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Testimony of David Runsten, Director of Policy and Programs, Community Alliance with Family Farmers, Davis, California, at the USDA hearing on the proposed National Leafy Green Marketing Agreement, Monterey, California

The Community Alliance with Family Farmers (CAFF) is a California non-profit membership organization composed of family farmers and other citizens that promotes family farming, sustainability, and local food systems. CAFF counts as members approximately 1,000 family farmers in California.

### **Impact on Diverse Farms**

CAFF does not agree with the approach of the produce industry that food safety should be dealt with on a crop specific basis. This proposed National Leafy Green Marketing Agreement (NLGMA) starts us down the road of one set of rules for greens, another for melons, another for tomatoes, and so on, all overseen by different groups making their own rules and determinations of risk. Our members include dozens of farmers who grow leafy greens, melons, tomatoes, and other crops on their farms. Some of the more diversified farms that supply Community Supported Agriculture (CSA) networks with weekly boxes grow as many as 100 different crops in the course of a year. Any such farm that is not quite small will also sell wholesale and so potentially become subject to multiple rules and auditing requirements—possibly contradictory—promulgated by agreements like this one, creating an unfair burden on such farms. This would be particularly burdensome for small farms that include animal production or that try to integrate farming practices with protective environmental or ecological practices, due to the biases against such practices that have developed among food safety professionals and their metrics. Furthermore, many of the small vegetable growers in California are immigrants and minorities who often market to their own communities but who also want to sell to wholesale markets. Asian immigrants in the Central Valley growing for the San Francisco and Los Angeles Asian markets are an example. Creating onerous and costly requirements is the wrong way to help them succeed as farmers or to ensure the safety of their food.<sup>1</sup>

### **Focus on Fresh-Cut**

CAFF has always supported an effort to develop a set of basic food safety practices—such as monitoring prior land use and activities on adjacent land, periodically testing water sources, or having farm workers wash their hands after using the toilet—that would be applicable to all farms growing produce. We believe that specialized rules to control risks for special markets—such as the fresh-cut processing industry—should be confined to farms producing for those markets. In reading this proposal for a National LGMA it is apparent that it is written to serve the

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<sup>1</sup> Shermain Hardesty from UC Davis will offer testimony on the costs of compliance with CA LGMA.

interests of the fresh-cut processing industry. As we have suggested repeatedly over the last few years, the scope of any agreement like this should be limited to that industry.

Back in 2007, CAFF requested data through the Freedom of Information Act from the Food and Drug Administration on incidents of *E. coli* O157:H7 in leafy greens that had led to multiple illnesses or deaths. They provided us with information from 1993 onwards. They told us that until late 1999, the agency did not distinguish between fresh-cut leafy greens and whole head or bunched leafy greens. We constructed a table of these incidents from the FDA data (attached). We continued trying to complete and update this table through the fall of 2008, using information from a variety of sources as investigations and lawsuits proceeded. I have attached this table here. What the table shows is that since late 1999, all of the *E. coli* O157:H7 outbreaks related to spinach and lettuce that created serious illness were linked to fresh-cut products in sealed bags.<sup>2</sup>

The fresh-cut industry has a food safety problem and they are anxious to keep pathogens out of their bags. Any potential risk is unacceptable to them. I say let them do whatever they think they need to do, as long as they respect the environment. But they should not be able to force every farmer in America who grows cabbage or lettuce to have to abide by the same metrics. As the table also shows, the sources of the outbreaks have been concentrated in certain places, and focusing on those defined geographical areas would make more sense than involving the whole country.<sup>3</sup>

I have also attached an additional table of other incidents with greens and herbs that the FDA provided in 2007. Though there was an incident with illnesses from salmonella on lettuce in 2004, and people often use such an incident to argue that all leafy greens are dangerous, in fact most recalls are not associated with illness, many are from false positive tests at some distant point weeks after the product was shipped, and contamination could have occurred at any point in the marketing chain.

“Leafy greens” are not a crop, not a species, not even a group of species in one genera. They are a marketing category defined only by the imagination of processors who include various products in processed salad bags or mixes, whether called spring mixes or other labels. Because of a broader definition of initial species in the proposed National Agreement, the “leafy greens” definition has metastasized beyond what was covered in the state Agreements to a longer and

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<sup>2</sup> The FDA itself recently was quoted as follows: “We have a record of fourteen outbreaks from 2002 [to today] linked to fresh-cut leafy greens,” says FDA press officer Stephanie Kisnek. “They were all in sealed bags.” Elly Hopper, “Of Mice and Men,” *Terrain*, Spring 2009. Fourteen is two more than I have in this table, probably because the table has not been updated since 2008.

<sup>3</sup> We have said this over and over since 2006 and I attach to this testimony Dan Cohen’s report on the subject that we commissioned, which includes a discussion of the structure of the fresh-cut industry.. Daniel Cohen, *The History, Politics and Perils of the Current Food Safety Controversy: CAFF Guide to Proposed Food Safety Regulations*, Davis, January 2008.

still open-ended list. It appears that any farmers growing any of the undefined species that could be included in some future salad mix, or called a “leafy green,” may find themselves subject to the Agreement’s metrics—even if they are not growing for fresh-cut processing. Mustards, for example, which were specifically excluded from the California LGMA, could easily be included in the federal Agreement. Cabbages are specifically included, presumably including farmers who grow for processing into sauerkraut or for Asian-American markets. It looks like any crop with a potential for fresh-cut use could come under the authority of this Agreement, in fact this is exactly what Mr. Giclas said in his testimony. This seems unacceptable unless the Agreement is limited to “leafy greens” for the purpose of fresh-cut use.

If the National LGMA were just for fresh-cut processing, then all of the leafy greens growers who do not produce for this market would immediately fall outside of the metrics that will inevitably be dictated by the processors. This would remove much of the opposition to a National LGMA. The processing industry has resisted this arrangement, since they do not want their processed product singled out. They also like having all leafy greens grown under similar food safety metrics, allowing them to buy or reject fields depending on market demand. This is also convenient for the largest growers. A voluntary National Fresh-Cut Leafy Greens Agreement could be designed to have uniform metrics for all production—fresh and processed—by the growers involved in the processing industry.

### **Concerns about On-Farm Metrics**

Although a set of on-farm metrics is not a part of the proposal, should this NLGMA be approved, those metrics will have the greatest impact on farmers who have not been a part of the core leafy greens processing industry. CAFF has three main concerns about such metrics:

1. The proposed governance structure is heavily weighted toward processors and handlers. The board in this proposal is called the “National Leafy Green Vegetable Administrative Committee” and its membership is defined in Section 970.40. Out of 23 members there are: 13 handlers (four of these must be processors), 6 farmers (a majority of which must be solely producers so 2 could be producer/handlers), and a retail representative, a foodservice representative, a (US) public member, and an (US) importer. Farmers, who have been the most impacted by metrics in the past, have a maximum of 6 out of 23 seats on the board and a minimum of 4 out of 23, if 2 farmer-handlers are seated. Handlers have an absolute majority under any circumstances (13 of 23).

Further increasing handler control “Once selected and appointed by the Secretary, the producer and handler members shall nominate the retail, foodservice, importer and public members and alternate members, subject to final selection and appointment by the Secretary” (Section 970.43 Nominations). In this process the handlers have a supermajority of at least 13 out of 19 in the preliminary board (possibly 15 of 19). If there were to be a difference between handler interests

and farmer interests, the handlers have complete control. The handlers also control the choice of the four at-large representatives. Effectively they have control of at least 17 out of 23 seats, possibly 19 out of 23 seats. Having the board, rather than the Secretary, nominate and choose the at-large representatives—including the sole “public member” who could conceivably represent consumer interests—means that these members could represent handler interests more than their alleged interest groups. This is very much a handler and handler-manufacturer controlled administrative structure and is not appropriate to an Agreement that could affect so many farmers.

The same control issues apply to the membership of the crucial Technical Review Board, which designs audit metrics and may have other tasks. Every zone representative (there are 5 zones) and zone-based food safety scientist (only from land grant colleges) are chosen by the committee’s producers and handlers from each zone. (section 970.45). However, within each zone, there is at least a 2/3 majority of handlers. Hence handlers control the choice of all 10 elected members of the Technical Review Board (10 of the seats). The remaining 4 members are chosen by the Secretary, the EPA administrator, and the FDA Commissioner (note that this adds up to 14, not the stated 13 members). If there are conflicts between handler objectives and the objectives represented by the public agencies, handler interests have at least a 70% majority on the Technical Review Board. Again, from our point of view this is not sufficiently balanced to dispel the notion that the USDA is authorizing collusion among non-farm companies.

Growers who are not also handlers have been disempowered by the California LGMA and by the buyers around the food safety issue. Growers’ concerns about excessive water testing, capricious auditors, or false-positive pathogen tests have gone largely unaddressed. CAFF was specifically asked to speak out by a number of Salinas-area growers because they feared that in speaking publicly they would lose their markets. The USDA should not underestimate the degree of control being exercised over these growers and should seek to balance interests if it goes ahead with a marketing agreement. Make growers real partners in the design of the Agreement and give them more than token representation.

2. Though the proposal holds out the possibility that the metrics might vary—“science-based, scalable, and regionally appropriate”—we are skeptical of this possibility because we have not seen this in practice, whether from the FDA, the California LGMA, or private buyers. Mr. Giclas in his testimony said that they embraced diversity in the metrics but also wanted one national set of food safety rules; these seem to us to be contradictory goals. It is never a good idea for one segment of an industry—in this case fresh-cut handlers—to have complete authority over determining what the “science” is, as well as the required response measures, especially since definitive scientific results are often lacking in the area of food safety. The scientific panel should be truly independent and reviewed for conflicts of interest, such as conducting research with funds from the industry. In terms of scalability, we do not understand how paperwork requirements or the cost of water testing or other basic expenses associated with on-farm metrics

might be scalable. But if this marketing agreement is approved, then devising basic metrics for less risky situations would be crucial. And who would determine what is risky? Many of the buyers have stated that they have zero risk tolerance, which is absurd but which seems to drive ever more extreme metrics.

3. Finally, one of the most distressing aspects of the California LGMA was its legitimization of “clean fields” metrics for farmers. Not only did these metrics encourage the buyers’ more extreme “super metrics,” but they also had a spillover effect in other crops, even those not eaten raw, such as potatoes, artichokes, and Brussels sprouts. After 20 years of planting hedgerows and other conservation measures on farms, CAFF finds itself in direct conflict with food safety auditors who say that “food safety trumps the environment.” Anyone who doubts that there are still super metrics being used need only drive down the Salinas Valley looking at the rodent traps, which are not part of the LGMA. If the USDA goes ahead with this Agreement, we believe that the use of the official certification mark as described in section 970.44 should be licensed only to signatories who actually utilize the USDA auditors and the Agreement’s metrics and not to firms that pretend that their super metrics are somehow better or safer. This is the only way that a National LGMA could reign in these environmentally destructive super metrics promulgated by unlicensed private auditing companies.

## **Conclusion**

CAFF has argued for some time that the California LGMA and the proposed National LGMA are not good ideas because they use the Marketing Acts for purposes for which they were never intended and because the boards overseeing marketing agreements and orders are inevitably skewed towards the largest firms. One need only look at the Almond Board and its rule requiring fumigation of all almonds, something prompted by salmonella incidents at the largest almond producer. Many of the smallest almond growers didn’t even learn of the rule until it was finalized, and some of the organic growers who were selling raw almonds have seen their markets destroyed.

A bigger problem with this whole approach is the focus on “tomatoes” or “leafy greens” or “almonds” as if all producers of these crops were equally risky. Metrics that might be appropriate to the large commercial operations with entire fields of one crop destined to be processed and to sit in a bag for weeks are inappropriate for smaller, more diversified producers who are supplying a local wholesale market. Moreover, the smaller producers have not been identified as having the same degree of food safety problems as the fresh-cut industry. As Bill Marler, the food safety attorney, has said, “In 16 years of handling nearly every major food-borne illness outbreak in America, I can tell you I’ve never had a case where it’s been linked to a farmer’s market.”<sup>4</sup> If the small and local producers are doing something right why aren’t we trying to

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<sup>4</sup> Carolyn Lochhead, “Paying the price to keep food safe,” *San Francisco Chronicle*, July 13, 2009, p. 1.

learn from them? That is the irony of this discussion, because the food safety problems in leafy greens have been concentrated among the very largest operations.