

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



PROPOSED
CALIFORNIA LEAFY GREEN PRODUCTS
HANDLER
MARKETING AGREEMENT

To Be Considered at a Public Hearing on January 12, 2007

CALIFORNIA LEAFY GREEN HANDLER MARKETING AGREEMENT

ARTICLE I

STATEMENT OF AGREEMENT

WHEREAS, it is provided in Section 58745 of the California Marketing Act, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of the State of California, as follows:

58745. In order to effectuate the declared policy of this chapter, the Department may also, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers and others that are engaged in the handling of any commodity, which regulate the preparation for market and handing of such commodity. Such marketing agreements are binding upon the signatories to the agreements exclusively.

WHEREAS, in order to effectuate the declared policy and purposes of said Act, the parties hereto desire to enter into a marketing agreement under the provisions of said Act. The purpose of this Marketing Agreement is to license Signatory Handlers to certify safe handling, shipment and sale of leafy green products to consumers by adopting Leafy Green Best Practices and declaring that leafy green products purchased from growers without growers first using Best Practices and trace-back systems is considered unfair trade practices; by using an official mark to make such certification; to advertise and promote use of the mark, and to educate consumers about the meaning of the mark.

NOW, THEREFORE, the parties agree as follows:

ARTICLE II

DEFINITIONS

Section A. DEFINITION OF TERMS. For the purposes of this Marketing Agreement, the following terms shall have the following meanings. These definitions apply only to the Handlers signatory to this Agreement:

1. "Act" means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code.
2. "California Leafy Green Products Handler Marketing Agreement" or "Agreement" refers to this Marketing Agreement, directly affecting handlers of California leafy green vegetables, which is issued by the Department pursuant to the provisions of the Marketing Act.
3. "Leafy Green Best Practices" or "Best Practices" means the commodity specific leafy green best practices document and the requirements contained

therein, prepared by industry scientists, reviewed and approved by state and federal agencies, scientifically peer reviewed by a nationally renowned science panel and adopted by the Board.

4. "Books and Records" means any ledgers, accounts, contracts, memoranda, correspondence, bills of sale, receipts, shipping documents, computerized data, and other writings, whether handwritten, typewritten, printed, photostated, copied or electronically stored.

5. "California Leafy Green Handler Advisory Board", "Leafy Green Board" and "Board" are synonymous and mean the Board established pursuant to the provisions of Article III of this Agreement.

6. "Handler" means any person who handles, processes, ships or distributes leafy green product for market whether as owner, agent, employee, broker or otherwise. This definition does not include a retailer except to the extent that such a person is a handler.

7. "Fiscal Year" and "Marketing Season" are synonymous and mean the period beginning April 1 of any year and extending through March 31 of the following year.

8. "Grower" means any Person who produces leafy green products for commercial sale and who has a proprietary interest therein.

9. "Person" means an individual, partnership, firm, corporation, association, or any other business unit.

10. "Leafy Green Products" means iceberg lettuce, romaine lettuce, green leaf lettuce, red leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard.

11. "Department" means the Department of Food and Agriculture of the State of California.

12. "Signatory Handler" means any handler who has signed this Agreement.

13. "Official Mark" or "The Mark" means the U.S. registered certification mark obtained by the Department and granted to the Board and further licensed to those Signatory Handlers who certify and verify that their leafy green products have been grown, packed, shipped, processed and/or handled in accordance with the Best Practices, other Marketing Agreement requirements and any federal trademark registration requirements.

ARTICLE III

CALIFORNIA LEAFY GREEN ADVISORY BOARD

Section A. ESTABLISHMENT AND MEMBERSHIP.

1. To assist the Department in the administration of this Agreement, an Advisory board, to be known as the California Leafy Green Advisory Board, is hereby established. The Board shall consist of no less than seven (7) and no more than thirteen (13) Signatory Handler members, with the exact number of members to be determined by the Board. However, the initial board shall consist of 13 members comprised of members as described in sub-paragraph a through c, below:

a. The Blythe-Imperial Valley area shall have three (3) members and three (3) alternate members and shall consist of the following counties: San Bernardino, Riverside, and Imperial.

b. The Oxnard-Santa Maria area, shall have three (3) members and three (3) alternate members, and shall consist of the following counties: San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, and San Diego.

c. The Salinas-Watsonville-San Joaquin area, shall have seven (7) members and seven (7) alternate members, and shall consist of all the counties in California which are north of the northern boundaries of San Luis Obispo, Ventura, Los Angeles, and San Bernardino Counties.

2. There shall be one (1) alternate member on the Board to represent each member. In the event that a member and his or her alternate are both present at a meeting, the alternate may serve in the place of any other absent member.

3. The members and their alternates shall be appointed by the Department from the Handler Signatories to this Agreement, or representatives thereof.

4. A Signatory Handler of record shall not be represented on the Board in more than one (1) voting position.

5. In addition to the members and alternate members, and upon the recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member to the Board to represent the general public. The public member and alternate shall not be affiliated with any organization engaged in the production, handling, or marketing of leafy green products and shall have all the rights and privileges, including voting, of any other member of the Board.

6. The term of office of the members and alternates of the Board shall be two (2) years beginning April 1 and continuing at the pleasure of the Department through March 31 of the second year following their appointment, or until their successors have been appointed and have qualified. The initial term of Board members shall be from the effective date of this Agreement until March 31, 2009.

Section B. APPOINTMENT PROCEDURE FOR MEMBERSHIP TO THE BOARD

Nominations of Signatory Handlers eligible to serve initially on the Board shall be received at the public hearing held to consider the Marketing Agreement. Board members and alternates shall be appointed by the Department.

Subsequent to appointment of initial Board members, procedures for nomination of members shall be recommended by the Board and approved by the Department.

Section C. VACANCIES

To fill any vacancies occasioned by the failure of any person appointed as a member or alternate of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate, a successor shall be appointed from persons remaining on the list of eligible nominees. In the event no nominees remain on such list, the remaining members of the Board may nominate qualified persons eligible for appointment by the Department to fill such vacancies pursuant to the procedures to be adopted under Section B above.

Section D. DUTIES AND POWERS OF BOARD

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

1. To administer the provisions of this Agreement;
2. To recommend to the Department rules and regulations relating to this Agreement;
3. To receive and report to the Department complaints of violations of this Agreement;
4. To recommend to the Department amendments to this Agreement;
5. To assist the Department in levying and collecting of assessments from Signatories to cover expenses incurred by the Board and the Department in the administration of this Agreement;
6. To assist the Department in collection of such information and data as may be deemed necessary to the proper administration of this Agreement and the Act;
7. To select a chair from its membership and to select such other officers recommended to the Department for adoption as the Board may deem advisable;
8. To keep minutes, books and records which will clearly reflect all of its acts and transactions. Such minutes, books and records shall at all times be subject to

examination by the Department or duly authorized representatives, and to provide to the Department copies of the minutes of all meetings duly certified by an authorized officer of the Board;

9. To employ such employees as it may deem necessary and to determine the compensation and define the duties of such employees;

10. To contract with such USDA/CDFR approved entities as it may deem necessary to provide management services, inspection and process verification services or for other services as it may from time to time determine and to determine the appropriate contract compensation.

11. To recommend to the Department such committees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Agreement. All Committee actions shall be recommendations to the Advisory Board, subject to approval by the Department;

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

13. To require Signatory Handlers to collect, compile and provide to the Board such data and reports and the Board may from time to time require to carry out the purposes of the Agreement; and

14 To comply with all applicable conflict of interest laws.

Section E. EXPENSES OF MEMBERS OF THE BOARD

The members and alternates of the Board may be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder.

Section F. PROCEDURE FOR BOARD

1. If the public member position is not filled, a quorum of the Board shall consist of seven (7) eligible voting members or alternates. If the public member position is filled, a quorum of the Board shall consist of 8 eligible voting members or alternates.

2. Any action taken by the Board shall require the concurring vote of a majority of the eligible voting members or alternates.

3. Any question before the Board which would, in the opinion of the Board member, result in a conflict of interest on his or her part shall be the basis of the member disqualifying himself or herself from voting on such a question. Said disqualification shall not abrogate a quorum that included the disqualified member.

Section G. LIMITATION OF LIABILITY OF BOARD

The members or alternate members of the Leafy Green Advisory Board, including employees of the Board, are not responsible individually in any way whatsoever to any person for liability on any contract or agreement of the Advisory Board approved by the Department.

ARTICLE IV

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

Signatory Handlers to this Agreement shall maintain Books and Records reflecting their operations and shall furnish to the Department or its duly authorized or designated representatives such Books and Records as may, from time to time, be requested relating to their operations under this Agreement, and shall permit the inspection, during normal business hours, by said Department or authorized representatives of such portions of their Books and Records as relate to operations that are the subject of this Agreement.

Section B. CONFIDENTIAL INFORMATION

Any information obtained by any persons pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him/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 as necessary in judicial or administrative proceedings.

ARTICLE V

OFFICIAL CERTIFICATION MARK

Section A. OFFICIAL CERTIFICATION MARK

Pursuant to Food and Agricultural Code section 58894, the Department will obtain and grant to the Board a U.S. registered certification mark that will be the Agreement's Official Mark. The Mark shall only be applied to leafy green products that has been grown, packed, shipped, processed and/or handled in accordance the Best Practices, other Marketing Agreement requirements and any federal trademark registration requirements.

Section B. LICENSURE OF OFFICIAL MARK

The Board will license Signatory Handlers to affix the Mark to their leafy green products, subject to the inspection, verification, suspension and revocation requirements specified in this Agreement. A Signatory Handler's compliance with the Best Practices is a condition precedent and subsequent to the Signatory Handler's entitlement to affix the Mark to the Signatory Handler's leafy green products

Section C. REQUIREMENTS FOR USE OF MARK

The Mark certifies that the leafy green products contained in the package or bin bearing the Mark has been grown, packed, shipped, processed and/or handled in accordance with the following requirements:

1. That Signatory Handler complies with both of the following:
 - a. Handler requirements of the Best Practices, or other Agreement requirements, subject to periodic inspection by a county, state or federal agricultural regulatory agency or their designee(s) contracted by the Board to provide such inspection and files with the Department and/or the Board such compliance reports as are periodically required.
 - b. Maintained a trace-back system, as defined in the Best Practices, subject to annual process verification by a county, state or federal agricultural regulatory agency or their designee(s) contracted by the Board to provide such process verification and files with the Department and/or the Board such compliance reports as are periodically required.
2. That Signatory Handler does not buy, consign or otherwise accept or handle leafy green products from a grower who has not first:
 - a. Grown the leafy green product and managed his/her farms in accordance with the Best Practices or other Agreement requirements, subject to periodic inspection by a county, state or federal agricultural regulatory agency or their designee(s) contracted by the Board to provide such inspection and files with the Department and/or the Board such compliance reports as are periodically required.
 - b. Maintained a trace-back system, as defined in the Best Practices, subject to annual process verification by a county, state or federal agricultural regulatory agency contracted by the Board to provide such process verification and files with the Department and/or the Board such compliance reports as are periodically required.

Section D. LOSS OF CERTIFICATION AND THE PRIVILEGE TO USE THE MARK.

Loss of certification and the privilege to use the Mark shall be the penalty for a Signatory Handler's failure to comply with the terms of this Agreement. However, the Board may additionally seek any remedy or penalty authorized by the Marketing Act of 1937 or federal trademark law to enforce the provisions of this Agreement. Loss of certification and the privilege to use the Mark shall be progressive, as follows:

- A. The first flagrant or repeated violation shall result in a two-week suspension of certification and the privilege to use the mark. A flagrant or

repeated violation is a violation that meets one of the following three criteria:

1. The Signatory Handler knew the product was packaged or produced in violation of either the Handler or the Grower Best Management Practices, and chose to proceed regardless.
2. The Signatory Handler had received either a prior written Notice of Violation for the same type of violation or prior written Notices of several different violations of either the Handler or the Grower Best Management Practices.
3. The Signatory Handler had received a prior written Notice of Violation for same type of violation of record keeping requirements during the current and prior growing season or Notices of Violation for several different violations of the record keeping requirements during the current and prior growing season.

B. A flagrant or repeated violation following a two-week suspension shall result in an indefinite suspension of certification and the privilege to use the Mark until the Signatory Handler has established a corrective action plan (CAP) approved by the inspecting and/or process verification agency and the Board.

C. A flagrant or repeated violation following implementation of a CAP shall result in an indefinite revocation of certification and the privilege to use the Mark. Certification and the privilege to use the Mark shall not be restored to a Signatory Handler for a minimum of two years unless the Signatory Handler demonstrates to the satisfaction of the inspecting and/or process verification agency and the Board a significant change in management and brand.

D. The Board may accelerate the progression if the Signatory Handler's product seriously affects a person's health and the Signatory Handler handled the product with intentional or reckless disregard for the Signatory Handler's obligations under this Agreement.

E. Imposition of penalties shall be subject to prior informal hearing before an independent arbiter on no less than seventy-two hours written notice prior to effective date of the imposition. The decision of the independent arbiter shall be final and binding on the Signatory Handler and the Board. The Department, advised by the Board, reserves all rights and prerogatives of the Department head under the Administrative Procedures Act, including, but not limited to, the power to declare a decision precedential and additionally, the power under the Marketing Act to clarify what constitutes a violation

A Signatory Handler's withdrawal from the Agreement under Section Article XII, Section B. shall not abrogate the effect of any action taken under Section D against that Signatory Handler or any successor of that Signatory Handler.

ARTICLE VI

UNFAIR TRADE PRACTICES:

Section A. Signatory Handlers agree that the handling, purchase, shipment or offer for sale of a leafy green product that does not comply with the requirements to bear the mark constitute separately and together an unfair trade practice within the meaning of Food and Agricultural Code section 58890. Signatory Handlers agree not to engage in such unfair trade practices. Signatory Handlers will not handle, purchase, ship or offer for sale a leafy green product that does not comply with requirements to use the mark.

ARTICLE VII

ADVERTISING AND SALES PROMOTION

Pursuant to Food and Agricultural Code section 58889, the Agreement may advertise and promote consumer recognition of the Official Mark and its meaning.

ARTICLE VIII

QUALITY IMPROVEMENT AND EDUCATION PROGRAM

Pursuant to Food and Agricultural Code section 58893, the Agreement may engage a program of educating the public and producers concerning the Best Practices.

ARTICLE IX

BUDGETS AND ASSESSMENTS

Section A. BUDGETS

For each Fiscal Year, the Board shall recommend to the Department a budget or budgets to cover proposed expenditures for the administration of this Agreement and for the activities authorized hereunder. Upon approval of such budget or budgets, the Board may incur expenditures in accordance therewith.

Section B. ASSESSMENTS

Rate of Assessment. The assessment shall not exceed five cents per carton or carton equivalents with the actual annual rate to be recommended by the Board each year at least one month prior to commencement of the fiscal year.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS

1. Any assessment levied pursuant to this Agreement shall constitute a debt of every Signatory Handler so assessed and shall be due and payable to the Department or the Board at such times and in such a manner as the Department may prescribe.

2. In the event that a Handler becomes a Signatory Handler to the Agreement, they shall pay an annual non-refundable assessment, recommended by the Board and approved by the Department which shall be due and payable to the Department or the Board at such times and in such manner as the Department or the Board may prescribe. The level of this Signatory Handler assessment will be established in an amount to defray the necessary expenses of administering the programs and for the research, inspection, process verification and audit processes.

Section D. DISPOSITION OF FUNDS

1. Any monies collected by the Department or the Board pursuant to the provisions of this Agreement shall be deposited in accordance with the provisions of the Act, allocated to this Agreement and disbursed by the Department or the Board only for the necessary expenses incurred or approved by the Department with respect to this Agreement. Said disbursements or expenditures of money so deposited shall be in accordance with rules and regulations prescribed by the Department in accordance with the provisions of this Agreement or the Act.

2. Any monies remaining from assessments, collected pursuant to this Agreement and upon recommendation by the Board and approval by the Department, may be refunded at the close of any Marketing Season upon a pro rata basis to all Signatory Handlers from whom such assessments were collected; or, such monies, upon recommendation of the Advisory Board and approval 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 the Advisory Board.

3. Upon termination of this Agreement, any and all monies remaining and not required by the Department to defray the expenses of this Agreement, including termination costs, shall be returned by the Department to those Signatory Handlers from whom such assessments were collected upon a pro rata basis. If the Department finds that the amounts so returnable are so small as to make impractical the computations and remitting of such pro rata refunds to such persons, the Department may use such funds to defray the expenses incurred by it in the formulation, issuance, administration or enforcement of any subsequent marketing agreement or marketing order covering the purposes set forth in this Agreement.

In the absence of the use of such funds for such purpose, the disposition of the funds shall be as further provided in Section 58938 of the Act.

ARTICLE X

APPEALS

Section A. APPEALS

Any Signatory Handler to this Agreement may petition the Department to review any order, recommendation or action of the Board approved by the Department. Any such petition must be filed in writing and set 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 action of the Board, approved by the Department. The Department shall, if the facts stated show reasonable and valid grounds, grant any such petition.

ARTICLE XI

IMMUNITIES

Section A. ANTITRUST LAWS

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Trade Practices Act, or any rule of statutory or common law against monopolies or in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Agreement and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding, to the extent set forth in the Act.

Section B. DURATION OF IMMUNITIES

The benefits, privileges, and immunities conferred by virtue of the provisions of this Marketing Agreement, shall cease upon its termination, except with respect to acts done under and during the time the provisions hereof are in force and effect.

ARTICLE XII

PARTICIPATION

Section A. NEW SIGNATORIES AND PARTICIPATION

Handlers may become Signatories to this Agreement at any time prior to a new fiscal year.

Section B. WITHDRAWAL FROM PARTICIPATION

Release from the Agreement may be obtained, provided that a Signatory Handler is not in violation of the provisions of this Agreement and has fulfilled all of his or her obligations, including payment of any assessments or charges levied or imposed pursuant to this Agreement, under any of the following conditions:

1. By filing with the Department a written request for withdrawal at the close of a fiscal year for the new fiscal year.
2. Immediate withdrawal may be effected when a Signatory Handler ceases to be a California Signatory Handler of leafy green products and gives notice thereof to the Board in writing.

ARTICLE XIII

COMPLIANCE OF CONTRACTING PARTIES

Section A. AGREEMENT TO COMPLY

Each Signatory Handler to this Agreement hereby agrees to be bound by and to comply with all the provisions of this Agreement and any rules or regulations made by the Department pursuant to this Agreement and agrees to perform each and every act and obligation.

ARTICLE XIV

SEPARABILITY

Section A. SEPARABILITY

If any section, sentence, clause or part of this Agreement 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 Agreement, and the invalid provision shall be reformed, if legally possible, so as to effectuate the intent of the provision to the maximum extent permissible by law.

ARTICLE XV

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

This Agreement shall become effective on the date specified by the Department, and upon notification to the parties hereto in accordance with the provisions of Section 59111 of the Act and shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act.

Section B. TERMINATION

The Department shall suspend or terminate this Agreement or any provision hereof whenever it finds that the Agreement does not tend to effectuate the declared purposes 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 this Agreement 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 provision of this Agreement not so amended, suspended or terminated; or (b) release, condone or dismiss any violation of this Agreement occurring prior to the effective time of such amendment, suspension or termination; or (c) affect or impair any rights or remedies of the Department or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Agreement.