

October 20, 2009

**Agricultural Marketing Service**

**7 CFR Part 970**

**Leafy Green Vegetables Handled in the United States: Hearing on Proposed Marketing Agreement No. 970**

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Thank you for the opportunity to represent the Syracuse Real Food Cooperative Market at this hearing in our formal opposition to the Agricultural Marketing Service Proposed Marketing Agreement No. 970; heretofore referred to as the Agreement.

In summary, we do not support the Agreement for the following reasons:

**There is no need for a marketing agreement for leafy green vegetables. As stated in the Proposed Marketing Agreement.** No. 970 these public hearings are held for the purposes of determining whether there is a need for a marketing agreement for leafy green vegetables. We propose that there is not. While food safety is an important issue, the AMS marketing agreement is an ineffective solution. Under §970.49, the Leafy Green Vegetable Administrative Committee has the power to administer the Agreement, make rules and regulations to effectuate the terms and provisions of the Agreement and, among other powers, adopt audit metrics to administer the terms of the Agreement. The USDA Agricultural Marketing Service is a marketing agency, not an agent or advocate for food safety. A marketing service is not the appropriate authority to prescribe, administer, or regulate agricultural safety regulation. Nor is a marketing agreement the appropriate means for national regulation of leafy green vegetable food safety. Food safety regulation should be created by food safety experts, adapted to specific operations, and regulated by organizations who are clear advocates for the consumer.

The Agreement is funded by assessments to the signatory handlers as stated in §970.56. §970.40 of the Agreement allocates members of the National Leafy Green Vegetable Administrative Committee. Of twenty-three committee members, thirteen are food handlers; six are producers; one is a retail representative from the production area; one is a foodservice representative from the production area; one is a public member from the production area; and one is an importer from the production area. Notably, there are no allocated memberships held by a food safety expert. This Agreement creates a system in which the very corporations being regulated are given power to fund, create, administer, audit, and regulate their own safety standards.

**The agreement takes accountability away from agricultural producers, and places power into the hands of handlers.** §970.35 of the Agreement states that a purpose of the

proposed Agreement is to ‘implement a uniform, auditable, science-based food quality verification program’. As previously stated, the Committee is not represented by any food safety experts. Therefore, it is impossible to assume that any quality verification program would be science-based. Our consumers trust their farmers and expect them to utilize their knowledge, skills and applied experience to their farming practices. Under §970.49 of this Agreement however, the Leafy Green Vegetable Administrative Committee has the power to administer the Agreement, make rules and regulations to effectuate the terms and provisions of the Agreement and, among other powers, adopt audit metrics to administer the terms of the Agreement. The Committee which would be granted these powers is overwhelmingly comprised of food handlers, 56.5%. Only 26% of allocated Committee positions are held by producers. We take issue against this application of uniform standards because of its propensity to limit the farmers, growers and producers in their ability to explore and develop safe and beneficial farming practices; such as identified by Franz et al (2005), Effects of cattle feeding regimen and Soil Management Type on the Fate of Escherichia Coli 0157:H7 and Salmonella enterica Serovar Typhimurium in Manure, Manure-Amended Soil, and Lettuce, *Applied and Environmental Microbiology*, Vol. 71, p. 6165-6174. For this study, researchers in the Netherlands tested the survival of E. coli 0157:H7 added to manure from grass-fed cows and those fed a mixture of grass and corn silage. This manure was added to organic and conventional soils. E. coli levels declined fastest in the manure from grass-fed cows that had been mixed with organic soil; the slowest rate of decline was in manure from cows fed the grass/corn silage mixture that had been mixed with conventional soil. the researchers found that cattle diet and soil management are important factors affecting the survival of human pathogens in the environment.

**We find no economic data to support a need to improve consumer confidence in leafy green vegetables and their products in the marketplace.** While Syracuse Real Food Cooperative Market did see a drop in percentage of leafy green vegetable sales in 2007, sales have since returned to, and exceeded, the level of sales sustained prior to the e-coli spinach outbreak in September, 2006. Produce sales grew 2.4% in 2006, 10.71% in 2007 and 9.93% in 2008. Syracuse Real Food Co-op’s produce department is projected to exceed these sales growth numbers in 2009. Leafy green vegetables (as currently defined in the Agreement) consistently perform in top 5<sup>th</sup> percentile of overall store sales.

Food safety regulations developed by food safety experts, rather than industry and marketing experts, would do far more to address safety issues and would also be far more effective in addressing consumer concerns about food safety.

**Creating a marketing brand that certifies safety standards will have a negative effect on non certified products, without any scientific assurance of a safer product for the certified products.** §970.69 states that the use of a U.S. registered certification mark will be granted to the AMS Leafy Green Vegetable Administrative Committee. Businesses that choose not to engage with signatories to the Agreement would not be eligible to use the certification mark. Potential issues with this system include the inadvertent creation of a competitive label based on safety standards created by the Committee. The growers, producers, handlers, retailers and other food based businesses

who choose not to work with signatory handlers to the Agreement would be negatively affected by this competitive edge.

Signatories to the Agreement are limited to food handlers as defined by §970.12. Under this definition of handlers, small farmers who sell their own product are excluded from being signatories and therefore ineligible for leafy green certification.

We perceive the potential for an alarming negative trend in biodiversity under this Agreement. The Committee shall certify only leafy green vegetables as defined in §970.15. This causes a potentially serious threat to leafy green vegetables that do not fall under the Committee's definition and consideration. Items like mustard greens, collard greens, basil and other leafy herbs which do not qualify for the leafy green certification mark may become less desirable to the consumer, and therefore to the producer, resulting in lower production rates and possible eradication of the product.

Thank you for considering our opposition to this Agreement.