

National Leafy Greens Marketing Agreement Hearings
Monterey, CA
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My name is Joe Pezzini

I am the Chief Operating Officer of Ocean Mist Farms.

Ocean Mist Farms is an 85 year old family owned grower-packer-shipper of vegetables in California and Arizona. My company farms approximately 10,000 acres of lettuce and leafy greens.

We have been members of the California Leafy Greens Marketing Agreement since its inception three years ago and members of the Arizona Leafy Greens Marketing Agreement since its inception two years ago.

I am also the current chairman of the advisory board of the California LGMA.

My testimony is in support of the National Leafy Greens Marketing Agreement.

Three years ago last week, the US Food and Drug Administration issued an unprecedented "do not eat" advisory related to spinach. The FDA had been tracking a national outbreak of E. coli 0157:H7, an outbreak that eventually sickened over 200 people and caused three deaths. In the wake of the FDA advisory, sales of spinach plummeted, and the entire leafy greens industry across the country was dramatically and negatively affected.

As the spinach crisis unfolded, the leafy green industry in California realized that we had to do something to raise the bar for food safety. The result was the creation of the California Leafy Green Products Handler Marketing Agreement, an organization operating with oversight from the California Department of Food and Agriculture. Almost all handlers of spinach, lettuce and other leafy green products have been members of California's LGMA for the past three years, and the organization has helped the industry make sure that there has been no repeat of the 2006 outbreak.

A similar program in Arizona quickly followed the creation of the California LGMA. As a result roughly 90 percent of the leafy greens grown in the country could be produced under the auspices of such a program. Now, a group of agricultural groups from across the country has collectively approached the United State Department of Agriculture to propose the creation of a National Leafy Greens Marketing Agreement.

The purposes of this marketing agreement are:

- To provide a mechanism to enable fresh leafy green handlers to organize;
- To enhance the quality of fresh leafy green vegetable products available in the marketplace through the application of good agricultural production and handling

- practices;
- To implement a uniform, auditable, science-based food quality enhancement program;
 - To provide for USDA validation and verification of program compliance;
 - To foster greater collaboration with local, state and federal regulators;
 - To improve consumer confidence in fresh leafy greens.
 - And, most importantly, to protect public health.

The proposed production area for the national marketing agreement includes the entire United States since leafy greens are grown in all 50 of the United States. While a particular type of leafy green may only be grown in a subset of states, the openness and diversity of the U.S. agricultural market ensures that handlers, processors, retailers and ultimately consumers will purchase fresh leafy greens from multiple growers, handlers and processing facilities from many states. Because of the diverse and open market, fresh leafy greens may be produced in one state, processed in another state, and ultimately shipped to many states for consumption.

Members of the NLGMA will be companies that handle leafy greens that commit themselves to sell only those fresh leafy green products that are grown in compliance with the good agricultural, handling, and manufacturing practices (GAPs, GHPs and GMPs) defined in the agreement. It is important to note that these best practices will be determined by the administrative committee whose members will be appointed by the USDA Secretary if the NLGMA is implemented. Members will subject themselves to, and pay for, mandatory audits and verification processes, ensuring every possible preventative step has been taken to make certain that leafy greens put into commerce and ultimately consumed worldwide have been grown and handled according to the best available scientific data.

The industry believes that a national marketing agreement promulgated by the USDA is the best available instrument for protecting the quality and hence, the marketability of fresh leafy green vegetables by promoting the use of scientifically-based GAPs, GHPs and GMPs in a standardized manner to reduce physical, chemical, and microbial contamination events. The fresh leafy green industry believes that the USDA is the most appropriate federal agency to oversee a national food quality enhancement program because it has significant expertise and experience in the design and delivery of programs that involve inspections for product quality and verification of production practices. At industry's request, USDA has incorporated food safety related elements into several of its programs, and has established programs such as the Qualified Through Verification and the GAP&GHP Audit Verification Program to provide independent verification that growers and handlers are following Food and Drug Administration guidance and commodity specific best practices. Both the leafy green industry and the USDA have a good working relationship with the FDA on food quality programs that include food safety issues.

The Agricultural Marketing Service of the USDA offers the "Fresh Produce Audit Verification Program," a voluntary, audit-based program for the fresh produce industry based on the *Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables* and the California and Arizona Leafy Green Marketing Agreements. Another example of interagency cooperation in ensuring safety of our nation's food supply is the co-sponsorship of the National Advisory Committee on Microbiological Criteria for Foods by the Food

Safety and Inspection Service of the USDA and the FDA along with our federal agencies such as the Centers for Disease Control and Prevention.¹ The FDA has been supportive of the utilization of marketing agreements and orders to address food safety issues and has worked with the fruit and vegetable industry and the USDA in developing and implementing best practices included in marketing agreements/orders. In his testimony before the U.S. House of Representatives' Subcommittees on Domestic Policy and Oversight and Government Reform on July 29, 2009, Michael Taylor, senior advisor to the Commissioner of the FDA said the following about the FDA's view of marketing agreements and orders to enhance produce safety:

You asked FDA to discuss the Agency's regulation of food safety provisions in agriculture marketing agreements. Although FDA has not had a direct role in creating such agreements, we do work collaboratively with our colleagues at AMS, which is the federal agency responsible for marketing agreements and orders. When AMS has incorporated food safety standards into its marketing orders, FDA has provided technical assistance to AMS on the appropriate safety practices and would provide such assistance for marketing agreements as well. It is our shared goal that any AMS safety standards would incorporate the applicable FDA regulations or guidance documents. I will defer to my colleague from AMS to describe these programs in more detail.

As FDA moves forward to establish science-based standards to improve the safety of produce, the Agency must have a plan to help ensure high rates of adoption. Given the number of producers, FDA recognizes the importance of leveraging its resources with other federal, state, and local agencies to help achieve greater compliance. In particular, FDA plans to continue to work closely with USDA, which has a great deal of experience in agricultural production and which has a significant workforce, including through its contracts with states. We believe that AMS, by incorporating FDA's produce safety standards in produce-related marketing agreements or orders, can help ensure high rates of compliance with FDA's standards.²

The USDA is currently administering marketing orders for almonds and pistachios that involve food safety-related requirements. In September 2007, the USDA implemented the requirement for pasteurization of almonds as an amendment to Marketing Order No. 981 in order to reduce bacterial contamination after two *Salmonella* outbreaks in 2001 and 2004. The main issue for the marketing order for California pistachios that went into effect in February 2005 was aflatoxin and the economic consequences of a contamination event. The marketing order for pistachios mandated testing for aflatoxin to improve food safety.

Best practices that address the safety of growing and handling fresh leafy greens are intrinsically linked to the quality and marketability of leafy greens. Good agricultural, handling and manufacturing practices that provide assurances of safety also improve quality. For example in addition to human pathogens, pests and plant pathogens cause damage to produce. Water and soil amendments may serve as sources of pests and plant pathogens. Use of potable water for cooling, hydrating and rinsing foliar applications reduces microbial-related damage such as bacterial soft-rots as does rapid cooling after harvest, and storage at

¹ USDA/FSIS, "National Advisory Committee on Microbiological Criteria for Foods."

http://www.fsis.usda.gov/About_FSIS/NACMCF_Background/index.asp

² <http://www.fda.gov/NewsEvents/Testimony/ucm174793.htm>

proper temperatures.³ The composting metrics for soil amendments in the California Leafy Green Products Handler Marketing Agreement (LGMA) would eliminate plant pathogens as well as human pathogens helping to reduce the incidence of plant disease. USDA scientists from the ARS Soil Microbial Systems Laboratory write that “compost, when carefully produced so as to achieve time-temperature standards, is not only free of phytopathogens, it is also an aid in control of seedling and root diseases, including those caused by various nematodes and pests.”⁴

Implementing best practices is intrinsically linked to competitiveness and market share. Proof of use of best practices is essential to the marketability of fresh produce. Growers that demonstrate use of GAPs, GHPs, and GMPs will undoubtedly have better marketing opportunities than those that cannot demonstrate that they have a food safety and quality management program in place.

A national marketing agreement is critical to the industry for the following reasons:

1) The marketing agreement is collective action for the good of the public. Contamination of food endangers the health of consumers. At worst, contaminated food can cause illness and even death. The Economic Research Services of the USDA estimated the annual cost of foodborne illness due to *E. coli* O157 to be \$370.0 million with \$334.8 million attributable to premature death and \$30.2 million and \$5.0 million due to medical costs and lost productivity respectively.⁵ Of lesser significance, but with consequences to public health nonetheless, food contamination damages consumer trust in the affected food product. When the affected food product is leafy green produce, reduced consumption means that consumers are losing out on the benefits of this healthy, nutritious food in their diet (more on consumer confidence in Section 2.3 and 3.5.1).

2) The marketing agreement is collective action for the good of the industry. Every contamination problem, whether real or perceived, has a detrimental financial impact on the growers and handlers of the affected food product. Rarely is the public’s response to a contamination event brand specific. Consumer’s reaction to a food safety alert is swift and decisive even before the scope and origin of the problem may be known. Consumers immediately adjust their buying patterns to reduce any potential exposure to an affected product.⁶

The economic impact of the *E. coli* outbreak in spinach on the entire leafy green industry is a recent example of this phenomenon. Estimated losses as a result of the voluntary recall include:

- According to a 2007 report compiled by the Center for North American Studies at Texas A&M University for the Texas Vegetable Association and the Texas Spinach Producers Board, the 2006 spinach *E. coli* outbreak reduced Texas sales

3 M. Cantwell and T. Solow. “Lettuce: Crisphead or Iceberg – Recommendations for maintaining postharvest quality.” UC Davis, 2009

4 Millner, P and Ringer, C. “Effects of composts on suppression of soil-borne plant diseases.” USDA-ARS-Soil Microbial Systems Laboratory, Presented at the 1995 Annual International Research Conference on Methyl Bromide Alternatives and Emissions Reductions.

5 Frenzen, PD. “An Online Cost Calculator for Estimating the Economic Cost of Illness Due to Shiga Toxin-Producing *E. coli* (STEC) O157 Infections.” USDA/ERS, Economic Information Bulletin Number 28. September 2007.

6 Palma et al, 2009. “Potential Impacts of Food Borne Ill Incidence on Market Movements and Prices of Fresh Produce in the U.S.” Presented at the Southern Agricultural Economics Association Annual Meeting, Atlanta, GA.

of fresh and processed spinach by 20 percent, and prices for fresh markets spinach fell 25 percent.⁷

- United Fresh Produce Association estimated losses to processors at between \$50-\$100 million, which does not include losses to growers or retailers.⁸
- According to Pacific International Marketing located in Salinas, CA, sales of salad mix fell approximately 50% immediately after the September 2006 outbreak and had only recovered 25% of the lost market six months later.⁶
- Industry representatives estimated economic losses to the industry ranged from \$37 million to \$74 million.⁹
- During the period January 24-February 24, 2007, five months after the *E. coli* outbreak, the value of retail sales of bagged spinach was still down 27 percent from the same period a year ago... Sales of bagged salads with spinach show similar trends. Sales of bagged salads without spinach were down 5 percent...¹⁰

The ability to trace a product during all stages of production, processing, and distribution is a key factor in reducing the economic impact of a contamination event. Traceability allows for more efficient, cost effective recalls if a contamination event was to occur. The NLGMA will require signatory handlers of the agreement to have in place systems and procedures that will allow them to track their products from supplier to customer. Decreasing contamination events will lead to a consistency in consumer demand for leafy green products. Long-term effects of a contamination event were demonstrated in the drastically reduced consumption of pistachios in the European Union after high levels of aflatoxin were found in September 1997. Aggregate pistachio imports into the EU were down 40 percent the following year. Imports to Germany demonstrated a protracted decrease in pistachio consumption for the next three years. In 1998 pistachio imports fell 56 percent from the average imports of the preceding five years; in 1999 imports were down 38 percent from pre-event levels; and in 2000 imports were again down 58 percent (there were several other reports of high levels of aflatoxin in pistachios that year).¹¹

3) Buyers, especially large buyers, are developing their own food safety requirements for producers and handlers. These requirements may differ from buyer to buyer and implementation of these varied requirements is costly to the producer/handler. A national agreement adopted by the majority of the industry would greatly increase efficiency and significantly reduce costs related to multiple buyer-specific requirements.

4) State level marketing agreements can only regulate the handlers in that particular state and so are limited in their effectiveness for the industry as a whole. For example the California LGMA cannot regulate lettuce or leafy greens grown in any other state outside of California. It does not have the authority to send inspectors to audit growers in another state.

7 Rosson, P., "An initial assessment of the economic impacts of *E. coli* on the Texas Spinach Industry." April 12, 2007;

8 California State Senate Republican Caucus. "Briefing Report: Leafy Green Blues – *E. coli* in California" March 15, 2007

9 Sahmes, L., "Federal Oversight of Food Safety. FDA's Food Protection Plan Proposes Positive First Steps, but Capacity to Carry Them Out is Critical." January 2008.

10 Calvin L. "Outbreak linked to spinach forces reassessment of food safety practices." AmberWaves, ERS, USDA (June 2007).

11 Alston J, et al., "Demand Enhancement through Food-Safety Regulation: A Case Study of the Marketing Order for California Pistachios," Chapter 14 in *Commodity Promotion Programs in California: Economic Evaluation and Legal Issues*; R. Peter Lang Publishing, 2005.

5) It is critical and timely for the industry to demonstrate the ability to apply standardized best practices and preventative controls to improve and ensure the safety of their product in light of the current regulatory climate as illustrated in the following statement by Michael Taylor, senior advisor to the Commissioner of the FDA in his testimony before the U.S. House of Representatives' Subcommittees on Domestic Policy and Oversight and Government Reform on July 29, 2009:

In the short term, FDA's approach is to issue commodity-specific guidance for industry on the measures they can implement to prevent or minimize microbial hazards of fresh produce. To improve compliance with such measures, FDA also plans to work with USDA's Agricultural Marketing Service (AMS) to include these recommended standards in their marketing agreements and orders when appropriate. Our long-term plan is to set enforceable produce safety standards through a regulation... As the federal regulatory agency responsible for ensuring produce safety, FDA has begun work on a regulation to establish enforceable standards for produce safety under our current authorities. The regulation will be based on the prevention-oriented public health principles embraced by the Working Group. It will capitalize on what we have learned over the past decade, since we published our "good agricultural practices" guidelines in 1998. **The regulation also will utilize the progress industry has made in establishing quantitative metrics for the control of some of the factors affecting produce safety by incorporating appropriate measures of success.** These metrics, or measures, will improve our ability to verify that certain measures or practices are being carried out and are effective.

Together with its federal and state partners, FDA will work to plan and implement an inspection and enforcement program to ensure high rates of compliance with the produce safety regulation. If Congress passes food safety legislation that includes explicit authority to require preventive controls, FDA would modify and update this rulemaking in light of the new authority.

The regulation will include the following key elements:

- clear standards for implementation of modern preventive controls by all participants in the fresh produce supply chain, from farm to market. These performance-oriented standards will recognize that operators must tailor their preventive controls to the particular hazards and conditions affecting their operations, but the regulation will ensure they do so in accordance with modern food safety principles;
- product-specific standards and guidance, where appropriate, for high-risk commodities;
- quantitative measures of the effectiveness of control systems, to the extent they are feasible and valid; and
- microbial testing protocols to verify the effectiveness of preventive controls.

The NLGMA proponent group includes industry trade associations such as Arizona Farm Bureau Federation, California Farm Bureau Federation, the California Leafy Green Handler Marketing Agreement, Georgia Farm Bureau Federation, Georgia Fruit and Vegetable

Growers Association, Grower Shipper Association of Central California, Imperial Valley Vegetable Growers Association, the Leafy Greens Council, Produce Marketing Association, Texas Vegetable Association, United Fresh Produce Association, and Western Growers.

In order to ensure the quality of fresh leafy greens by protecting them from potential contamination, the provisions of the NLGMA will include the scientifically-based best practices for production and handling. A national marketing agreement would allow for verification of the use of best practices by government audit.

And most importantly it will protect public health by verifying the use of best practices, every bite, every time.

Thank you and I would be happy to answer any questions about my testimony.