



## **Leafy Green Marketing Agreement and Marketing Order Frequently Asked Questions**

(Prepared by Western Growers on 1/2/07)

### **Why did Western Growers act so quickly to pursue a marketing agreement and marketing order as a food safety solution? Why not wait to see what reaction the legislature, FDA and California DHS had to the food safety outbreaks?**

When FDA announced the September 14, 2006 E. coli outbreak on spinach, it brought the whole produce industry to a standstill. As result of the outbreak, several things occurred:

- A media frenzy exploded and over 20,000 stories focused on food safety were published and exacerbated the problem.
- The California legislature held a hearing on the outbreak strongly criticizing the industry and regulatory agencies and threatened onerous legislation which will be introduced in early 2007.
- FDA, California state administration officials and California DHS said that this was the 20<sup>th</sup> food borne outbreak in the last 9 years and demanded immediate industry action.
- Retailers, distributors and food service also demanded immediate industry action.

Western Growers Board of Directors strongly believes that to wait or do nothing is, by far, the worst solution to the current food safety crisis. Only quick, decisive action by the industry itself will solve the crisis. WG staff was directed to find and implement a mandatory regulatory solution.

### **Why was the marketing agreement and marketing order approach chosen?**

There is a need to adopt an industry led and developed mandatory regulatory food safety program to thwart adverse legislation. The only relatively quick regulatory options available are marketing agreements that take a couple of months to complete and marketing orders that takes about 6 to 8 months to complete.

Contrast that with legislation, which could/will be much more onerous and not industry driven, and takes a year to pass into law and an additional 6 months to develop implementing regulations. If regulations are in place before legislation, we have leverage to use with the Governor in requesting a veto. Additionally, retail, food service (especially NRA) and handlers were already beginning to put in place their own food safety guidelines, each different from the other.



## **What is a marketing agreement?**

A California marketing agreement is a regulatory mechanism that permits handlers to voluntarily band together to protect, promote, conduct research about and coordinate food safety activities for a specific commodity or commodities like leafy greens. They are authorized by California Marketing Act law and found in Section 58745 of the California Food and Agriculture Code.

## **What's the bottom line? What do they do?**

As every marketing agreement has a different purpose, there is no “one size fits all” bottom line. However, the specific purpose of the leafy green marketing agreement is to license Handlers to:

- Certify the 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 are unfair trade practices; and,
  - By having a government inspection process that verifies that growers are complying with best practices and handlers are using best processing practices; and,
  - 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.

## **What is a handler?**

The statutory definition of a handler is any person or business that 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 a retailer is also a handler.

A grower who is also a shipper is defined as a handler, so growers can and will, in their handler capacity, be part of the marketing agreement and its board.

## **Is the marketing agreement mandatory or voluntary?**

The marketing agreement is by law voluntary. However, once a handler signs onto the agreement, they are bound by the government regulatory oversight processes that establish and regulate marketing agreements and in that sense become “mandatory” when signed. However, a handler could opt out of the MA at any time.

## **Does every handler have to sign the marketing agreement?**

No, but the marketing agreement and a sound food safety program can only be successful if a significant number of handlers sign onto the marketing agreement.



**Does the marketing agreement apply to every handler, even those who don't sign up for it?**

No, the marketing agreement only applies to those handlers who sign onto the agreement.

**How are marketing agreement advisory board members nominated and selected?**

Handlers who wish to serve on the advisory board either as a regular or alternate member must be nominated at the marketing agreement public hearing on January 12, 2007. The Secretary of the California Department of Food and Agriculture officially appoints the advisory board when the Secretary approves the marketing agreement following the public hearing.

**What is a marketing order?**

A California marketing order is a regulatory mechanism that permits growers to elect to bind them together to protect, promote, conduct research about and coordinate food safety activities for a specific commodity or commodities like leafy greens. They are authorized by California Marketing Act law and found in Section 58745 of the California Food and Agriculture Code.

**How does the marketing order differ from the marketing agreement?**

In very basic terms, a marketing agreement is typically limited to handlers and is voluntary while a marketing order is typically used by growers, requires a super majority vote of growers to implement and, once the requisite vote is obtained, is mandatory to all growers.

**Does a marketing order apply to every grower, even those who don't vote or vote against it?**

Yes. But, a grower vote will first be held. If 51% of growers who represent 65% of the volume or 65% of growers who represent 51% of the volume vote in favor of the marketing order, the order becomes mandatory to all leafy green voters, even those who didn't vote or voted against the marketing order.

**Why didn't the industry initiate a marketing order first?**

It is much quicker to develop and implement a marketing agreement than a marketing order, mainly because the agreement is "voluntary" while the order is "mandatory" and requires a grower vote that takes time to conduct and tabulate. As noted, there is a need to move quickly to stop adverse California legislation.

**Will the marketing agreement and marketing order coordinate and work together?**

Yes, it is contemplated that once the marketing order and its board is established, the two boards will coordinate duties, responsibilities and costs.



### **What crops are covered by the marketing agreement and marketing order?**

Only “Leafy Green” crops. These crops are defined as: 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.

### **What are the “Leafy Green Best Practices”?**

“Leafy Green Best Practices” or “Best Practices” mean a commodity specific leafy green best practices document and the requirements contained therein prepared by industry and its scientists, reviewed by and with recommendations from state and federal agencies, scientifically peer reviewed by a nationally renowned science panel and adopted by the marketing agreement and marketing order boards.

### **Are they the same as the best practice metrics?**

Yes, the terms are used interchangeably, although the term “metrics” is gaining wider industry usage.

### **Once developed, can the best practices metrics be changed?**

Yes. The metrics will be ever changing as new science is discovered, new processes and technology are developed and market place changes occur. It is expected that the metrics will be periodically updated as these changes occur.

### **Once adopted by the marketing agreement board, can the best practices metrics be changed?**

Yes. The marketing agreement board, at its discretion, can amend the metrics they initially adopted.

### **Who else can change them?**

The leafy green industry. The industry metrics development process will continue even after the marketing agreement is implemented. The metrics are living, breathing, and ever changing. The industry will continue to provide significant input through periodic meetings and industry will receive metric change recommendations from government and non-government scientists and others who have an interest in leafy green food safety.

However, only the marketing agreement and marketing order boards can adopt the metrics as part of their food safety and inspection programs. Both the marketing agreement and marketing order boards could, theoretically, have different best practice metrics. However, it is contemplated that both boards, when both are established, will establish identical best practice metrics.



### **Where are the best practices metrics?**

A second draft of the best practices metrics have been distributed to industry for its review and revision. Industry scientists and retained food safety scientists are also reviewing the second draft. Government agencies have also reviewed and provided suggestions and other input.

### **Will they be made available to the media?**

They will be made available to the public, including the media, when an industry consensus has been reached on the second draft.

### **Does the marketing agreement and marketing order have an inspection process?**

Yes. Once the best practice metrics are adopted by the marketing agreement or marketing order board, the boards will develop an inspection and verification process.

Again, it is contemplated that both the marketing agreement board and marketing order boards will coordinate and agree on the inspecting agency and the inspection and verification process.

### **Who does the inspecting?**

The marketing agreement and marketing order both require the advisory boards to hire local, state or federal agricultural regulatory agencies or their designee(s) to conduct on the ground inspections and initiate verification processes to ensure that food safety practices are being followed.

### **What does the marketing agreement cost to administer? What is the assessment rate?**

The marketing agreement assessment ranges from zero to 5 cents per carton or carton equivalent. The marketing agreement advisory board must first determine the costs of administering the agreement and inspection programs and then establish an assessment sufficient to cover those costs.

It is contemplated that both the marketing agreement board and marketing order boards will coordinate and agree splitting the costs of the inspection and verification processes so as not to unnecessarily duplicate costs.

### **Who pays for it?**

Signatory handlers are required to pay the assessments.

### **Will those assessments be passed on the growers?**

That will be between the handler and his growers. However, Western Growers is strongly encouraging handlers to absorb the cost and pass the cost up to receivers (perhaps as a separate invoice line item) who in turn can pass the costs on to consumers.



### **Why aren't retailers, food service and other receivers paying for these food safety activities?**

#### **They should!**

### **Why aren't marketing agreements and marketing orders standards applied to other states and imported leafy green products?**

The marketing agreement and marketing order is a California state regulation and therefore not applicable on the federal level. However, Western Growers will commence a federal effort soon. (See below)

### **Does Western Growers favor regulation?**

Yes, with caveat that an industry shaped regulatory approach, such as the marketing agreement and marketing order, is preferable. The marketing agreement and marketing order are regulations.

### **Does Western Growers favor legislation?**

No. Western Growers believes that the industry, not the California legislature that doesn't understand our industry or its practices, should develop and implement food safety standards.

### **Is there a similar effort going on at the federal level?**

Not yet, but there will be. Western Growers has examined all federal mandatory regulatory solutions available to it and recognizes that the best produce industry food safety solution is one that is uniformly applied to all federal and international fresh produce.

### **How long until the federal process starts?**

Western Growers contemplates commencing the federal process in the first quarter of 2007. Once the California marketing agreement and marketing order are established, their implementation will guide the industry on how best to approach a federal and international solution.

### **What federal agency will oversee the federal marketing agreement and marketing order?**

United States Department of Agriculture.