

**STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH**



**CALIFORNIA PISTACHIO
MARKETING AGREEMENT**

Effective December 1, 2006

CALIFORNIA PISTACHIO MARKETING AGREEMENT

ARTICLE I

STATEMENT OF AGREEMENT

WHEREAS, it is provided in Section 58745 of the California Marketing Act of 1937, 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 director 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 the Act, the parties hereto desire to enter into a marketing agreement under the provisions of the Act. This Agreement shall apply to all uncommitted and unshipped pistachios in the signatories' inventory as of the effective date of this Agreement, as well as new crop pistachios processed by the signatories beginning with the 2006 crop.

NOW, THEREFORE, the parties agree as follows:

ARTICLE II

DEFINITIONS

SECTION A. DEFINITION OF TERMS

For the purposes of this Agreement, the following terms shall have the following meanings. These definitions apply only to the signatories to this Agreement:

1. “Act” means the California Marketing Act of 1937, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code of the State of California.
2. “Administrative Rules and Regulations” means any marketing regulations that are applicable to this Agreement and are made effective by the department to the Act.
3. “Aflatoxin” means a mycotoxin produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*.

4. “Artificially Opened Pistachios” means pistachios that do not open naturally on the tree prior to harvest or in the normal drying process. Artificially opened pistachios includes the process of cracking or splitting the shell whether by hand, machine, or any other method.

5. “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.

6. “California Pistachio Board”, “Pistachio Board”, or “Board” are synonymous and mean the board established pursuant to Article III of this Agreement.

7. “California Pistachio Marketing Agreement” or “Agreement” means this Marketing Agreement, directly affecting processors of California pistachios, which is issued by the department pursuant to the provisions of the Act.

8. “Certification” means a document confirming compliance with approved inspection sampling protocols and proscribed aflatoxin tolerance levels as established by the importing country.

9. “Committed Pistachios” means pistachios in the processor’s inventory that are committed to sale upon effectuation of this Agreement.

10. “Department” means the California Department of Food and Agriculture.

11. “Distributor” means any person that engages in the operation of selling, marketing, or distributing any pistachios whether as an owner, agent, employee, broker, or otherwise.

12. “Fiscal Year” and “Marketing Season” are synonymous and mean the period beginning September 1 of any year and extending through August 31 of the following year.

13. “Grower” means any person who produces pistachios for commercial sale and who has a proprietary interest therein.

14. “Handler” means any person that is engaged within this State as a distributor in the business of distributing pistachios. This definition does not include a retailer except to the extent that the person is engaged as a distributor.

15. “Naturally Opened Pistachios” means pistachios that open naturally on the tree prior to harvest or in the normal drying process.

16. “Person” means an individual, partnership, firm, corporation, association or any other business unit.

17. “Pistachios” means any variety of pistachios processed, in whole or in part, and/or packaged, in this State, including pistachios delivered to a processor for processing into any pistachio product.

18. “Processor” means any person who takes possession of pistachios from growers, and who hulls and dries pistachios.

19. “Retailer” means any person that purchases or acquires pistachios for resale at retail to the general public for consumption off the premises. This person is also included within the definition of distributor to the extent that the person engages in the business of a distributor.

20. “Signatory” means any person who has signed this Agreement.

21. “Uncommitted Pistachios” means pistachios in the processor’s inventory that are not committed to sale upon effectuation of this Agreement.

22. “Unfair Trade Practices” means activities affecting the processing and distribution of pistachios that are unfair and detrimental to the effectuation of the declared purposes of the Act and this Agreement.

23. “Unshipped Pistachios” means pistachios that have not left the control of the processor.

ARTICLE III

CALIFORNIA PISTACHIO 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 Pistachio Board, is hereby established. The board shall consist of one (1) member for each signatory and the six (6) processors handling the greatest tonnage in the prior marketing season shall each designate an at-large alternate. The alternate representing the processor handling the greatest tonnage in the prior marketing season shall serve in the place of an absent member. In descending order based on tonnage of the processors who designated the alternates, alternates shall serve in the place of other absent members.

2. A signatory of record shall not be represented on the board in more than one (1) voting position, except when an at-large alternate serves on the board in the place of an absent member.

3. 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, processing, or marketing of pistachios and shall have all the rights and privileges, including voting, of any other member of the board.

4. The term of office of the members and alternates of the board shall be two (2) years beginning August 1 and continuing at the pleasure of the department through July 31 of the second year following their appointment, or until their successors have been appointed and qualified. The initial term of board members shall be from the effective date of this Agreement until July 31, 2008.

SECTION B. APPOINTMENT PROCEDURE FOR MEMBERSHIP TO THE BOARD

Nominations of processors eligible to serve initially on the board shall occur during the sign-up period following the public hearing held to consider this Agreement. Board members and alternates shall be appointed by the department.

Subsequent to appointment of initial board members, the members and their alternates shall be nominated by the signatories or representatives thereof to this Agreement, and appointed by the department.

SECTION C. QUALIFICATION AFTER APPOINTMENT

A person appointed by the department as a member or alternate of the board shall qualify by filing with the department a written acceptance or other documents as may be required.

SECTION D. 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 nominations from the signatories or representatives thereof to this Agreement.

SECTION E. DUTIES AND POWERS

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 Agreement;
2. To recommend to the department administrative 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 information and data as the department may deem necessary to the proper administration of this Agreement and the Act;

7. To select a chair from its membership and to select other officers recommended to the department for adoption as the board may deem advisable;

8. To keep minutes, books and records that will clearly reflect all of its acts and transactions. The 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 employees as it may deem necessary, and to determine their compensation and define their duties;

10. To recommend to the department 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 board, subject to approval by the department;

11. To receive, invest, borrow, and disburse funds pursuant to the Act; and

12. To comply with all applicable conflict of interest laws.

SECTION F. EXPENSES OF BOARD MEMBERS

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 G. PROCEDURES FOR THE BOARD

1. A quorum of the board shall consist of a majority of eligible voting members or alternates. Any action taken by the board shall require the concurring vote of a majority of the eligible voting members or alternates present. The board shall conduct its meetings according to the Bagley-Keene Open Meeting Act.

2. 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 the question.

SECTION H. LIMITATION OF LIABILITY

1. The members or alternate members of the 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 board approved by the department.

2. The board shall have the power to purchase and maintain insurance on behalf of any board member or alternate member, employee, or agent of the board against any liability asserted against or incurred by any board member or alternate member, employee, or agent of the board in the capacity or arising out of his or her status as a board member or alternate member, employee, or agent of the board.

ARTICLE IV

BOOKS AND RECORDS

SECTION A. BOOKS AND RECORDS

Signatories to this Agreement shall maintain books and records reflecting their operations and shall furnish to the department or its duly authorized or designated representatives the 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 the department or authorized representatives of the portions of their books and records as related to operations that are the subject of this Agreement.

SECTION B. CONFIDENTIAL INFORMATION

Any information obtained by any persons pursuant to this Article shall be confidential and shall not be disclosed by him or her to any other person, except 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

PROGRAMS

SECTION A. COMMINGLING, BLEACHING AND THE PRACTICE OF SHIPPING PISTACHIOS FOR EXPORT WITHOUT AFLATOXIN CERTIFICATION

1. Findings. The department has found that the practice of commingling artificially opened pistachios with naturally opened pistachios, the practice of bleaching or otherwise treating pistachios with chemicals to remove shell stains, and the practice of shipping pistachios for export without aflatoxin certification are unfair trade practices by signatories and detrimental to the effectuation of the declared purposes of the Act.

2. Unfair Trade Practices. The following provisions are designed to correct unfair trade practices:

(a) Commingling Pistachios. Signatories shall not commingle or cause to be commingled artificially opened pistachios with naturally opened pistachios, regardless of whether the pistachios are intended for sale to a purchaser located inside or outside of this State.

(b) Bleaching Pistachios.

(i) No signatory shall cause pistachios to be bleached or otherwise treated, directly or indirectly, with hydrogen peroxide, or other chemicals or other products, to remove shell stains.

(ii) This Agreement is not intended to limit the processor's ability to achieve potable water quality to levels acceptable to the American Water Works Association in his or her processing facility or intended to limit the use of sodium chloride in the processing of pistachios.

(iii) This Agreement is not intended to limit the future use of chemicals necessary to control microbiological activities as defined in the administrative rules and regulations.

(c) Shipping Pistachios for Export without Aflatoxin Certification.

(i) No signatory shall ship pistachios to export markets designated by the board and approved by the department without an aflatoxin certification for the pistachios.

(ii) The board shall prescribe the protocol required to do aflatoxin testing and shall inform processors of the levels of aflatoxin that are permissible in pistachios in various export markets. Processors will be required to report to the board on the levels of aflatoxin in export shipments.

(iii) Bulk containers and cartons sold to export must be labeled with a board approved aflatoxin certification.

3. Random Verification Audits.

(a) All pistachios of signatories that are processed shall be subject to random verification audits by the board or its agents to ensure compliance with this Agreement and any regulations issued and made effective by the department. The frequency and manner of these verification audits shall be recommended by the board and approved by the department.

(b) The board is authorized to recommend to the department, for approval, suitable arrangements for the conducting of random verification audits on lots of pistachios by an established and experienced agency, either governmental or private.

4. Compliance.

(a) The board may arrange for the issuance of audit certificates or other evidence of compliance as the board deems necessary and proper to ensure compliance with this Agreement and any regulations issued and made effective by the department. The board may require all signatories to register all brands under which inventory of affected pistachios will be sold.

(b) No signatory shall possess, store, market, handle or transport any pistachios in violation of this Agreement or any regulations issued and made effective. No signatory shall, directly or indirectly, do any act or cause others to do any act in violation of the foregoing unfair trade practices or the other terms of this Agreement.

(c) The department through duly authorized representatives or agents shall have access, solely for the purposes of investigating possible violations of this Agreement, to the books and records of signatories, and shall have, at all times, free and unimpeded access to all buildings, yards, warehouses and transportation facilities, and other places in which pistachios are processed, stored, marketed, handled, or transported. All information obtained shall be confidential and shall not be disclosed except when necessary in a judicial or administrative proceeding.

(d) Any signatory who violates the provisions of this Agreement, orders or regulations issued pursuant hereto, shall be subject to the penalties prescribed in the Act.

SECTION B. INFORMATION

The board is authorized to provide information to appropriate governmental and private entities regarding any program engaged in pursuant to this Agreement.

SECTION C. EDUCATION

The board is authorized to implement an educational program which is designed to inform interested persons regarding any program engaged in pursuant to this Agreement.

ARTICLE VI

ADMINISTRATIVE RULES AND REGULATIONS

1. The board may recommend and the department may adopt, without prior notice or hearing, administrative rules and regulations as may be necessary to facilitate the administration and enforcement of this Agreement.
2. Notice of any administrative rules and regulations, shall be given to all signatories to this Agreement in the manner and within the time as specified in the Act.

ARTICLE VII

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 a budget or budgets by the department, the board may incur expenditures in accordance therewith.

SECTION B. RATE OF ASSESSMENTS

The assessment shall not exceed three cents (\$0.03) per pound on all pistachios processed by a signatory in this state in any marketing season.

SECTION C. PAYMENT AND COLLECTION OF ASSESSMENTS

1. Any assessment levied pursuant to this Agreement shall constitute a personal debt of every signatory processor so assessed and shall be due and payable to the department at the time and in a manner as the department may prescribe.
2. Processors who become signatories to this Agreement shall pay assessments directly on all pistachios which they process, including pistachios processed at production facilities which they may own or in which they may have a financial interest.
3. No assessment shall be paid on any pistachios if another signatory has previously paid an assessment on the pistachios.

SECTION D. DISPOSITION OF FUNDS

1. Any monies collected by the department or the board pursuant to this Agreement or the Act shall be deposited in accordance with 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. The disbursements or expenditures of money so deposited shall be in accordance with rules and regulations prescribed by the department in accordance with this Agreement or the Act.

2. Any monies remaining from assessments, collected pursuant to this Agreement, 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 signatories from whom the assessments were collected; or the monies, upon recommendation of the board and approval by the department, may be carried over in reserve into the next succeeding marketing season whenever the department finds that the monies may be required to assist in defraying costs of the 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 and contracts, shall be returned by the department to those signatories from whom the 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 the pro rata refunds to the persons, the department may use the 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 the funds for this purpose, the disposition of the funds shall be as further provided in the Act.

ARTICLE VIII

APPEALS

SECTION A. APPEALS

Any signatory to this Agreement may petition the department to review any order, recommendation, or action of the board approved by the department. This 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 ground, grant the petition.

ARTICLE IX

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 Act shall be a complete defense to the 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 this 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 X

PARTICIPATION

SECTION A. NEW SIGNATORIES AND PARTICIPATION

Only processors may become signatories to this Agreement. When this Agreement has been made effective by the department, and except as provided in Article XI hereof, any processor may become a party to this Agreement during the period of time that the department designates as the initial assent period by filing with the department a properly executed copy of this Agreement. Upon implementation of this Agreement, signatories shall immediately become subject to the rights, duties, privileges, and immunities provided for in this Agreement.

After the close of the initial assent period, processors may become signatories to this Agreement by filing with the department an executed copy of this Agreement, not later than July 1 of any year. With board approval, this deadline may be extended for new processors that begin operation after July 1. This Agreement will apply to new signatories effective immediately upon the start of the new marketing season.

SECTION B. WITHDRAWAL FROM PARTICIPATION

Release from this Agreement may be obtained, provided that a signatory is not in violation 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. A signatory filing with the board and the department a written request for withdrawal prior to July 1, with the release of this Agreement to become effective on September 1st of the succeeding marketing season;

2. A signatory ceasing to be a processor of pistachios, which creates an immediate withdrawal, and gives notice thereof to the board in writing; or

3. The department terminating this Agreement with respect to any signatory for cause as set forth in Article XIII hereof.

ARTICLE XI

COMPLIANCE OF CONTRACTING PARTIES

SECTION A. AGREEMENT TO COMPLY

Each signatory to this Agreement hereby agrees to be bound by and to comply with 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.

SECTION B. ENFORCEMENT ACTIONS

The penalties, remedies, procedures and actions provided in the Act may be applied by the department in instances of violation and complaints of violation of this Agreement.

SECTION C. RIGHT OF INJUNCTION

1. In the event of a violation or threatened violation of this Agreement, or any rule or regulation made effective hereunder, the department may request the Attorney General of California to file an action in the Superior Court of this State for an injunction as specified in the Act.

2. Upon compliance with Section 527 of the Code of Civil Procedure of the State of California, the Court may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief; and upon trial of such action, if judgment be in favor of the plaintiff, the court shall permanently enjoin the defendant from further violations.

ARTICLE XII

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, the 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 XIII

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 the Act, shall continue in effect until suspended or terminated by the department, or by operation of law, in accordance with 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 (1) 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 (2) release, condone, or dismiss any violation of this Agreement occurring prior to the effective time of the amendment, suspension, or termination; or (3) affect or impair any rights or remedies of the department or of any person with respect to the violation; or (4) affect any liabilities pursuant to this Agreement.