



# THE MARKETING MEMO

**June 2008**

**Marketing Branch**

**Division of Marketing Services**

**California Department of Food and Agriculture**

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## **PROGRAM ISSUES**

### **CONFIDENTIAL INFORMATION**

From time to time, the Marketing Branch receives inquiries from handlers that have received notices to file information regarding producers from whom they receive a given commodity. Handlers are also required to report the volume of product received from each producer during the most recently completed marketing season.

The concern often expressed by these handlers regards the confidentiality of the information provided to the Department. The information is sensitive and the perception among some handlers is that such information may be shared by program staff with their board of directors.

The California Marketing Act and each council and commission law provide that proprietary information necessary to be collected for the purpose of administering a marketing program must be kept strictly confidential. While Department and Program staff must have access to this information in order to carry out their administrative responsibilities, this information must not be shared with others including board officers or members. To do so is a violation of State law.

Should there be a question regarding whether release of certain information is appropriate, please contact the Department or, if a commission, contact your legal counsel for direction.

### **CALIFORNIA PISTACHIO RESEARCH PROGRAM IMPLEMENTED**

Pistachio producers recently voted in favor of implementing a new state marketing order entitled the "California Pistachio Research Program". This producer-funded program essentially carries on the research activities formerly conducted by the Pistachio Commission which was terminated by a referendum vote in 2007. However, in order to obtain industry-wide support for this program it was drafted with a specific prohibition against conducting research on the effects of pistachio consumption on human nutrition and health. This program is currently managed via a contract with the federal Administrative Committee for Pistachios (ACP). Under this arrangement, the manager of the ACP, Bob Klein, also serves as the manager of the Pistachio Research Program. Mr. Klein formerly served as the Pistachio's Commission's Director of Research. If you have questions about this new program, you may call Bob Klein at 559-255-6480 or you may call Dennis Manderfield here at the Marketing Branch.

On a related note, many of the promotion and government affairs activities formerly conducted by the Pistachio Commission are now being conducted by the Western Pistachio Association (WPA), a voluntarily-funded producer trade association. WPA recently hired Richard Matoian as its new chief executive. Before assuming this new position, Mr. Matoian served five years as the manager of the Fig Advisory Board.

## **NEW LEAFY GREENS RESEARCH PROGRAM IMPLEMENTED**

Earlier in the year, the Marketing Branch conducted an industry vote to determine if leafy greens handlers favor the implementation of a state marketing order entitled the "California Leafy Greens Research Program." This new program replaces the former Lettuce Research Program. The voting results exceeded the statutory referendum approval requirements. Therefore, the Department has implemented this new program effective March 24, 2008.

## **ALFALFA SEED and MELON RESEARCH PROGRAMS CONTINUED**

On November 8, 2007, the Marketing Branch conducted two public hearings to consider continuation of the California Alfalfa Seed Production Research Program and the California Melon Research Program. The hearings were called pursuant to Section 59086 of the California Marketing Act, which requires a public hearing every five years to determine whether the operation of a marketing order, such as the Alfalfa Seed and Melon Research Programs, should be continued. The Department determined from the two hearing records that no substantial question exists as to the effectiveness of the either Program and that therefore the Programs should be authorized to operate for another five years. For additional information, please contact Janyce Wong.

## **GRAPE ROOTSTOCK IMPROVEMENT COMMISSION CONTINUED**

The Department conducted a continuation referendum during January/February among all California grape rootstock nurseries regarding continuation of the Grape Rootstock Improvement Commission. In order for the Commission to continue for up to a five-year period, the law requires that at least 40 percent of all grape rootstock nurseries must participate in the vote and that one of the following must occur:

- At least sixty-five percent of those grape rootstock nurseries voting favor continuation of the Commission and that those voting in favor represent a majority of the volume voted, or
- At least a majority of those grape rootstock nurseries voting favor continuation of the Commission and that those voting in favor represent a majority of the volume voted.

Eighty-four percent of the eligible grape rootstock nurseries participated in the referendum. Of those voting, 94 percent by number representing 82 percent of the volume voted favored continuation of the Commission. This more than meets the requirement for continuation of the Commission and the Commission is authorized to continue through March 31, 2013.

## **CALIFORNIA WHEAT COMMISSION CONTINUED**

A continuation referendum was conducted during the period of January 18, 2008 through February 18, 2008 among all eligible California wheat producers. Eighty-seven percent of the eligible producers voted favored continuation of the Commission. This percentage exceeds the requirement of majority of favorable continuation referendum results; therefore, the Commission is authorized to continue through April 30, 2013.

## **CALIFORNIA WALNUT COMMISSION REFERENDUM**

The Marketing Branch is conducting a referendum vote of California walnut producers in June/July 2008 to consider an increase in the maximum assessment rate. On May 28, 2008, the California Walnut Commission Board of Directors voted to increase the maximum assessment rate allowable by the Commission law. This change would increase the assessment ceiling from one cent (\$0.01) per inshell pound to one and one-half cent (\$0.015) per inshell pound on all walnuts shipped by producers to handlers or handled by the producers. The basis for the decision made by the Commission is to provide continued health research and communications effort to build demand and to allow for new market development.

## **SUPREME COURT DENIES GALLO PETITION**

In early February, the Third Appellate District Court upheld the Superior Court ruling regarding the Gallo Cattle Company v. Kawamura. The Court affirmed the constitutionality of the use of milk producer assessments to fund generic advertising of milk by the California Milk Advisory Board. In making its ruling, the Court decided to follow the reasoning in the *Johanns v. LMA* ruling made by the U.S. Supreme Court last year.

In the appeal, Gallo contended that the trial court erred in applying *Johanns* to find that this use of assessed funds is government speech and therefore not a violation of Gallo's rights of free speech under the California Constitution. The trial Court had relied on *Johanns* for the principle that where the basic message of commodity advertising is prescribed by statute, and where its content is overseen and subject to the control of a politically accountable official, it is government speech. The Third District Court of Appeal upheld the trial court, agreeing with CDFA that *Johanns* provided the applicable standard and that the challenged program met that standard. Gallo recently petitioned for review by the California Supreme Court. In mid-May the Supreme Court denied Gallo's petition for review, which effectively closes the case.

## **PROGRAM EXECUTIVES CHANGING POSITIONS**

There are three program executives who left their employ with marketing programs to pursue other opportunities. These three executives are Richard Matoian of the Fig Board, Bonnie Fernandez of the Wheat Commission, and John Enquist of the Mendocino Wine and Winegrape Commission. Each of the executives leaving has been replaced, with Karla Stockli accepting the Fig job, Robert Falconer taking the Wheat Commission position, and Paige Poulos accepting the Mendocino position.

Richard Matoian assumed the position as the Executive Director of the Fig Board when Ron Klamm retired five years ago. He left the Board on April 30<sup>th</sup>. During Richard's tenure with the Board many changes were made in updating and streamlining the large amount of production data that is processed by the Board. Richard joined the Western Pistachio Association (WPA) as its Executive Director. With the demise of the Pistachio Commission the WPA is taking on many of the activities of the Commission in the areas of government and trade relations, nutritional research and promotion. Last week it was announced that Karla Stockli, who worked for a number of years as the Marketing Director for the California Raisin Advisory Board, has accepted the Executive Director position with the Fig Board. Karla also worked for a time with the National Pork Board.

Bonnie Fernandez left the California Wheat Commission this spring. Bonnie served as Executive Director for the last 15 of her 24 years of service to the Commission. The Commission has played a vital industry role under her leadership. During her tenure Bonnie served the wheat industry on the national level as chairperson for two US Wheat Associates committees. The Branch was very happy to have Bonnie as an active committee member in the writing of our first policy manuals and the rewrite of the new manual in 2006. Bonnie started her new position of Director of the Center for Produce Safety at UC/Davis on March 1<sup>st</sup>. The Center was started in April of 2007, and serves as a clearinghouse for produce safety research. The Center was created through financial commitments of produce handlers, PMA, Western Growers, the California Farm Bureau, UC and CDFA. Robert Falconer has been chosen as the new Executive Director of the Commission beginning May 1, 2008. Falconer has been employed the past 19 years by the California Association of Nurseries and Garden Centers.

John Enquist was the Executive Director of the Mendocino County Winegrape Growers Association, and played an integral part in creating the momentum necessary to have the new Mendocino Wine and Winegrape Commission voted into effect in 2006. John left the Commission to pursue other interests. Commission Chairman Ed Berry, Jr. commended Enquist on his service and said, "John's administrative abilities were invaluable as we launched the Commission, and we appreciate his on-going presence as we seek new leadership." The Commission retained Paige Poulos Communications to create and execute the Commission's 2008 communications campaign in December of 2007. Paige was also interested in providing the management for the Commission, and was unanimously chosen by the Commission at its April meeting as its new President.

## **ADMINISTRATIVE ISSUES**

### **MARKETING PROGRAM EXECUTIVES MEETING**

The Marketing Program Executives Meeting was held on May 8, 2008 at the California Farm Bureau in Sacramento. We had record turnout at the meeting with 68 attendees representing 52 of our programs. The meeting began with opening comments by Secretary Kawamura. The Secretary spoke about several important issues the Department is working on including the 2007 Farm Bill and the eradication of the Light Brown Apple Moth. Secretary Kawamura mentioned that these invasive species are entering the state through ports and at border crossings. The Secretary commented on the lack of inspectors at ports around the country and asked for support in filling the several dozen vacancies at the ports in Los Angeles and Oakland.

The Secretary encouraged everyone to participate in an upcoming series of listening sessions for the California Agricultural Vision. The sessions will be held across the State this summer. For more information please visit [www.cdffa.ca.gov/agvision](http://www.cdffa.ca.gov/agvision).

We also reviewed two new proposed policies for programs: Review of Advertising & Promotional Materials and Program Activities During a Hearing or Referendum Process.

The Branch also presented its fiscal year 2007/08 expenditures to date as well as the budget for fiscal year 2008/09.

There was discussion regarding the next meeting of Program Executives. Ted Batkin volunteered to host the next meeting this fall in the Visalia area. Shannon Gunier at the Lake County Winegrape Commission has also graciously offered to host a meeting at the Mt. Konocti Resort at Clear Lake.



<b>GENERAL INFORMATION</b>
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**MARKETING PROGRAM AND MARKETING BRANCH JOB ANNOUNCEMENTS:**

We routinely include notices of job openings in the Marketing Memo for openings with the California marketing programs and other agricultural organizations. Please contact Beth Jensen at 916-341-6005, or via e-mail at [bjensen@cdfa.ca.gov](mailto:bjensen@cdfa.ca.gov) to include information in this section.

**MARKET ENFORCEMENT ADVISORY:**

Attached is the Market Enforcement Advisory Notice for May 2008. If you have questions regarding the notice, please contact the CDFA Market Enforcement Branch at 916-341-6276.