, including, but not limited to, seizing and destroying avocados. Avocados may not be destroyed by the department without due notice to the person whose avocados were seized and an informal hearing before the secretary pursuant to procedures adopted by the department.

8981.5. The department may commence civil actions and utilize all remedies provided in law or equity for obtaining of a writ of attachment, injunctive relief, or specific performance for violations of this chapter.

8982. (a) The department may levy a civil penalty against any person who violates this chapter in an amount of not more than fifty thousand dollars (\$50,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the violation upon the effectuation of the purposes of this chapter, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Upon a finding that a violation was unintentional, the department may levy a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(c) For a first offense, and upon a finding that the violation is minor and unintentional, in lieu of a civil penalty as prescribed in subdivisions (a) or (b), the department may issue a notice of violation.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the secretary, upon a request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and non-reviewable order.

(e) If a hearing is held, review of the decision of the secretary may be sought by the person against whom the civil penalty is levied within 30 days of the date of the final order of the secretary pursuant to Section 1094.5 of the Code of Civil Procedure.

(f) A civil penalty levied by the department pursuant to this section may be recovered in a civil action brought in the name of the state.

8983.

(a) The department shall be entitled to receive reimbursement for any reasonable attorneys' fees and other related costs, including, but not limited to, investigative costs, involved in enforcement of this chapter.

(b) The department shall use all funds received pursuant to this chapter for the purposes of this chapter.

67005. Commission form of administration

The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of avocados the opportunity to avail themselves of the benefits of collective action in the broad fields of advertising; promotion; production, nutrition, and marketing research; quality and maturity standards; the collection and dissemination of crop volume and related statistics; public education; and any activity authorized in Part 7 of Division 4 of this code (commencing with Section 8900).

