

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



PROPOSED CALIFORNIA LEAFY GREENS
RESEARCH PROGRAM

Issued to an Industry Vote
January 2008

CALIFORNIA LEAFY GREENS RESEARCH 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, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code.
2. "Department" means the California Department of Food and Agriculture.
3. "California Leafy Greens Research Program" or "Program" means, unless the context indicates otherwise, this Marketing Order, directly affecting handlers of leafy greens of any type as defined in this Program, which is issued by the Department, pursuant to the provisions of the Act.
4. "California Leafy Greens Research Board," and "Board" are synonymous and mean the California Leafy Greens Research Board created pursuant to Article II of this Program.
5. "Person" means any individual, partnership, corporation, firm, association, subsidiary, affiliate, or other business entity/unit.
6. "Lettuce" means, for the purposes of this Program, California grown iceberg lettuce.
7. "Mixed Leaf" is comprised of the following California grown lettuce types: romaine, butterhead, green leaf, red leaf lettuce, and any cross-breeds derived from any iceberg and leaf type lettuce.
8. "Spring Mix" means California grown immature iceberg lettuce, mixed leaf lettuce and/or spinach used as ingredients in salad products.
9. "Spinach" includes California grown product destined for fresh spinach products including baby spinach, but does not include product frozen, dehydrated, or canned.
10. "Leafy greens" includes California grown lettuce, mixed leaf, spring mix, and spinach as previously defined.
11. "Producer" and "Grower" are synonymous and mean any person engaged within this State in the business of producing, or causing to be produced for market, leafy greens of any type as defined in this Program.

12. "Standard Carton," "Standard Container," "Standard Crate," and "Standard Box" are synonymous and mean standard cartons or containers as used in the harvesting of leafy greens, regardless of the number of heads or the weight.
13. "Handler" means any person engaged within this State as a distributor, processor, or as a shipper of leafy greens who handles a quantity of 250,000 pounds or more of raw leafy greens as herein defined, during a marketing season. This includes any producer of leafy greens who performs any of the functions of a distributor, a processor, or a shipper as such terms are defined as follows:
 - a. "Distributor" means any person engaged in the operation of selling, marketing, or distributing leafy greens, as herein defined, which he/she has produced, or purchased or acquired from a producer, or which he/she is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer except such retailer who purchases or acquires from or handles on behalf of any producer, leafy greens not theretofore subjected to the regulation of the Program.
 - b. "Processor" means any person engaged in the operation of receiving, sorting, washing, grading, packing, cutting, shredding, chopping, or otherwise preparing for market or marketing, leafy greens as herein defined.
 - c. "Shipper" means any person, other than a common carrier, who ships leafy greens as herein defined.
14. "To Handle" means to perform any of the functions of a handler as herein defined.
15. "To Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, leafy greens as herein defined.
16. "To Ship" means to transport, or cause to be transported by any means whatsoever, leafy greens as herein defined.
17. "Grower-Shipper" means any producer who performs the function of a shipper as herein defined.
18. "Market," unless the context indicates otherwise, shall be synonymous with the phrase "to market" and shall mean to sell, ship, distribute, or otherwise handle leafy greens as herein defined.
19. "Prepare for Market" means to cut, harvest, receive, sort, wash, grade, pack, process, transport, or otherwise prepare for market leafy greens as herein defined.

20. "Books and Records" means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other written data reflecting operations under this Program.
21. "Marketing Season," "Fiscal Year," and "Fiscal Period" are synonymous and mean the period beginning April 1 of any year and extending through March 31 of the following year.

ARTICLE II

CALIFORNIA LEAFY GREENS RESEARCH BOARD

Section A ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE

1. A Board to be known as the California Leafy Greens Research Board (Board) is hereby established to assist the Department in the administration of this Program. The Board shall be composed of fifteen (15) members, ten (10) of whom shall be handlers of lettuce or mixed leaf as herein defined, three (3) of whom shall be handlers of spinach as herein defined, and two (2) shall be handlers of spring mix as herein defined. The Board shall have the ability to adjust membership by minor amendment in proportion to volume.
2. There shall be an alternate member for each member of the Board. The alternate shall be selected in the same manner and for the same term as the member.
3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.
4. In addition to the fifteen (15) handler members and their respective alternates, upon 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 in any way with respect to the production or marketing of leafy greens and shall have all the rights and privileges, including voting, of any other member or alternate member of the Board.

5. With the exception of public members and the initial Board members, the term of office of members and alternate members of the Board shall be two (2) years beginning March 1 of the year in which they are appointed and continuing at the pleasure of the Department through the last day of February of the second year following their appointment, or until their successors have been appointed and have qualified. With respect to public members appointed pursuant to Subsection 4 above, the regular term of office shall be as close as possible to two (2) full years and shall terminate on the last day of February of each odd- numbered year.

6. With the exception of the public member and alternate member, representation on the Board shall be by districts as herein described. District boundaries and/district representation may be changed by recommendation of the board with the approval of the Department, to maintain equitable representation of handlers. Any such change of boundary lines of said districts or change in district representation shall be deemed to be a minor amendment to this Program. The Board shall have the ability to adjust membership via a minor amendment in proportion to volume.

District A, known as 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.

District B, known as 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.

District C, known as the Salinas-Watsonville-San Joaquin area, shall have nine (9) members and nine (9) 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.

Section B. INITIAL ADVISORY BOARD

1. The members and their respective alternates of the initial Board shall serve from the date of their appointment for three (3) years through the last day of February 2011, or until their successors are appointed and have qualified.
2. Nominations of persons eligible to serve on the initial Board shall be received at the public hearing held on this Program.
3. The Department shall appoint the initial members and their alternates from nominations received at such public hearing, and such nominations shall be in accordance with the commodity and district classifications as set forth in Section A, Subsections 1 and 6 of this Article.

Section C. NOMINATION AND APPOINTMENT OF SUCCEEDING MEMBERS AND ALTERNATE MEMBERS OF THE ADVISORY BOARD

1. Subsequent to the appointment of initial members, procedures for nomination of members shall be recommended by the Board and approved by the Department.
2. Each member and alternate member of the Board shall be, during his/her term of office, a handler in the district from which he/she is appointed.

Section D. FAILURE TO NOMINATE

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

Section E. QUALIFICATION

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

Section F. ALTERNATE MEMBERS

1. An alternate member of the Board shall, in the absence of the member for whom he/she is an alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meetings. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act in his/her place and stead until a successor of such member is appointed and has qualified.
2. When both a member and his/her assigned alternate from a specific district are absent from a duly noticed and assembled Board meeting, and a quorum is not present, the Board Chairman shall, with the concurrence of the majority of members present, designate any alternate member from that district, who is present at the meeting but whose assigned member is also present, to sit in place of the absent member for that meeting. If there are no other available alternates from that specific district, the Board Chairman shall, with the concurrence of the majority of members present, designate any available alternate member from any other district who is present at the meeting but whose assigned member is also present, to sit in place of the absent member for that meeting.
3. When at a duly noticed and assembled Board meeting, the Board wishes to consider a proposed minor amendment to the Program, and there are less than twelve (12) handler members or their respective alternates present at the meeting, the same procedure described in Subsection 2 of this Section shall be utilized to designate other available alternate members to fill those positions for which both the member and the respective assigned alternate are absent.

Section G. VACANCIES

The Department shall fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Advisory Board. In replacing a member or alternate member of the Advisory Board, the Department may take into consideration any nominations made by the remaining members or by a committee

authorized by the Board to make such nominations; provided, however, that such nominees shall be appointed in accordance with the provisions of Section A, Subsections 1 and 6 and Section C, Subsection 2 of this Article.

Section H. ORGANIZATION

1. If the Board does not have a public member, then eight (8) members of the Board, or their voting alternates, shall constitute a quorum. If there is a public member on the Board, then nine (9) members of the Board, or their voting alternates, shall constitute a quorum. Any action by the Board shall require an affirmative vote of a simple majority of the voting members present.
2. The Board shall select a chairman and a vice-chairman from its membership, and a secretary and other officers as it may desire who may be members of the Board or Board Staff, and may adopt rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary.

Section I. COMMITTEES

The Board may recommend and the Department may appoint such committees as may be deemed necessary to assist the Board and the Department in performing duties authorized pursuant to this Program.

Section J. EXPENSES

The members of the Board, alternate members when acting as members or when requested by the Board, and committee members shall be reimbursed for necessary expenses incurred by them in the performance of their duties and in the exercise of their powers hereunder.

Section K. 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 personnel as may be deemed necessary and to fix their compensation and terms of employment.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD

The members of the Board 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 producer, shipper, grower-shipper or to 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 members 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

Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES

The Board is authorized, subject to the approval of the Department, to undertake or cause to be conducted, to administer, and to expend monies for research relating to production, processing, and distribution of leafy greens. Such research activities may include, but shall not be limited to, research, development, and survey programs relating to varietal development, production, food safety, harvesting, handling, transportation from field to processing points and from processing points to market, and processing or preparation for market of any or all types of leafy greens, 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 to the conduct of leafy greens research and development and survey program limited only by the provisions of Section 58892 of the Act.

Section B. DISSEMINATION OF RESEARCH INFORMATION

The Board, with the approval of the Department, may release, distribute, and disseminate the results of research studies, surveys, and information obtained as a result of research, to appropriate parties, including activities such as training, and public education.

ARTICLE IV

BUDGETS AND RATES OF ASSESSMENT

Section A. BOARD RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT

At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. Research funds within the recommended budget shall be allocated proportionally for lettuce, mixed leaf, spring mix baby leaf, and spinach based upon estimated assessment income from the respective leafy green types. Annual budgets shall include carryover allocations for lettuce, mixed leaf, baby leaf, and spinach based on the approximate percentage of each leafy green type for that budget year. Despite the provisions of this Section, carryover and research contingency funds do not need to be allocated by leafy green type, and shall be available to be used as needed.

The Board shall also recommend a rate or rates of assessment to be levied upon handlers of California leafy greens upon a uniform basis, sufficient to provide adequate funds to defray the proposed expenditures and reserve as set forth in said budget or budgets; provided, that during any marketing season, such rate or rates shall not exceed one cent (\$0.01) per standard carton of packed leafy greens, herein defined as a carton of leafy greens regardless of the number of heads or the weight, or three cents per hundred pounds (\$0.03 per cwt.) of leafy greens prepared for market or equivalent basis; as expressed in standard containers, herein defined as any container of leafy greens regardless of the number of heads or the weight, or otherwise on all leafy greens delivered by producers and received by handlers.

Section B. DEPARTMENT APPROVAL OF BUDGETS AND ASSESSMENT RATES

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, the Department may approve such budgets and rates; provided, however, that in no event shall said rates of assessment exceed the maximum rates authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS

The obligation to pay assessments under this Program shall apply to handlers of leafy greens prepared for market by said handlers. Each handler of leafy greens shall pay the entire applicable assessment, at the rates approved by the Department pursuant to the provisions of this Program, on all leafy greens received by him/her from a producer or from his or her own production and prepared for market by said handler. The Department may verify that handlers have made proper assessment payments. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In any event of failure of any person to pay any assessment payable hereunder, the Department

may file a complaint against such persons in a State court of competent jurisdiction for the collection thereof, pursuant to the provisions of Section 58929 of the Act. The Department may add to any unpaid assessment a collection-expense penalty not to exceed ten percent (10%) of such unpaid assessment.

Section D. REFUNDS

Any money collected as assessments during the 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 cost of this Program in such succeeding season.

**ARTICLE V
GENERAL PROVISIONS**

Section A. PROHIBITION OF ACTIVITIES NOT AUTHORIZED UNDER THIS PROGRAM

This Program does not authorize and expressly prohibits, as activities under this Program, any control or regulation of the volume, quantity, grade, size, or quality of leafy greens which may be marketed during any marketing season.

The Program does not authorize and expressly prohibits, as activities under this Program, advertising or sales promotion of leafy greens. Nothing in this section shall be construed to restrict or prohibit the dissemination of research information authorized under Article III, Section B of this Program.

Section B. ADMINISTRATIVE RULES AND REGULATIONS

Upon the recommendation of the Board, the Department is authorized to issue and make effective such administrative rules and regulations and interpretations of terms as may be necessary to carry out the purposes and attain the objectives of this Program.

Section C. 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 made effective for leafy greens 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 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 representatives such information as may be, from time to time, requested by the Department relating to their operations under this Program, and shall permit the inspection by the Department or its duly authorized or designated representatives of such portions of their books and records as relate to operations under this Program.

Section B. REPORTS TO THE ADVISORY BOARD

Upon request of the Board, made with the approval of the Department, each person shall furnish to the Board in such manner and at such times as the Board prescribes, and in addition to such other reports as are specifically provided for herein, such other information as will enable the Board to perform its duties and to exercise its powers in the proper administration and enforcement of this Program.

Section C. 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/her to any other person, save to a person with like right to obtain the same, or any attorney employed by the Department to give legal advice thereupon, or by court order.

Section D. 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/her tends to incriminate him/her or subjects him/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 transaction, matter, or thing concerning which he/she may be so required to testify or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by the Department .

ARTICLE VII APPEALS

Section A. APPEALS

Any person regulated by this Program may petition the Department to review any order or decision of the Board. 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 the Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any such petition and may revise any order or decision upon which an appeal is taken.

ARTICLE VIII RELATION TO OTHER LEGISLATION

Section A. ANTITRUST LAWS

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with 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 DURATION OF IMMUNITIES

Section A. DURATION OF IMMUNITIES

The benefits, privileges, and immunities conferred by virtue of the provisions hereof 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 X AGENTS

Section A. AGENTS

The Department may, by a designation in writing, name any person, including any officer or employee of the State or any branch or division in the Department, to act as its agent or representative in connection with any of the provisions hereof.

ARTICLE XI DEROGATION

Section A. DEROGATION

Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Department or of the State to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XII SEPARABILITY

Section A. SEPARABILITY

If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

ARTICLE XIII EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

This Program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department or by operation of law in accordance with the provisions of the Act; provided, that within three (3) years of the effective date of this Program and at least once each five (5) years thereafter hold a hearing to ascertain whether the Program is meeting the declared objectives of the Marketing Act and whether each of the commodities wishes to participate in the program. If based on the testimony and evidence presented at the hearing the Department determines that the marketing order is meeting the objectives of the Marketing Act and each of the leafy green commodities wish to continue participation in the program, 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 Marketing Act and/or whether each of the commodities wish to continue participation in the program, it shall submit the question to a referendum vote consistent with the provisions of the Marketing Act. The program may continue without the participation of one (1) or two (2) of the leafy green commodities.

Section B. CONTINUATION WITHOUT ONE OR MORE TYPES OF LEAFY GREENS

The Leafy Greens Research Program can continue without the participation of one (1) or two (2) of the leafy greens commodities.

Section C. REMAINING FUNDS IF THE PROGRAM TERMINATES

If the Leafy Greens Research Program terminates, any remaining funds may be used towards the reactivation of the prior Lettuce Research Program, or towards the formation of a new marketing order for lettuce and/or spinach and/or baby leaf.

Section D. TERMINATION

Pursuant to the Provisions of Article 15 of the Act, the Department shall suspend or terminate this Program or any provision thereof whenever the Department finds, after a public hearing duly noticed and held in accordance with provisions of Article 6, of said Act, that this Program or any provision thereof is contrary to or does not tend to effectuate the declared purposes or provisions of said 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.

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 issued by the Department shall neither:

1. 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;
2. release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination;
3. affect or impair any right or remedy of the Department or of any person with respect to such violation; or
4. affect any liabilities pursuant to the provisions of this Program.