



C O R N U C O P I A
I N S T I T U T E

**US Department of Agriculture, Agricultural Marketing Service Hearing:
Proposed National Leafy Green Marketing Agreement**

**Syracuse, New York
October 20, 2009**

Testimony of Charlotte Vallaeyes

My name is Charlotte Vallaeyes, I am a Farm and Food Policy Analyst with the Cornucopia Institute. Cornucopia is a non-profit organization based in Wisconsin, with a mission of promoting economic justice for the family-scale farming community. We represent approximately 3000 members, the majority of whom are farmers.

The Cornucopia Institute opposes the proposed National Leafy Greens Marketing Agreement, for the following reasons:

The Leafy Greens Marketing Agreement will give industry representatives authority to self-regulate for food safety, doing a disservice to our citizenry's need for safer food.

A fundamental question here is whether the subject of food safety is simply a quality issue and a marketing issue.

Food safety, in our view, is more than a "quality issue."

A contaminated bag of lettuce is, of course, of bad quality, but since the attribute that makes it unacceptable has the potential to kill you, or worse, kill your child, it is more than just a "bad quality" product. It is a dangerous product that has no place on market shelves.

If "quality" were to be measured on a spectrum, then a product that is supposed to be healthy, but instead turns out to be life-threatening, doesn't just fall on the low end of the quality spectrum, it falls off the quality spectrum altogether and into a whole new arena. This new arena—food safety—is one that should not be left to industry self-regulation, as proposed by this marketing agreement.

And although you've heard it many times, it bears repeating: the current Administrator of the USDA's Agricultural Marketing Service, Rayne Pegg, said in her testimony to Congress this past summer, that AMS is not a food safety agency. I quote

from her testimony: “The mission of AMS is to facilitate the strategic marketing of agricultural products in the domestic and international marketplace. AMS is not a food safety agency. The agency, through programs such as marketing orders and agreements, assists handlers and producers in verifying various product quality control efforts.” In this statement, she appears to suggest that food safety and quality control efforts are separate issues.

Improvements in food safety should be driven by one sole concern: to protect the citizenry from illness and possible death. If we agree that food safety standards should be a public service, it currently falls under the purview of government agencies. Proposing to merge voluntary marketing agreements and food safety shows that these industry proponents have their own interests in mind, not the safety of the citizenry.

Such self-regulation leaves important stakeholders out of the important process of developing food safety standards. Instead of using the traditional regulatory process to make rules and regulations, the proposal, in section 49, states that the 23-member Committee “shall have the following powers: (b) to make such rules and regulations as may be necessary to effectuate the terms and provisions of the agreement.” While the proposal specifies that any proposed standards will be subjected to “notice and comment” by the public (section 49(c)), it is likely that the public’s only chance to comment will be after the first draft of the rules has been written by industry representatives. This is very different from standard regulatory procedures, in which government agencies solicit comments from all stakeholders, including concerned citizens, farmers, consumers and environmentalists, before drafting new regulations. While this system is not perfect, the opportunity for public engagement is preferable to the industry-driven and dominated model proposed in the LGMA, in which the only opportunity for public comment will come *after* the standards have been developed by industry representatives and a Technical Review Board on which only 4 out of 14 members will not be chosen by the Committee.

Furthermore, although the LGMA plan is voluntary for handlers, this does not mean that growers will be free to choose whether they will be affected by the national metrics. A grower who may not want to sign on will have no choice but to follow the national metrics if his or her primary wholesale customer(s) becomes a signatory. Growers who do not want to follow the metrics may have a difficult time selling their crops. In this sense, the proposed marketing agreement is not entirely voluntary for growers, and will likely allow industry representatives to establish a national set of standards that will become, de facto, mandatory.

In addition, our food safety system is fractured and fragmented as it is, and involving yet another government agency in food safety would be counterproductive and further contribute to this fragmentation.

The National Leafy Greens Marketing Agreement, with a USDA-backed “certification mark” will create a second-class citizen status for non-signatories like organic, small-scale and direct marketers.

Section 970.69(b) of the proposal states that “The Committee may license signatories to affix the official certification mark to bills of lading or manifests, subject to the verification, suspension, revocation requirements, or any other such uses recommended by the Committee and approved by the Secretary to carry out the purpose of this Agreement.”

Since this is a marketing agreement, the “purpose of this Agreement” refers to marketing, as stated explicitly in section 970.75: “The Committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research, and development projects, and/or promotional activities, including paid advertising, designed to assist, improve or promote the efficient adoption, implementation, and marketplace acceptance of the agreement and of leafy green vegetables or products handled by signatory members.” So although the proposal currently does not explicitly state that the certification mark will be used on packaging visible to consumers, nowhere does it state that this would be prohibited, and given the marketing focus of this proposal, it is not unreasonable to suggest that the marketing agreement may lead to paid advertising to promote the products of signatories, implying that non-signatories are offering food of inferior quality—in this case, inferior “food safety” quality.

Even if paid advertisements are not used to promote the program and the certification mark, its use among handlers may very well create the impression among many consumers and retailers that leafy greens from non-signatories are less safe. This will create an unfair marketing disadvantage for wholesalers who choose not to become signatories, and for producers selling direct to consumers, possibly inhibiting the growth of a local food system that the USDA and others have been promoting and which is part of the solution to our nation’s food safety woes.

A National Leafy Greens Marketing Agreement may undo many of the conservation and habitat improvements made over the past several decades that have softened agriculture’s footprint on the environment. Experiences in California have shown that food safety measures are not always written with adequate consideration for environmental laws and biodiversity concerns. The California LGMA has resulted in loss of wildlife habitat and destruction of natural vegetation even though it has not been conclusively proven that these are material factors in food contamination. The metrics and FDA guidance documents currently list deer as animals of significant risk and encourage fencing and other measures that interfere with environmental protection and biodiversity. Scientific studies show that deer are not to be considered animals of significant risk. Since the metrics will not be developed using the standard governmental regulatory process, which involves all stakeholders, we cannot be assured that environmental concerns will be adequately considered in the standards.

Furthermore, food safety standards should recognize the benefits of certain farming practices that are common on organic farms, such as building rich microbial life in soil, which has been shown to minimize food safety risks. Studies have shown that organically managed soil and competition in the soil with other microorganisms significantly reduces

the survival success of pathogenic e. coli.¹ Again, if the proposed food safety standards are developed by a 15-member Technical Review Board, inadequate consideration may be given to these scientific findings and others that point to food safety benefits of organic and sustainable farming practices.

A National Leafy Greens Marketing Agreement will not create safer food, at least not in the near future. The current state of science does not allow for developing metrics that can confidently eliminate food safety risks from leafy greens to consumers.

First, the LGMA metrics will do nothing to tackle the root of the problem, which is, in most cases, tainted manure from confined animal feeding operations.

Second, not enough scientific evidence exists to develop standards that can confidently prevent contamination and further outbreaks.

Third, bacterial contamination is only one of many food safety concerns. The proposed marketing agreement suggests that metrics will be silent on reducing pesticide use and use of other agrochemical residues, and additional practices that will make food safer.

Fourth, in the summer of 2009, two signatories to the California Leafy Greens Marketing Agreement were involved in recalls due to salmonella contamination of their leafy greens.² This shows that metrics have not been able to prevent contamination.

Last but not least, while the proposal states that rules will be “science-based, scalable and regionally applicable,” it is unclear how one set of rules can accommodate both large-scale, monoculture growers in California and small-scale, diversified farms, as an example, in the Northeast. Rules that may be appropriate for one type of operation may put unnecessary burdens on another—and with the large-scale growers represented on the Committee, chances are the smaller-scale and diversified farms’ needs and concerns will be the first to go.

For these reasons, Cornucopia believes that this proposal for a marketing agreement is inappropriate and does not deserve the backing of the USDA.

¹ Vidovic S, Block HC, Korber DR. (2007) Effect of soil composition, temperature, indigenous microflora, and environmental conditions on the survival of Escherichia coli O157:H7. *Canadian Journal of Microbiology* 53(7):822-9.

van Elsas JD, Hill P, Chronáková A, Grekova M, Topalova Y, Elhottová D, Kristůfek V. (2007) Survival of genetically marked Escherichia coli O157:H7 in soil as affected by soil microbial community shifts. *Multidisciplinary Journal of Microbial Ecology* 1(3): 204-14.

Cooley, MB, Chao, D and Mandell, RE (2006) Escherichia coli O157:H7 survival and growth on lettuce is altered by the presence of epiphytic bacteria. *Journal of Food Protection*. 69(10): 2329-35)

³ Ippolito International recalled 1,715 cartons of spinach on September 18, 2009 due to Salmonella contamination. Tanimura and Antle, on July 23, 2009, recalled bulk and wrapped romaine lettuce heads after the Wisconsin Department of Agriculture, which conducted random tests, found it tested positive for salmonella. Both are signatories to the California LGMA.

Thank you.
