

ARIZONA LEAFY GREEN PRODUCTS SHIPPER MARKETING AGREEMENT

ARTICLE I BACKGROUND AND PURPOSE

The general purpose of this Marketing Agreement is to enable shippers of leafy green products to engage in mutual help and continue the production of high quality leafy green products grown in this State. The primary purpose of this Marketing Agreement is to authorize signatory shippers to certify safe handling, shipment and sale of leafy green products to consumers by adopting leafy green best practices and by using an official mark. The Marketing Agreement will permit the advertisement and promotion of the use of official marks and the education of consumers about the meaning of official marks.

This Marketing Agreement also serves to extend the August 29, 2007 Arizona Leafy Green Products Shipper Marketing Agreement, as amended effective October 1, 2011 and herein, for up to another four terms. *See* A.R.S. § 3-428(D). Accordingly, this Marketing Agreement continues the existing Marketing Committee and the prior actions of the Marketing Committee remain valid.

ARTICLE II AUTHORITY AND APPLICATION

A.R.S. Title 3, Chapter 3, Article 1 provides for marketing agreements. This Marketing Agreement shall apply only to signatory shippers who grow or handle leafy green products in the State of Arizona.

ARTICLE III DEFINITIONS

In addition to the definitions prescribed at A.R.S. § 3-401, for the purposes of this Marketing Agreement:

1. “Act” means Arizona Revised Statutes, Title 3, Chapter 3, Article 1.
2. “Audit” or “Inspection” means an official review conducted by an auditor to verify and document that the best practices are adhered to and includes a physical visit to the farm or facility subject to audit while it is in operation, where practicable. An audit represents a “snapshot in time” based on documentation review, persons interviewed, and operations observed and is intended to reflect past and ongoing activities.
3. “Auditor” or “Inspector” means a state or federal agricultural regulatory agency or their designee(s) or a private entity contracted by the Marketing Committee to perform audits authorized by the Act.

4. “Best practices” means the commodity specific leafy green production and handling best practices adopted by the Marketing Committee and includes any changes adopted after the effective date of this Agreement pursuant to Article V.
5. “Department” means the Arizona Department of Agriculture.
6. “Fiscal year” means the period beginning July 1 of any year and extending through June 30 of the following year.
7. “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 (i.e., baby leaf mixtures, including but not limited to cress, dandelion, endigia, mache, mizuna, tat soi and winter purslane), spinach, cabbage, kale, arugula, chard and radicchio grown in Arizona.
8. “LGMA”, “Leafy Green Marketing Agreement” or “Marketing Agreement” means this Agreement.
9. “Official mark” means any trademark, service mark, collective trademark, collective service mark, collective membership mark or certification mark established or owned by the Marketing Committee and authorized for use by signatory shippers in accordance with the Marketing Agreement.
10. “Producer” means a person who has a financial interest in producing or causing leafy green products to be produced for market in commercial quantities and is synonymous with the term “grower.”
11. “Records” means all books, accounts, reports, files and other records relating to the Marketing Agreement.
12. “Shipper” means a person that engages in shipping, transporting, selling or marketing leafy green products under his or her own registered trademark or label or a person who first markets the leafy green products for the producer. It does not include a retailer. “Shipper” is synonymous with the term “handler.”
13. “Signatory” means a shipper who has notified the Department in writing of the shipper’s decision to participate in and abide by the terms of this Marketing Agreement.

ARTICLE IV MARKETING COMMITTEE

Section A. ESTABLISHMENT, MEMBERSHIP, AND ELECTION.

1. A Marketing Committee of five members is established pursuant to A.R.S. § 3-426, consisting of:
 - a. Three members from Yuma County.

- b. Two members from any leafy green producing area in this State.
2. Committee members shall be elected by signatories.
3. Committee members shall be representatives of signatories. Only one Marketing Committee member shall be elected from each signatory.
4. The term of office of the members runs from the initial qualification and election through September 30 of the calendar year that falls two years after the election or until their successors have been elected and qualified or the Marketing Agreement is terminated.
5. The Marketing Committee shall conduct elections.
6. In the event of a vacancy, the remaining members of the Marketing Committee shall select a qualified representative of a signatory to fill the remainder of the term. Vacancies may occur by the failure of any person selected as a member to qualify, by the death or resignation of a member or the disqualification of a member. A member may be disqualified if the member is no longer designated as the representative of the signatory or if the signatory withdraws from this Agreement.
7. Committee members serving on September 30, 2015 shall continue to serve for their elected terms and until their successors have been elected and qualified.

Section B. DUTIES AND POWERS

The Marketing Committee shall have the duties and powers prescribed in the Act, including without limitation A.R.S. §§ 3-414, 3-415, and 3-417.

Section C. EXPENSES OF MEMBERS OF THE MARKETING COMMITTEE

Members of the Marketing Committee may be reimbursed for expenses pursuant to A.R.S. Title 38, Chapter 4, Article 2.

Section D. INDEMNIFICATION

Each member or employee of the Marketing Committee shall be indemnified as prescribed in A.R.S. § 3-416.

Section E. NAME

The official name of the Marketing Committee shall be the Arizona Leafy Greens Food Safety Committee. The Marketing Committee may do business as the Arizona LGMA.

ARTICLE V BEST PRACTICES

Section A. ADOPTION

1. The Marketing Committee has adopted the best practices set out in the “Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens: Version 9 – Arizona” dated August 25, 2015.
2. The Marketing Committee may amend the best practices. Amendments to the best practices shall be binding on signatories as of the time set by the Marketing Committee, except for signatories that withdraw from this Marketing Agreement pursuant to Article XVI, Section C, paragraph 1(b).

Section B. COMPLIANCE

1. Signatories shall comply with the best practices (including recordkeeping requirements), maintain a trace-back system, and be subject to periodic audit.
2. Signatories shall only buy, consign, or otherwise accept or handle leafy green products (grown in Arizona) from a shipper or producer who also is in compliance with the best practices (including recordkeeping requirements), maintains a trace-back system, and is subject to periodic audit.
3. When the best practices require the preparation of a standard operating procedure (SOP), the SOP must also be followed.

Section C. VIOLATIONS

1. Violations of Section B fall into four levels: flagrant violations, major deviations, minor deviations, and minor infractions. The Marketing Committee or its designee shall determine the level of a signatory's violations.
2. The Marketing Committee may establish policies and rules to:
 - a. Define and distinguish between the violation levels.
 - b. Elevate the level of a signatory's violation in certain circumstances.
 - c. Require signatories to correct violations and submit and comply with corrective action plans.
 - d. Subject a signatory to additional audits following a violation.

ARTICLE VI RECORDS

Section A. RECORDS

Signatories shall maintain records reflecting their operations and permit the Marketing Committee or its authorized representatives to inspect and audit the records during normal

business hours. Pursuant to A.R.S. § 35-214, all records shall be subject at all reasonable times to inspection and audit by the State of Arizona for five years after completion of this Marketing Agreement.

Section B. CONFIDENTIALITY

All information concerning the businesses of individual producers and shippers, including cartons or equivalent marketed, the dollar value of gross annual sales and audit records, is not a public record and shall not be disclosed by the Marketing Committee or the Department except:

1. By court order.
2. To a person who presents a release signed by the producer or shipper.
3. In an annual report or similar document if individual producers and shippers are not identifiable.
4. In relation to a judicial or administrative proceeding for the purpose of enforcing or administering this Agreement.
5. As otherwise allowed by law.

ARTICLE VII AUDITS

An auditor discharging his or her duties may enter every field and facility during operating hours where leafy green products are produced or handled by a signatory or a signatory's producers and cooler facilities where a signatory stores leafy green products for distribution to determine compliance with the best practices and recordkeeping requirements of this Agreement.

ARTICLE VIII OFFICIAL MARKS

Section A. OFFICIAL MARKS

Pursuant to A.R.S. § 3-404(B)(8), the Marketing Committee may establish and regulate the use of official marks.

The Marketing Committee has established as an official mark the collective service mark registered on the principal register of the United States Patent and Trademark Office on October 19, 2010, registration number 3,862,595 (the AZLGMA "service mark").

Section B. REQUIREMENTS FOR USE OF MARKS

1. A signatory's compliance with Article V, Section B is a condition precedent and subsequent to the signatory's privilege to use an official mark.
2. A signatory shall not use an official mark until the signatory has undergone at least one audit for compliance with the best practices by an auditor without a finding of any major deviations or flagrant violations and has evidenced that the signatory has corrected any minor deviations found.

3. A signatory shall only use an official mark in accordance with policies and rules adopted by the Marketing Committee.

Section C. LOSS OF PRIVILEGE TO USE MARKS.

1. The Marketing Committee shall suspend a signatory's privilege to use the official marks for a flagrant violation or repeated major deviation under Article V.
2. The Marketing Committee may suspend a signatory's privilege to use the official marks for failure to:
 - a. Comply with the Marketing Committee's rules or policies concerning use of the marks.
 - b. Pay assessments due, including penalties and interest.
3. The Marketing Committee may establish policies and rules related to the loss of the privilege to use the marks, including suspension periods.
4. The Marketing Committee may publish a list of signatories whose privilege to use the official marks has been suspended.
5. A signatory may request a hearing pursuant to the Uniform Administrative Hearing Procedures, A.R.S. Title 41, Chapter 6, Article 10 to appeal or contest a suspension of the privilege to use the official marks. If the Marketing Committee finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Marketing Committee may order the summary suspension of a shipper's privilege to use the official marks.

ARTICLE IX VIOLATIONS

A signatory who violates this Marketing Agreement may be subject to civil penalties as described in A.R.S. § 3-421(A). The Department or Marketing Committee may apply for a temporary restraining order or injunction against a signatory who violates this Marketing Agreement, the Act or rules adopted under the Act pursuant to A.R.S. § 3-421.

In addition to the remedies and penalties authorized by this Article and Article VIII(C), the Marketing Committee may seek any remedy or penalty authorized by this Marketing Agreement or by law. The rights and remedies of the Marketing Committee under this Agreement are cumulative and not exclusive.

ARTICLE X RULEMAKING

1. Signatories shall comply with rules adopted by the Marketing Committee.

2. The Marketing Committee has adopted the rules set out in Arizona Administrative Code, Title 3, Chapter 9, Article 6.
3. The Marketing Committee may adopt, amend and repeal any rules pursuant to A.R.S. § 3414(C)(11).

ARTICLE XI ADVERTISING AND SALES PROMOTION

Pursuant to A.R.S. § 3-404(B)(3), the Marketing Committee may advertise and promote consumer recognition of the official marks and their meaning.

ARTICLE XII QUALITY IMPROVEMENT AND EDUCATION PROGRAM

Pursuant to A.R.S. § 3-404(B)(5)-(6), the Marketing Committee may provide for educational programs concerning the best practices.

ARTICLE XIII RESEARCH

Pursuant to A.R.S. §§ 3-404(B)(4) and 3-414(C)(6), the Marketing Committee may provide for research programs and make grants to research agencies to finance appropriate studies, or to purchase or acquire equipment and facilities consistent with the marketing agreement.

ARTICLE XIV BUDGET AND ASSESSMENTS

Section A. BUDGET

Pursuant to A.R.S. § 3-417(D), the Marketing Committee shall establish an annual budget.

Section B. ASSESSMENTS

1. The Marketing Committee shall set the assessment rate as prescribed in the Act.
2. The assessment shall not exceed five cents per carton or carton equivalents.

Section C. COLLECTION OF ASSESSMENTS

1. Signatories shall pay any assessments owing to the Marketing Committee and shall not charge producers any assessments for the Marketing Agreement.
2. The Marketing Committee may allow the Department's Supervisor of Standardization to collect assessments from signatories on its behalf pursuant to A.R.S. § 3-485(B).
3. Signatories shall file with the Marketing Committee or the Supervisor of Standardization reports of cartons of leafy green products shipped as are periodically required by the Marketing Committee.
4. The first signatory that ships a carton shall be responsible for paying the assessment if the carton is sold to another signatory. Only one assessment shall be paid for each carton of leafy green products.

Section D. FAILURE TO PAY ASSESSMENTS

Any signatory that fails to pay assessments shall be subject to the provisions of A.R.S. § 3-418.

Section E. DISPOSITION OF FUNDS

The Marketing Committee may dispose of funds as prescribed in A.R.S. §§ 3-414(C)(10) and 3-419.

ARTICLE XV PARTICIPATION

Section A. CURRENT SIGNATORIES

Shippers may continue as signatories to this renewed Marketing Agreement by submitting a completed sign-up form to the Department by the date established by the Department.

Section B. NEW SIGNATORIES

1. Shippers may sign-up as a new signatory to this Marketing Agreement by submitting a completed sign-up form to the Department by the date established by the Department.
2. After this Marketing Agreement is renewed pursuant to A.R.S. §§ 3-425 and 3-428, shippers may become additional signatories to this Marketing Agreement upon approval of the Department pursuant to A.R.S. § 3-428(A). The Department shall seek the recommendation of the Marketing Committee before adding a shipper as an additional signatory, but the Department is not required to follow the Marketing Committee's recommendation.
3. In the fiscal year a shipper becomes a signatory, the shipper shall pay an assessment covering leafy green products it shipped during the entire fiscal year.

Section C. WITHDRAWAL FROM PARTICIPATION

1. A signatory may withdraw from this Marketing Agreement by:
 - a. Filing a written request for withdrawal for the subsequent fiscal year with the Marketing Committee prior to June 1 of the current fiscal year;
 - b. Filing a written request for withdrawal with the Marketing Committee within 30 days of being notified of the Marketing Committee's approval of a substantive amendment to the best practices, such withdrawal being effective the later of the effective date of the amendment or the date the withdrawal request is received; or
 - c. Filing a written notice with the Marketing Committee stating that the signatory ceases to be an Arizona shipper of leafy green products.
2. Withdrawal from the Marketing Agreement does not suspend or terminate any obligations of, or causes of action against, the withdrawing signatory that may have accrued under the Act or the Marketing Agreement. Further, in the fiscal year a signatory withdraws pursuant to section (C)(1)(b), the signatory shall continue to pay assessments covering leafy green products it shipped during that entire fiscal year.
3. A shipper shall not use an official mark after its withdrawal from this Marketing Agreement becomes effective.

Section D. CONSIDERATION; ASSESSMENT; MATERIAL BREACH

By voluntarily becoming or continuing as a signatory to this Agreement, the signatory consents to paying assessments established by the Marketing Committee to fulfill the purpose of this Agreement. Signatories do not consent, however, to the transfer of funds collected through assessments to any purpose not authorized by this Agreement. Any transfer of funds collected through assessments to any purpose not authorized by this Agreement, including transfers to the State's General Fund, constitutes a material breach of this Agreement.

ARTICLE XVI EFFECTIVE TIME, AMENDMENT AND TERMINATION

Section A. EFFECTIVE TIME

This Marketing Agreement shall become effective on the expiration of the current term, which is through September 30, 2015, if the Department renews the Agreement as prescribed by A.R.S. §§ 3-425(D) and 3-428.

Section B. TERM

Upon renewal of this Marketing Agreement, the Agreement shall continue in effect through September 30, 2016. The Marketing Agreement shall be renewed automatically through the following September 30, up to an additional three terms, pursuant to A.R.S. § 3-428(C) unless

otherwise suspended or terminated by operation of law or as prescribed by A.R.S. § 3-428(A). This Agreement may be continued beyond September 30, 2019 pursuant to A.R.S. §§ 3-425 and 3-428.

Section C. AMENDMENT

Pursuant to A.R.S. § 3-428, the Marketing Agreement may be amended at any time with the approval of the Department and all of the signatories. If a signatory fails to vote on a proposed amendment within thirty days after notice of the proposed amendment, the signatory will be deemed to have approved the amendment.

Section D. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT

The suspension, substantial change, or termination of this Marketing Agreement does not suspend or terminate any obligations or causes of action that have accrued under it.

ARTICLE XVII OTHER MARKETING AGREEMENTS

If a signatory is also a signatory to the California Leafy Green Marketing Agreement, or a substantially similar program, and the signatory is suspended or decertified for violations under that other Agreement or program, an auditor may conduct an unannounced audit of the signatory and the signatory's growers in Arizona and, for any violations found of the same type that led to suspension or decertification under the other Agreement or program, the Marketing Committee may elevate the violation level.

ARTICLE XVIII SEVERABILITY

If any provision of this Marketing Agreement or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Marketing Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Marketing Agreement are severable.

ARTICLE XIX MISCELLANEOUS PROVISIONS

The authority and requirements prescribed in A.R.S. § 3-420 relating to an inspector holding a lot found to be in violation and time periods to recondition lots so held do not apply to the provisions of this Marketing Agreement.

ARTICLE XX NON-AVAILABILITY OF FUNDS

Every payment obligation of the Marketing Committee under this Marketing Agreement is conditioned upon the availability of funds for the payment of such obligation. If funds are not available for the continuance of this Marketing Agreement, this Marketing Agreement may be terminated at the end of the period for which funds are available. No liability shall accrue to the Marketing Committee or Department in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this Article.

ARTICLE XXI CONFLICT OF INTEREST

This Marketing Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

ARTICLE XXII DISPUTE RESOLUTION

Only to the extent required pursuant to A.R.S. § 12-1518, the signatories and the Marketing Committee agree to use arbitration to resolve any dispute arising under this Marketing Agreement.

ARTICLE XXIII APPLICABLE LAW

This Marketing Agreement shall be governed and interpreted by the laws of the State of Arizona.

SHIPPER SIGN-UP FORM

Participation in the Arizona Leafy Green Products Shipper Marketing Agreement

ARIZONA DEPARTMENT OF AGRICULTURE
Citrus, Fruit & Vegetable Standardization
1688 West Adams Street Phoenix,
Arizona 85007

OPEN
SIGNUP
PERIOD

Directions

1. Read the Arizona Leafy Green Products Shipper Marketing Agreement.
2. Review the definition stated below to verify your eligibility to sign up as a Leafy Green Products shipper:

Shipper means a person that engages in shipping, transporting, selling or marketing leafy green products (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, radicchio, kale, arugula or chard under his or her own registered trademark or label or a person who first markets the leafy green products for the producer. It does not mean a retailer.
3. If you wish to participate in the proposed Arizona Leafy Green Products Shipper Marketing Agreement, you must: 1) check the box in the Sign-up Section and 2) complete the Certification Section. First time participants must also report the number of cartons of leafy green products shipped during the period July 1, 2014 through June 30, 2015. Volume information will be kept confidential. If you do not wish to participate, there is nothing further for you to do.
4. Those interested in participating in this Agreement should return this completed sign-up form to the Arizona Department of Agriculture. You can mail the document to the address above, fax it to (602) 542-0898, or email it to tlopez@azda.gov.

SIGN-UP SECTION

Check the box below to become a signatory to the Arizona Leafy Green Products Shipper Marketing Agreement and if you are a first time participant, report the total cartons of leafy greens shipped on the following line.

I HEREBY **AGREE TO PARTICIPATE** AS A SIGNATORY IN AND BE BOUND BY THE ARIZONA LEAFY GREEN PRODUCTS SHIPPER MARKETING AGREEMENT.

☐

Total cartons of leafy green products shipped July 1, 2014-June 30, 2015: _____

CERTIFICATION SECTION

By signing below, I certify that the person or entity named on this form is an eligible leafy green products shipper in Arizona that agrees to be bound by and comply with all the provisions of the Marketing Agreement and rules and policies adopted by the Marketing Committee. I further certify that I am authorized to complete this form and that the information I provide, including the volume of leafy green products shipped if applicable, is correct to the best of my knowledge.

Date	Type or Print Name	Signature	
Telephone	Business Entity Legal Name		
Address	City	State	ZIP