Attachment

1.) Justification for Proposed Marketing Agreement

JUSTIFICATION OF PROPOSED FEDERAL MARKETING AGREEMENT
FOR LEAFY GREEN VEGETABLES

1. *What is the purpose of the proposal?*

The proposed national leafy green marketing agreement (NLGMA) program would be a voluntary program that would provide a clear and logical framework for signatory handlers to improve the quality of U.S. and imported leafy green products. A national leafy greens marketing agreement would empower industry representatives to engage proactively with USDA, the US Food and Drug Administration (FDA), and others in the development of production and handling practices (best practices, or metrics). Formation of these best practices within the agreement framework would ensure the adoption of science-based, scalable, and regionally flexible metrics in conformance with the FDA's Good Agricultural Practices (GAPs), Good Handling Practices (GHPs) and Good Manufacturing Practices (GMPs). Coupled with a corresponding audit-based verification program, these best practices would minimize microbial contamination of fresh leafy green vegetables in the growing and handling processes, enhance the overall quality of fresh product in the marketplace, and boost public confidence in these commodities. Ultimately, an agreement would support the marketability of fresh leafy green vegetables and overall stability of the industry.

Therefore, the proposed marketing agreement would:

- Provide a mechanism to enable leafy green handlers to organize;
- Enhance the quality of fresh leafy green vegetable products available in the marketplace through the application of good agricultural production and handling practices;
- Implement a uniform, auditable, science-based food quality enhancement program;
- Provide for USDA validation and verification of program compliance;
- Foster greater collaboration with local, state and federal regulators;
- Improve consumer confidence in leafy greens.

2. *What problem is the proposal designed to address? Explain/quantify.*

The proposed program is designed to minimize microbial contamination in the production and handling of fresh leafy green vegetables placed in the marketplace for human consumption. In recent years, microbial contamination of food products in the marketplace has led to public and industry concern for food safety, a drop in consumer confidence of products related with food safety events, and severe economic consequences for producers and handlers of those products affected. The proposed program is designed to develop a system to fortify the leafy green vegetable industry's ability to proactively engage in the improvement of product quality and consumer confidence through the development of production and handling best practices.

History of Foodborne Illness Related to Leafy Greens in the U.S.

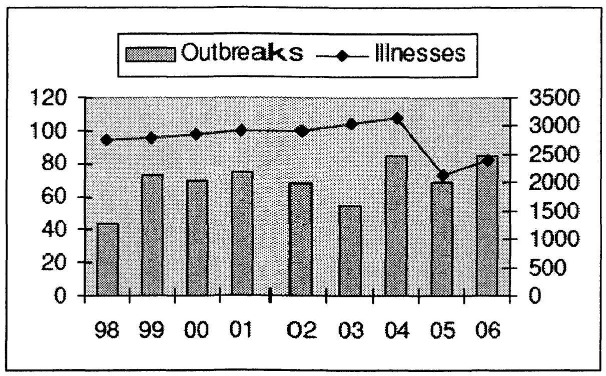
More than 10,000 foodborne disease outbreaks were reported to the Centers for Disease Control and Prevention (CDC) foodborne disease outbreak surveillance system from 1973 – 2006. Researchers there discovered that approximately 5 percent of those foodborne outbreaks were linked to consumption of leafy greens. Ten percent of the leafy greens-related outbreaks were caused by salmonella and nine percent were caused by *E. coli*. At the 2008 International Conference on Emerging Infectious Diseases, Michael Lynch of the Centers for Disease Control and Prevention (CDC) reported on the research:

"Consumption of leafy greens has increased over the years, but it does not completely explain the increase in the proportion of foodborne outbreaks due to leafy green consumption...During the 1986-1995 period U.S. leafy green consumption increased 17 percent from the previous decade. During the same period, the proportion of all foodborne disease outbreaks due to leafy greens increased 60 percent. Likewise during 1996-2005 leafy green consumption increased 9 percent and leafy green-associated outbreaks increased 39 percent."

He went on to note that because some of the outbreaks were widespread, the contamination quite possibly occurred early in the production process – either at the farm level or the processing plant.

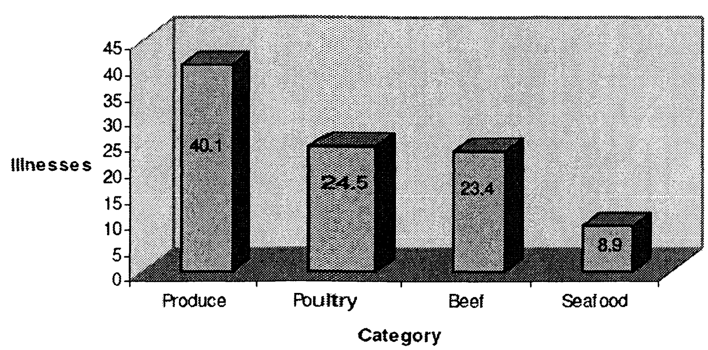
Although there are more outbreaks of foodborne illness caused by seafood, more people get sick when produce is the source of contamination. The average number of foodborne illness cases per outbreak event in produce exceeds illness caused by microbial contamination of poultry, beef, or seafood. This phenomenon is also true for cases of foodborne illness caused by *E. coli* contamination in particular.[1]

Figure 1: Food borne illness related to fresh produce



Source: Center for Science in the Public Interest

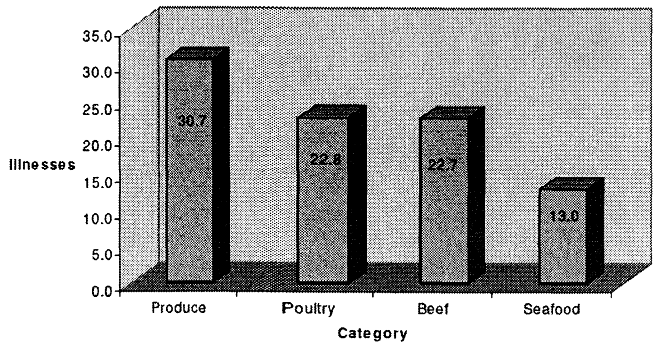
Figure 2: Average Illnesses per Outbreak by Category 1998-2006



Source: Center for Science in the Public Interest

1 Center for Science in the Public Interest. "CSPI Outbreak Alert Data: Info on Produce Outbreaks," August 29, 2008.

Figure 3: Average Illnesses of *E. Coli* Outbreaks by Category 1998-2006

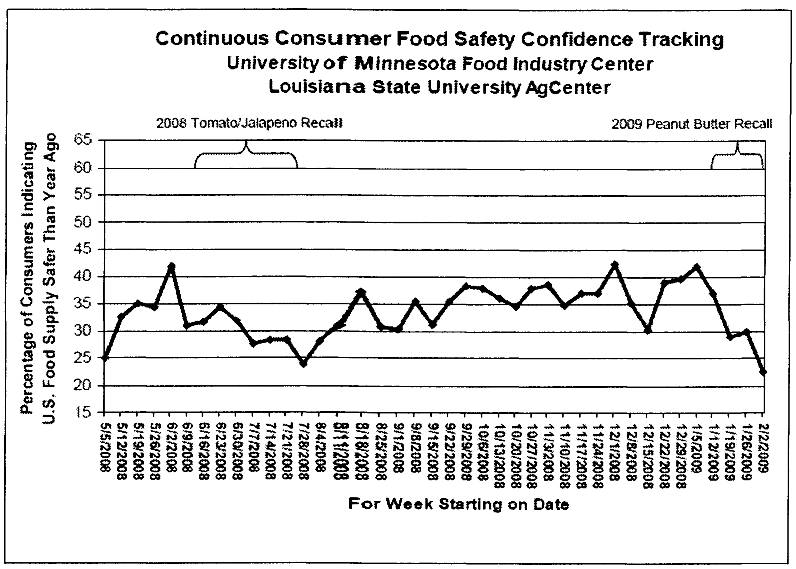


Source: Center for Science in the Public Interest

Public Sentiment/Perception - Food Safety

U.S. consumers are conscious of leafy greens quality and safety. A national study conducted by the Harvard School of Public Health found that many Americans lack confidence in particular parts of our food safety system, both for domestic foodstuffs and imported. Thirty-seven percent thought that food produced in the U.S. was very safe while 58 and four percent thought that it was somewhat safe or unsafe, respectively. "With growing globalization of the food supply, Americans are likely to worry more about the safety of the food they eat. At the moment, many are not confident that the system for protecting their food is working as well as it should," said Robert J. Blendon, professor of Health Policy and Political Analysis at the Harvard School of Public Health.

Figure 4: Consumer Confidence in Safety of Food



Source: The Food Industry Center at the University of Minnesota and the Louisiana State University AgCenter.

Public perception of food safety often decreases after an outbreak incident. A new continuous study tracking consumer opinion on food safety is being conducted jointly by the Food Industry Center at the University of Minnesota and Louisiana State University AgCenter. Findings released in February 2009 following the *Salmonella* outbreak linked to peanut butter paste in January 2009, showed that consumer confidence in the ongoing safety of the U.S. food supply fell 22.5%. As indicated by the chart above, a similar phenomenon happened in late summer of 2008 following the tomato/jalapeno recall - the result of a *Salmonella* outbreak.

3. ***<u>What are the current requirements or industry practices relative to the proposal?</u>***

Overview of Current Fresh Leafy Green Industry Quality and Food Safety Requirements in the U.S.

Producers and most handling operations in the leafy green industry are not regulated in the U.S; however processing facilities are regulated by the federal government under Title 21, Part 110 of the Code of Federal Regulations. This section highlights the voluntary programs for leafy greens that exist at both the state and federal level. At the federal level, the USDA has several voluntary programs related to food safety and food quality for both producers and handlers. These programs are not specific to leafy green vegetables or vegetables in general, but are general programs for the agricultural community at large. The USDA also established quality grade standards for a few leafy green vegetables as summarized in the next section. State-level marketing agreements for leafy green vegetables have been established in both California and Arizona. Lastly, there are requirements imposed by buyers that are a necessity for access to certain markets.

Quality: USDA - Grading Standards

Leafy greens are inspected using quality grade standards set by the USDA. New York is the only state that has state laws for grades of lettuce that may go beyond the standards set by the USDA.[2] Quality grade standards take into account the size and condition of the lettuce head. USDA authorizes inspectors to evaluate leafy green products according to USDA standards. These USDA authorized inspectors are most often employees of a state's agricultural department.[3]

The USDA has set standards for the following leafy green vegetables:

- Lettuce – U.S. Fancy, U.S. No. 1, and U.S. No. 2
- Field grown leaf lettuce - U.S. Fancy, U.S. No. 1, and U.S. No. 2
- Greenhouse leaf lettuce – U.S. Fancy, U.S. No. 1
- Romaine - U.S. No. 1
- Endive, escarole or chicory - U.S. No. 1
- Dandelion greens - U.S. No. 1
- Cabbage - U.S. No. 1, U.S. Commercial

As an example, the requirements for *U.S. Standards for Grades of Field Grown Leaf Lettuce* are as follows:[4]

"U.S. Fancy" consists of plants of field grown leaf lettuce of similar varietal characteristics which are well developed, well trimmed, free from decay, freezing, insects, worms or excreta, and free from injury by broken midribs, bruising, dirt or foreign material, discoloration, Downy Mildew, seedstems, Tipburn, water soaked, yellowing, insect, mechanical or other means.

"U.S. No. 1" consists of plants of field grown leaf lettuce of similar varietal

2 "Circular 908-Lettuce," Article 13-C of the *Agriculture and Markets Law*, New York State, 1979
3 USDA Agricultural Marketing Service, "Fresh Market Vegetable Grade Standards," 2009.
4 USDA Agricultural Marketing Service, "United States Standards for Grades of Field Grown Leaf Lettuce," 2006.

characteristics which are well developed, fairly well trimmed, free from decay, freezing and free from damage by broken midribs, bruising, dirt or foreign material, discoloration, Downy Mildew, seedstems, Tipburn, water soaked, yellowing, insects, worms, mechanical or other means.

"U.S. No. 2" consists of plants of field grown leaf lettuce of similar varietal characteristics which are fairly well developed, reasonably well trimmed, free from decay, freezing and free from by serious damage by broken midribs, bruising, dirt or foreign material, discoloration, Downy Mildew, seedstems, Tipburn, water soaked, yellowing, insects, worms, mechanical or other means.

USDA Quality-Related Programs

The USDA also offers the following voluntary programs for fresh fruits and vegetables:

- Qualified Through Verification program: Validates a company's Hazard Analysis Critical Control Point plan through on-site audits to verify their effectiveness.

- Good Agricultural/Handling Practices (GAP/GHP) Audit Verification Program: GAP programs examine farm practices; GHP programs examine packing and storage facilities and wholesale distribution centers; and Food Defense protocols that are utilized throughout the food chain. Audits are conducted by the USDA when requested by growers and handlers.[5]

- Partners in Quality Program – a program for packing facilities to demonstrate and document their ability to pack products that meet all requirements of Federal and State laws and their customers.[6]

- Identity Preservation program – offers participants a means to positively verify their product's unique value-added characteristics.[7]

- Domestic Origin Verification (DOV) Program — verifies that all fruit, vegetable, and nut commodities purchased for the USDA food assistance outlets are 100 percent grown in the U.S. In order to demonstrate compliance, each contractor, subcontractor, supplier, or processor that provides fruit, nut, or vegetable components or products may choose either a minimum of one traceback per contract and commodity at each facility or full-time participation in the DOV audit program.[8]

Food Safety Guidance Documents

Nationally, there are no government audited, enforceable food safety requirements for the growing or handling of leafy green vegetables with the exception of processing facilities that are subject to current good manufacturing practices as outlined in Title 21, Part 110 of the Code of Federal Regulations. Two guidance documents developed by the government and the industry provide guidelines for best practices in the fresh produce industry and leafy green supply chain as indicated below.

FDA and USDA Guidance to Industry — Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables

This guide is intended to assist the produce industry in establishing and implementing best practices for growing, harvesting, sorting, packing and distributing fresh and minimally processed produce. The goal of the guidance is to reduce the incidence of contamination of produce by human pathogens.

Commodity Specific Food Safety Guidelines for the Lettuce and Leafy Greens Supply

5 USDA Agricultural Marketing Service, "Fresh Produce Audit Verification Program," 2009.
6 USDA Agricultural Marketing Service, "Partners in Quality Inspection Program," 2009.
7 USDA Agricultural Marketing Service, "Identity Preservation Program," 2009.
8 USDA Agricultural Marketing Service, "Domestic Origin Verification Program," 2009.

Chain

In April of 2006, the leafy greens industry, at large, including representatives from academia and the buying and food service industries, collaborated with government agencies, including the U.S. Food and Drug Administration and the California Department of Health Services to develop the "Commodity Specific Food Safety Guidelines for the Lettuce and Leafy Greens Supply Chain."

This guidance document is recognized nationally as a food safety reference guide for the leafy greens industry, but it is not a directive. It provided the baseline for the Good Agricultural Practices (GAPs) outlined in both the Arizona and California leafy greens products marketing agreements (see section below).

Marketing Agreements in California and Arizona

The leafy green marketing agreements, governing fresh leafy greens in Arizona and California respectively, are voluntary programs; however, the requirements of those agreements are mandatory for all signatory handlers/shippers. Signatories have an annual audit conducted by their state's department of agriculture for food safety issues. Participation is renewed on an annual basis.

The LGMA was officially formed in February of 2007 when California Secretary AG Kawamura, of the California Department of Food and Agriculture, appointed an Advisory Board comprised of 13 members and one public representative. To date nearly 120 handlers, representing more than 99 percent of the volume of California leafy greens, have joined the LGMA.

The Arizona Department of Agriculture Assistant Director Jim Nowlin, head of the Department's Citrus, Fruit, and Vegetable Division, certified the AZ LGMA on September 27, 2007, with 32 shippers listed as signatories. These certified members of the AZ LGMA produce more than 52 million cartons, representing 90 percent of leafy greens grown in that state. Those enrolled shippers agreed to purchase only leaf greens grown according to accepted good agricultural practices. The AZ LGMA guidelines closely replicate the 40-plus pages of California's agreement.

Buyer Requirements

Currently there are many different food safety and quality requirements levied from the retail and food service industries on leafy greens producers and handlers. Today, handlers, including those who have signed on to the Arizona and California marketing agreements are subject to many different requirements from the retail and food service industries. Buyers may develop their own quality and safety standards or adopt established systems such as the Global Food Safety Initiative standards. Some of these requirements are very costly to implement. This has not deterred the industry from paying for and adding on another layer of GAPs as mandated by these agreements. If a handler does not abide by buyer requirements, their leafy greens products would not be introduced into commerce and could result in a grave economic loss for the handler and grower.

A national marketing agreement would establish consistency in leafy green production and handling practices through the industry supply chain. This would help to mitigate the costs of multiple quality and food safety requirements since buyers do not need to audit producers' production practices as often, and buyers will be less likely to require producers to adopt practices in addition to those included in the national agreement. Though some retail and food service companies may continue to require their handlers to meet additional standards, the best practices outlined in the NLGMA will provide the baseline for all additional requirements as we have seen in Arizona and California.

4. ***What are the expected impacts on producers, handlers and consumers?***

It is anticipated that the incremental costs associated with the implementation of a national marketing agreement would be nominal or, in some cases, may not result in an increase costs for producers and handlers at all. Today, many producers and handlers of leafy greens already have food safety programs in place and are investing in the continuing administration of these programs. For example, approximately 90 percent of all leafy greens are already covered by the state LGMAs operating in California and Arizona.

Much of the industry is already adhering to the marketing agreements in Arizona and California either because they are located in one of these two states or because buyers are using the CA and AZ marketing agreements as their baseline requirements for purchasing leafy greens. The California leafy greens industry represents about 75 percent of all the leafy greens produced in the U.S., with 99 percent of that volume already covered by the marketing agreement. The Arizona leafy greens industry represents about 15 percent of all the leafy greens produced in the U.S., with 90 percent of that volume covered by the marketing agreement.

Costs associated with a robust food safety program typically include investments in personnel, equipment as well as monitoring and verification programs. In today's commercial production these are baseline expenses associated with the production and handling of leafy greens. The NLGMA would increase costs by assessing handlers to fund a comprehensive verification program and administration of the marketing agreement. In states where marketing agreements currently exist, the national marketing agreement is intended to supersede or coordinate with these programs such that costs do not increase for these growers and handlers. These costs would be equitably distributed based on volumes of product handled by individual signatories. The increased costs to comply with GAPs, GHPs and GMPs established by the marketing agreement would vary also by size of operation, complexity of established metrics, environmental variances etc. Currently USDA's inspection fee is $92 per hour for domestic operations and $92 per hour plus travel and per diem for international operations.

5. ***How would the proposal tend to improve returns to producers? Quantify.***

Absent a national marketing agreement, retailers, food service industries, and states will develop and implement their own mandatory standards for producers and handlers– at times for competitive advantage and more than likely not based on scientific data. With a national marketing agreement, the likelihood of producers and handlers being subject to multiple inconsistent requirements is reduced, which in turn should minimize any production cost increases.

The implementation of a NLGMA will result in additional costs for some producers and handlers, but for many leafy greens growers, the impact could be cost neutral or even financially beneficial if special labeling is used for NLGMA produce and as market confidence and access expands as a result of the new quality standards.

In February of 2008, California's LGMA conducted a nationwide survey to determine how consumers view the food safety efforts by the industry. Consumers found the produce buyers' commitment to the LGMA program very reassuring. When told that grocery stores and restaurant chains support the food safety program by only purchasing these products from LGMA member companies who passed mandatory government audits, 88 percent of consumers said this increased their confidence in leafy greens.[9] If consumers are confident in the product, they will be more

9 "Food Safety Program that Protects Consumers," "Also Very Popular with Consumers," "Eighty-Nine Percent had Favorable Opinion of LGMA Programs," California Leafy Green Handlers Assn, 2008.

prone to purchasing that product, thus increasing the producers' returns.

In examining other quality programs, some research indicates the introduction of the NLGMA could be financially beneficial to producers and growers. For example, a 2007 study that analyzed the costs of introducing a quality assurance (QA) program with food identity components intended to separate genetically modified crops from non-genetically modified crops, found that introducing the QA program at the farm level could be financially profitable depending on farm size and equipment management.[10] The QA program, called Grainsafe, was introduced after the food supply was contaminated with genetically-modified corn not approved for human consumption. Grainsafe, like the NLGMA, requires additional efforts to ensure the overall quality of product leaving the farm including complete documentation of farming practices and some means of future product identification or traceability. Because of the additional requirements, farmers and handlers face additional labor costs, sampling costs, laboratory testing costs and equipment cleaning costs. However, the benefits of the Grainsafe program include higher overall product quality (meaning producers may not have to discount products due to lower quality standards), the program reduces the likelihood product will fail to meet quality standards at delivery and finally, the producers' reputation for delivering high quality product may lead to increased business. Handlers benefit financially for the same reasons-higher quality product and the potential to enhance their reputations and hence grow their business.

To demonstrate the financial profitability of Grainsafe, Karaca et al. (2007) compared the cost of producing conventional crops to farms producing genetically modified crops under the Grainsafe program for three different farm sizes. They concluded that while all farms face higher production costs with Grainsafe, larger farm costs benefit from economies of scale. After projecting increased contract premiums from improved yields, they concluded that all farms with one exception, regardless of size, financially benefited from the introduction of the quality program. The one exception was small farms that grow both genetically modified crops and conventional crops and used a harvesting strategy requiring mid-season equipment cleaning.

6. ***What are the expected effects on small businesses?***

There are several ways small producers and handlers will be affected by the marketing agreement. Processors should be more willing to purchase products from those small producers and handlers who have signed onto the agreement and are participating in the audit program. Aside from the immediate financial impact of a contamination event, the long term issue for processors and distributors is the adverse impact on the value of the brand.

Absent any national food quality enhancement program, major retail distributors are already establishing their own standards. Their standards are focused on protecting the retailer's brand and not necessarily on protecting the grower and the handler brands. Also, the retailer programs probably will not take into account the cost to a small producer or handler to implement the programs. In fact, with each large retailer developing its own standards, small handlers or growers will potentially be unable to compete for business delivering leafy green products to one of these retailers.

It is difficult to put a price on the importance of food safety, however as with any quality program, there is a cost associated with its implementation. In comparison, the cost of not implementing a quality program is probably far greater than implementing one (especially when a voluntary recall occurs). Some small handlers and growers may be concerned about the cost of implementing the program, to address their concerns the proponent group will develop cost studies to present to small handlers and growers for review. In addition, the proponent group will work to streamline the training, reporting and compliance procedures in an effort to minimize

10 Karaca U, Alexander C, and Maier D. "Does On Farm quality Assurance Pay? A Cost-Benefit Analysis of the Grainsafe Program," Journal of Agricultural and Applied Economics, 39,3, December 2007:541-556.

costs.

There have been no documented cases of farms going out of business in Arizona and California as a result of adhering to the standards outlined in the respective marketing agreements.

7. ***Would the proposal increase or decrease costs to producers, handlers, committees and/or USDA? Explain/quantify.***

Costs associated with a robust food safety program typically include investments in personnel, equipment, as well as monitoring and verification programs. In today's commercial production these are baseline expenses associated with the production and handling of leafy greens. As with most regulations and standards in agriculture, costs typically find their way back to the grower level, and that is the case with the proposed NLGMA. However, with approximately 90 percent of all leafy greens already being covered by the LGMA, the implementation of a national marketing agreement should bring about nominal, if any, cost increases for those producers and handlers.

Much of the industry is already adhering to the marketing agreements in Arizona and California either because they are located in one of these two states or because buyers are using the CA and AZ marketing agreements as their baseline requirements for purchasing leafy greens. The California leafy greens industry represents about 75 percent of all the leafy greens produced in the U.S., with 99 percent of that volume already covered by the marketing agreement. The Arizona leafy greens industry represents about 15 percent of all the leafy greens produced in the U.S., with 90 percent of that volume covered by the marketing agreement.

Some of the additional costs California LGMA members incurred upon signing on to the agreement included:[11]

- Monthly water tests.
- Soil amendments tests.
- Documentation costs.

For those growers who would be implementing proposed rules with the implementation of the NLGMA for the first time, costs will probably increase at the farm level. However, not every procedure will need to be carried out in exactly the same fashion in all growing regions. Because of environmental variances, testing procedures and required frequency of testing, costs may vary across growing regions. Exact costs will vary slightly from region to region – what's necessary in Salinas, Calif. may not be necessary in New Jersey. Growers who are not currently operating under one of the respective marketing agreements will have to implement farm-level standards anyway, as the retail and food service industries will require it — as we have seen in Arizona and California.[12]

The NLGMA would increase costs by assessing handlers to fund a comprehensive verification program and administration of the marketing agreement. Assessment fees will be determined by the Leafy Green Products Administrative Committee that will administer the terms and provisions of the NLGMA. Handlers who are already part of the marketing agreements in Arizona and California or who are operating according to those agreements should not experience cost increases. Although the national marketing agreement will be different from the California and Arizona agreements, terms and provisions of the national agreement are not expected to go beyond the terms and provisions of these state agreements. Handlers operating outside of the

---

11 Tootelian DH, "California Leafy Green Products - 2007 Signatory Survey Summary Report.," 2008.

12 Calvin L, et al., "The Economics of Food Safety: The case of green onions and Hepatitis A outbreaks," USDA Economic Research Service, 2004.

conditions of the existing Arizona or California marketing agreements will most likely face increased cost for additional auditing and certification steps. Currently the USDA charges $92 per hour for inspection services at domestic locations and $92 per hour plus travel and per diem for inspection of operations outside the U.S. Total cost of USDA audits will vary based on the size of handler operations. Other measures under the NLGMA that may impose additional costs are additional traceability processes and/or equipment and additional dedicated food safety personnel. Some costs may be one-time costs to meet requirements of the agreement while other costs would be ongoing.

The USDA may also bear some additional costs as the NLGMA is implemented nationally. Under the NLGMA, the USDA may have to hire and/or train additional inspectors, who will ensure each signatory is complying with the program. The administration of the NLGMA and the costs associated with an increased demand for USDA inspections has yet to be determined.

Historically, however, the administration of a marketing agreement is paid for by the members of the marketing agreement. In California LGMA members pay an assessment, which covers the cost of inspections and the administration of the program. Arizona members pay a flat rate for those same services. These costs are in addition to those incurred on the farm level to implement the program

8. ***<u>How would the proposal be implemented?</u>***

Signatories

Signatories of the NLGMA are handlers of leafy green vegetables. By signing the agreement, signatories agree to handle leafy green vegetables identified in the agreement that are verified by an official audit as meeting the provisions of the marketing agreement.

Zones

The United States, as the production area will be subdivided into five zones. Proposed zones are as follows:

- Zone 1 - California, Washington, Oregon, Hawaii, and Alaska.
- Zone 2 - Arizona, Montana, North Dakota, Wyoming, South Dakota, Idaho, Nevada, and Utah.
- Zone 3 - New Mexico, Colorado, Nebraska, Minnesota, Iowa, Kansas, Oklahoma, Texas, Missouri, Arkansas, and Louisiana.
- Zone 4 - Wisconsin, Michigan, Ohio, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Alabama, and Georgia.
- Zone 5 - Maine, New Hampshire, Vermont, New York, Connecticut, Massachusetts, Pennsylvania, New Jersey, West Virginia, Virginia, Maryland, Delaware, Rhode Island, North Carolina, South Carolina, Florida, and the District of Columbia.

Administration

The terms and provisions of a national marketing agreement would be administered by a National Leafy Greens Administrative Committee that would consist of twenty-three members, each of whom shall have an alternate. The alternate will have the same qualifications as the member for whom he or she is an alternate. Committee membership shall be allocated as follows:

(1) Four handlers and two producers from Zone 1;
(2) Three handlers and one producer from Zone 2;
(3) Two handlers and one producer from Zone 3;
(4) Two handlers and one producer from Zone 4;
(5) Two handlers and one producer from Zone 5;
(6) One retail representative from the production area;

(7) One foodservice representative from the production area;
(8) One public member from the production area; and,
(9) One importer from the production area.

A majority of the six producers on the committee must not be involved in the handling or processing business, two of the producers on the committee must be small farmers and at least four of the handler committee members must be manufacturers of fresh-cut leafy green products. The retail, foodservice, importer, and public members as well as their alternates may not be engaged in the production or handling of leafy greens in a proprietary capacity. Upon recommendation by the committee, the USDA Secretary has the authority to reapportion committee members among the zones, change the number of members and alternates, and change the composition by changing the ratio of members, including their alternates. Alternate members will act in the place of a member if that member is absent, resigns, or is removed until a successor is selected.

In order to be eligible for a committee position, one must be serving as a handler, producer, retailer, importer, or a food service personnel at the time of their appointment and throughout his or her term of office. Both members and their alternates will serve two year terms with no more than three consecutive two-year terms. Producer and handler members of the initial committee will be selected by the USDA Secretary. Subsequent producer and handler committee members will be nominated by zone with selection by vote with the voting population comprised of all individuals that are eligible themselves to serve on the committee. All persons eligible to vote get only one vote even if they have business operations in more than one zone. Producer and handler members will nominate the retail, foodservice, importer, and public members and alternate members.

In addition a technical review board and a market review board will assist the administrative committee with developing audit metrics and addressing retail, food service and consumer issues respectively.

The administrative committee will make decisions by quorum with a simple majority of the members constituting the quorum and a required one voting member per zone. Decisions affecting assessment rates, termination of the agreement, and/or good agricultural, handling and manufacturing practices will require a two thirds majority of the committee. Committee meetings may take place at a designated geographical location with votes cast in person or committee members may meet and vote by videoconference, phone or other means of communication with confirmation provided in writing. The administrative committee will have the following powers:

- To administer the agreement in accordance with its terms and provisions;
- To make rules and regulations, with the approval of the USDA Secretary, as may be necessary to effectuate the terms and provisions of the agreement;
- To adopt, with the approval of the USDA Secretary after notice and comment, audit metrics to administer the terms and provisions of the agreement;
- To collaborate with existing state boards, commissions and agreements through memorandum of understanding to affect the purposes of the agreement;
- To receive, investigate, and report to the USDA Secretary complaints of violation of the provisions of the agreement; and,
- To recommend to the USDA Secretary amendments to the agreement.

The administrative committee will have the following duties:

- To act as intermediary between the USDA Secretary and any signatory with respect to the operations of the agreement;
- To select from among its members a chairperson and other officers as necessary, and to define the duties of these officers;
- To establish subcommittees and advisory boards to aid the administrative committee in the performance of its duties under the agreement;
- To adopt bylaws for the conduct of its business as it deems advisable;

- To keep minutes, books, and records which clearly reflect all the acts and transactions of the administrative committee and subcommittees with these subject to examination by the USDA Secretary at any time;
- To appoint such employees or agents as it deems necessary, and to determine the compensation and define the duties of each;
- To have its financial statements audited by a certified public accountant at least once each crop year and at any other time the administrative committee deems necessary or as the USDA Secretary requests. Audits will include an examination of the receipt of assessments and the disbursement of all funds. The administrative committee will provide the USDA Secretary with a copy of all audits and will make copies of these audits available for examination at the offices of the administrative committee after the removal of any confidential individual or handler information contained therein;
- To investigate the production, handling and marketing of leafy green vegetables and to assemble data in connection therewith; and,
- To furnish available information as deemed pertinent or as requested by the USDA Secretary.

Funding

The program will be funded by assessments and inspection service fees paid by signatory handlers. All leafy green products covered by the agreement will have assessment fees determined by the USDA for each crop year. These assessments will be paid for by first handlers. Handlers that are not first handlers will pay inspection service fees based on time and travel as approved by the administrative committee.

Audits

Audits will be conducted by a USDA-authorized inspector who will visit a farm or facility when it is in operation to validate, verify and witness that good agricultural, handling, management and manufacturing practices are adhered to throughout the growing, harvesting, packing, processing, and shipping operations as briefly described below.

- GAP audits of all producers including producers outside the production area who provide leafy greens to signatory handlers. These audits will cover good agricultural practices related to the following areas: water quality, soil amendments, machine harvest, hand harvest (including direct contact with soil during harvest), transfer of human pathogens by field workers, field sanitation, equipment-facilitated cross contamination, flooding, water usage to prevent dehydration, and production location concerns, including climatic conditions and environment, and encroachment by animals and urban settings.

- GHP, GMP, or good management practices for all signatory handlers, manufacturers, or other post-production and harvest operations including those outside the production area. These audits will cover the following areas:

  - *Post-harvest handling process*: cooling, water, reuse of field containers, bulk-bin modified atmosphere process, condition and sanitation of transportation vehicles, and employee hygiene.

  - *Handling and manufacturing process*: wash water, wash system capacity, bulk-bin modified atmosphere process, condition and sanitation of transportation vehicles, and employee hygiene, labeling of Raw Agricultural Commodity (RAC) versus ready–to-eat (RTE) products, and finished product packaging.

  - *Distribution handling process*: condition and sanitation of transportation vehicles, condition and sanitation of distribution/cooler facilities, and temperature measurement of product.

Audit metrics may be developed and recommended to accommodate differences in production, handling, and manufacturing environments of different regions within the production area and different leafy green vegetable products.

Official certification mark

The USDA will obtain and grant to the administrative committee the use of a U.S. registered certification mark that will be the agreement's official mark. This mark will be licensed to signatories who certify and verify that their leafy green products have been grown, packed, shipped, or handled in accordance with the NLGMA and any other federal trademark registration requirements. The administrative committee will license signatories to affix the official certification mark to bills of lading or manifests, subject to the verification, suspension, revocation requirements, or any other uses recommended by the committee and approved by the USDA Secretary to carry out the purposes of the NLGMA. A signatory's compliance with the regulations under the agreement is a condition precedent and subsequent to the signatory's entitlement to use the mark.

9. ***<u>How would compliance with the proposal be effected? Explain/quantify.</u>***

All producers who produce leafy green vegetables and who provide leafy green vegetables to signatory handlers subject to the provisions of the agreement will undergo GAP validation and verification audits. Audits will verify that the leafy greens were produced under auditable conditions that meet production and harvest requirements as outlined in the GAPs adopted by the administrative committee. All signatory handlers, manufacturers, or other post-production and harvest operations will be subject to audits verifying that they operate under auditable conditions that meet requirements outlined in the GHPs, GMPs, or good management practices adopted by the administrative committee.

Each handler will maintain records of all receipts and acquisitions of leafy green products, and all documentation relating to the verification audit reports. These records will be maintained for at least two years after the crop year of their applicability, and must be sufficient to document and substantiate handler compliance. To verify compliance with the requirements of the agreement, authorized agents or employees of the administrative committee and the USDA will have access to the premises and producer audit verification records of any signatory at any time during reasonable business hours.

Compliance with the provisions of the NLGMA will be overseen by the administrative committee and any staff hired or appointed to undertake this responsibility. In conjunction with the USDA, the committee will establish a policy for dealing with situations where signatory handlers commit acts that do not conform to the provisions of the agreement. A signatory will be subject to withdrawal of audit services, lose the privilege of the use of the official certification mark, and/or subject to misbranding or trademark violations, if the signatory:

- Produces or acquires leafy green products without an inspection service verification audit.
- Fails to obtain audit verification on the production, handling or manufacturing of leafy green products and ships such products for human consumption.
- Ships or places into the current of commerce leafy green products that fail to meet requirements under this agreement for human consumption.
- Commingles leafy green vegetables that fail to meet the requirements of this agreement with leafy green vegetables verified to meet the requirements of the agreement and ships the commingled lot for human consumption.
- Fails to maintain and provide access to records.
- Or otherwise violates any provision of the marketing agreement.

Any lot or portion of leafy green vegetables that is deemed a threat to public health by inspection service staff during the course of a verification audit will be reported by the USDA to the FDA and the brands and name of signatory entity listed to make entities in violation public.