

**Testimony of Steve Warshawer to USDA NLGMA hearing
Yuma, Arizona, October 15, 2009**

Hello, My name is Steve Warshawer. I am a small farmer located near Santa Fe New Mexico where I raise mixed vegetables including fresh cut salad mix, poultry and eggs, and beef, replacement dairy heifers and bulls. I operate the oldest CSA (Community Supported Agriculture program in New Mexico, providing fresh produce to directly to about 200 families.

I am also employed by La Montanita Cooperative, a 4 store, consumer owned retail grocery chain that focuses on local, organic, and natural food. La Montanita serves the public and is owned by 16,000 families and individuals in Albuquerque, Santa FE, and Gallup. I am the Enterprise Facilitation Manager for the COOP's Distribution Center, which offers a full range of distribution services to our region's farmers, and to other wholesale and retail buyers of local food. I provide business services to farmers in our region designed to help them become and remain viable business. My job is to help farmers address internal and external barriers to their success. Regulatory factors and the ability of farmers of all scales to successfully comply with a conflicting web of regulations is looming ever larger as a barrier for success on our US farms of all scales.

I am also the Coordinator of the Food Safety Committee of the National Good Food Network, organized by the Wallace Center at Winrock International. The NGFN is a voluntary association of regional groups working to scale up the production and distribution of "Good Food", fresh, local and regional, through a values based value chain approach, linking growers, distributors, buyers, and other members of the value chain. The NGFN is a multi-stakeholder, multi-interest group body.

I also work closely with the staff of the National Organic Coalition and National Sustainable Agriculture Coalition. These groups are coordinating opposition to the NLGMA and will do so until a final disposition of the proponent's proposal is reached.

My assessment of the proposed NLGMA is made in the light of my personal experience, as a farmer, an advisor to farmers and marketer for and retailers locally in New Mexico, Colorado, and Arizona, and my coordination of Food Safety related discussion among groups including farmers, wholesalers, and NGO agricultural service providers all over the US.

I believe that proponents and opponents alike, at this and at the previous hearings, share the goal the goal of creating Food Safety solutions that reduce incidents of food borne illness and protect public health. I look to counter eroding public confidence in the safety of our food and its sources. I am personally committed to the effectiveness and viability of farms of all scales, with an emphasis on economically, environmentally and socially fair practices throughout the value chain. I do not support solutions that reduce consumer choice or favor any single segment of the farm and food production community at the expense of any other. We are a diverse nation of diverse farms and food sources and all systems that seek to improve performance in the US food system must respect that fact. I support multi-interest, stakeholder based processes as the mechanism by which to create solutions that are resilient, durable, and enduring.

As we work to preserve opportunity for US farms and processors of all scales and types, while restoring public confidence in the safety of the foods we offer, we are being challenged to do so in ways that are effective and fair to all.

Summary of concerns raised previously by opponents:

At the administrative hearings conducted over the last several weeks USDA/AMS has heard from dozens of witnesses representing thousands of farmers and tens of thousands of members of the general public expressing concerns about the NLGMA. The concerns of these witnesses have covered a consistent range of topics. I have not been able to attend other hearings. I have had the opportunity to read transcripts of several witnesses and to view several hours of video. I realize that this represents only a tiny fraction of what you heard thus far. I will list areas of concern that have been previously raised, and which are also of concern to me. I share concerns that the proposal as written is designed to place authority and control over the choices of many farms and many citizens in the hands of a small number of individuals with a definite and narrow interest.

I will offer further observations about the proposed NLGMA that reflect my belief that it is not an agreement that should be administered as a USDA/AMS marketing agreement. I will describe the relationship between the regulatory process and its purpose, and private Food Safety programs (called “schemes” among Global Food Safety players). I will offer my suggestion as to the correct role of an NLGMA as a private Food Safety program, not a public/private partnership. I will also identify an appropriate role for USDA/AMS in relation to a properly positioned NLGMA

Experience and impact of metrics, based on experience of Cal. and Az. LGMA:

Witnesses speaking in opposition to the proposed NLGMA have cited a broad range of adverse environmental impacts that have been increasingly evident during the tenure of the two existing state marketing agreements. While proponents have argued that the LGMA metrics are not the cause, it is safe to say that current LGMA metrics have not harmonized with environmental improvement mandates, or significantly influenced the chaotic situation that farmers must face as they attempt to resolve conflicting imperatives from different regulatory sources or buyer demands. Any proposed marketing agreement must coexist and be effective in the multi-regulatory agency, multi-stakeholder, multi-interest group climate in which farmers today operate if it is to be worthy of consideration for expansion to a national scope. It makes no sense to extend further a concept that has not shown effectiveness in this regard.

Opposition witnesses have pointed out in particular that the metrics of the existing LGMAs do not harmonize with the rules of the National Organic Program, a set of marketing rules that have been created to assure consistency: that processes defined as organic have been followed in the production of food labeled as organic. This issue is another harmonization failure of the current model.

Opposition witnesses have pointed out that the metrics developed under the existing LGMAs reflect a sterilization (example: bare earth buffer strips) and isolation (example: general wildlife exclusion) approach to on farm food safety that is impractical and too costly for small and diverse farm operations to afford. There is significant disagreement

over the effectiveness of the sterilization and isolation approach in relation to microbial food borne illness from leafy greens in general and fresh cut, ready to eat salads in particular. Burdening an entire range of farms with such metrics is counterproductive and regressive. The fact that such a set of metrics has been developed under the current LGMAs: one size fits all metrics based on the practices of larger, monocrop farms and discourages diversity, cannot be defended and surely cannot be allowed to become a template for an expanded national approach.

Proponents have argued that the proposed LGMA is voluntary, allowing small scale, and direct marketing producers to operate outside the agreement. This point is intended to allay the concerns raised above regarding affordability and practicality of NLGMA in relation to small, medium scale, and diverse producers. This approach would have the “unintended consequence” of excluding small scale and diverse farms from access to larger markets. As a small, CSA farmer who also packs and sells wholesale fresh cut salad mix, I object to this solution. If a marketing agreement is an appropriate regulatory intervention, then it must be workable for farms of all scales and crop and production methods and crop and livestock mixes. All farms are responsible to produce safe food.

Structure of proposed NLGMA:

Witnesses speaking in opposition to the proposed NLGMA have expressed concerns about its “zone design”: grouping climatically dissimilar locales into zones such as Alabama with Wisconsin and Vermont with Florida. The apparent goal of this design is to assure that locales dominated by larger handlers are in control of each zone. The fact that large handlers also operate in key production locales in each zone, and that multi-zone handlers will choose which zone to vote in seems designed so that the large handlers who initiated the Cal LGMA will retain operational control under the proposed NLGMA.

Opponents point out that there is only token involvement of consumers in the NLGMA power/administrative structure, and no representation of environmental groups on its boards. If in fact the goal of the NLGMA is to improve food safety while harmonizing with the existing climate of diverse regulatory imperatives, then it is critical that other stakeholders have an equal voice in the discussion. The current design seems intended to deny a meaningful voice to all but the largest handlers. (See analysis of Dave Runsten, CAFF, Monterey NLGMA hearing, Sept. 22-24)

Opponents have pointed out that the range of produce covered under the proposed agreement is inappropriately broad. The category of “fresh cut ready to eat” produce seems to be the locus of greatest risk for food borne illness, yet the proposed NLGMA reaches beyond that area to whole leafy greens, including produce that generally includes a kill step (such as cooking) in its preparation process. The unique handling, packing, and presentation processes associated with “fresh cut ready to eat” produce invite a totally different approach to process control for enhanced food safety than do other “leafy greens”. The proposed NLMGA goes beyond the realm of greatest risk, and seeks to impact activities in segments of the produce industry where is little or no indication that such intervention is needed. If such impact is necessary, then why limit impact to Leafy greens, why not a “Risky Produce Marketing Agreement?”

Opponents have pointed out that in practice the agreement is not truly voluntary. If it is successful, as proponents intend it to be, in attracting “a significant percentage” of support from handlers, it will become a de facto standard that all other handlers must follow. Handler approval of this program places establishment of on farm production metrics in their hands, forcing growers to follow standards created through a process in which they had no significant voice. This again shows need for a multi-stakeholder process in the creation of a marketing agreement if it is to be effective and fair. Input, through testimony at hearings such as this, and through public comment, into a process whose outcome will be controlled by a limited portion of a single segment of a multi-stakeholder value chain should not be confused with meaningful participation in such a process. I also bring to your attention the fact that I have been personally spoken to growers, handler/shippers and others that are unwilling to voice their concerns as part of the hearing process. This does not bode well for equitable involvement in the administration process if an agreement goes into effect. The design of the proposed NLGMA does not allow meaningful, ongoing participation of the stakeholders that it affects. Yet it will have a coercive effect on many of those stakeholders if it is successfully implemented.

Role of USDA/AMS marketing agreements:

Witnesses speaking in opposition to the proposed NLGMA have raised the question of whether USDA/AMS has the authority to implement a marketing agreement on Food Safety under the Agricultural Marketing Agreement Act of 1937. At best this is a remarkable stretch of the authority granted in 1937. It is reasonable to hypothesize that Food Safety was not an issue that was in the minds of legislators when the Act was passed. Clearly it is a reinterpretation of the intent of the act to address Food Safety within a Federal Marketing framework. If the proposal proceeds over the objections of enough interest groups, this authority could be challenged legally and/or attempts will be made to modernize the AMAA of 1937.

Opponents have pointed out that Food Safety is not a marketing matter. Everyone in the room can agree that the public expects, and demands that its food be as safe as possible. AMS is mandated to use marketing agreements to help industry address matters that effect the marketing of its products. Despite the fact that consumer loss of confidence does influence marketing, I believe that confidence has been lost due to ineffective, inadequate, and outdated modes of regulatory oversight, not due to marketing chaos within the industry. It is in no ones best interest to turn Food Safety into “brand identity” issue. I believe that the current LGMA's operating, alongside buyer “branding” of food safety through the imposition of private standards has exacerbated the trend toward “marketing” of food safety. The entry of a Federal Marketing agency into the realm of Food Safety sends the worst possible message. A regulatory, science based agency with expertise in Food Safety should be leading the governmental intervention, not a marketing agency. USDA/AMS is not a food safety agency.

One of the goals of the AMAA of 1937 was to establish and maintain orderly marketing conditions for agricultural commodities in interstate commerce while preserving consumer choice. It is important to consider both of these aspects of AMAA's purpose. On the one hand, order is best maintained by concentration of power and authority, such

as in monopolies. Marketing agreements are intended to give some of the price stability and supply chain orderliness of monopolies without subverting consumer choice in the market place. The proposed NLGMA fails the test of balance between these two objectives both by giving near monopolistic control of the market to a limited number of large handlers while tending toward metrics and practices that exclude popular types and scales of operations from access to the stated benefits of participation. The proposed NLGMA does not meet the criteria of an AMAA marketing agreement.

Role of Regulation:

I believe that opponents and proponents alike agree that public expectation that its food be as safe as possible is pre-competitive and non-competitive. It is a condition that the public reasonably believes should exist among all market players: all food should be as safe as possible. As with universal public expectations, such as with clean air and water, when this expectation is undermined the public turns to our government to assure through regulation and oversight that its expectations are met. As with other public health issues that we face, there is always a tension between industry self-regulation and government intervention. In general, regulatory intervention ensues or increases when self-regulation, in the eyes of a significant body of the public, has failed, and public well-being is threatened. This is the condition that we face now in regard to Food Safety. We can debate this point all we want, but the public believes that the Food Safety system is broken, and expects government regulation to repair it.

It is in this context that enormous legislative effort is being brought to bear to modernize our food safety regulations, and enforcement processes. Efforts are being made to assure that our regulations are science based, and identify and target areas of significant risk while recognizing diversity of scale, production practice, distribution method, and even climate. Significant attention is being given to assure that modernized regulatory processes do not inadvertently further past trends of consolidation of production into the hands of fewer and fewer business owners, and reverse recent trends in growth of local and regional food production and distribution, and the increased choices afforded to the public and to farmers that result from this growth.

The role of Marketing agreements and private “Schemes”:

I have no doubt that the intention of the proponents and of USDA/AMS in its willingness to advance the proponent proposal so far is driven by its belief that such a public/private partnership is both appropriate and useful to this process. I believe that it is actually the worst possible course to follow. The AMS Marketing Agreement process does not follow the duly established conventions for creation of regulations, which involve extensive and transparent process, significant investment in, and peer critique of underlying science, and ultimate accountability to the public through our legislative branch. Marketing agreements are not a substitute for regulation.

Along side effective regulation, marketing agreements and other private initiatives can enhance public confidence through the systematic implementation of best practices and continuous improvement of such practices. Based on current experience with “Supermetrics”, which are also examples of private Food Safety schemes, we can also

see the danger of the proliferation of these standards. Nothing in the experience of the current LGMA, nothing in the current proposal, and nothing in USDA/AMS authority or capacity gives anyone more than “hope” that a successfully implemented NLGMA will end the trend of private standard proliferation and the continued marketing of food as “safer” to the public.

What is missing today in the US produce (and especially the fresh cut ready to eat produce) industry is a fair competitive framework in which private schemes can be assessed and implemented. Such a framework has emerged globally, through the development of multi-stakeholder supported benchmarking capacity for the various schemes. Through benchmarking, standards are set for these schemes and “fair competition” ensues, as private scheme owners “sell” their programs on the basis of their potential to support continuous improvement and implementation of best practices at different levels of food production. Global benchmarking is carried out by GFSI, the Global Food Safety Initiative (GFSI), which is a multi-stakeholder collaboration of buyers, producers, and other interested organizations. McDonalds and Walmart and several other major US buyers are members of GFSI. GFSI measures the private schemes against globally agreed on standards designed to meet public expectations about pre-competitive conditions, and the competitive marketplace determines which schemes add value and which do not. The “guidance document” comprising these standards is reviewed and updated regularly, and a wide range of stakeholders work together to maintain a functional, current, and relevant set of standards. GFSI member buyers agree to accept any private scheme that is GFSI approved. Supermetrics are minimized.

See: www.mygfsi.com

If the US produce industry (or any segment within it) wants to enhance the process of rebuilding public confidence in the food system, and to do so in a way that is not anti-competitive, it would operate within the harmonized private food safety schemes. As Tom Nunes told us yesterday, we cannot make supermetrics go away. I especially believe that we will not eliminate them by creation of quasi-governmental alternatives.

Harmonizing private food safety schemes according to a process such as GFSI, (which is currently working to establish itself strongly in US) subjects the standards themselves to critical assessment as to whether they do in fact support continuous improvement across the full range of businesses represented in a given sector. GFSI as a multi-stakeholder body is an objective “third party” with credibility beyond that of USDA. The Leafy Greens industry does not need a government “stamp of approval” on its voluntary food safety regime. It needs BUYER approval. The most direct path to buyer approval is through multi-stakeholder collaboration within the GFSI framework. If the NLGMA seeks reduce to supermetrics and restore public confidence, it will best accomplish this through a framework such as GFSI.

If the proposed LGMA was a private Food Safety scheme, its “owners” would get together and develop their program, including metrics and standards. They would proactively engage other important parties in the process because of their interest in creating a successful “product”: the scheme itself. They would be judged successful if they met GFSI standards and received GFSI approval. This approval would assure

acceptance by a substantial and growing number of buyers, and in so doing replace those buyers in house auditing programs. From my point of view this is a more accurate reflection of the process of LGMA process to date, all the way back to its origin, with the exception that it has not been vetted to an entity whose stamp of approval would compel buyers to accept it in lieu of their own programs.

So I wonder, how good ARE the current metrics? What would we find if we submitted the Cal or Arizona LGMA to GFSI for evaluation? Perhaps that would give us a good idea where we stand with our current direction in marketing agreements.

A role for USDA in harmonization of food safety schemes:

It is important that industry respects, values, and trusts its relationship with USDA, who can support industry within the GFSI framework. One of the major complaints about implementation of GAPs, public and private, is the lack of consistency in auditing. USDA/AMS can and should be actively involved in auditor training and certification. USDA/AMS involvement in this process would enhance confidence on the part of all stakeholders, including the public.

There is also an increasing need for training in best practices all along the value chain. USDA is best equipped to deliver this training and should retain a leading role.

If USDA/AMS were to recognize that it is not doing industry or the public any favor by advancing the proponent proposal, it would remain an important and active player in the furthering of the goals of building public confidence and reducing the adverse impacts of supermetrics. The work we have done over the last few years, and especially in the last few weeks, would serve USDA and the industry well.

Conclusion:

In addition to the concerns of the many opponents of the proposed NLGMA I add for your consideration the idea that a USDA/AMS NLGMA, even if it is legal, even is it is implemented to the highest standards, is not what the industry or the public needs now in order to effect an increase in public confidence in Fresh cut ready to eat leafy greens and other high risk produce. Rather what is needed is the modernization of our regulatory processes according to science and risk based principles, with scalable implementation, along with privately developed food safety schemes to support the continuous improvement of best practices on the farm and all the way through processing and handling, shipping and retail delivery. It is imperative that these private schemes pass muster with GFSI and thus are acceptable to buyers of all scales and sizes. This is the most effective set of interventions that would support industry opportunity and consumer health and satisfaction.

If I could believe for a moment that a USDA/AMS NLGMA could fit into such a framework, I could consider supporting it, but even after yesterday's testimony I cannot.

I agree that the most important goals of the proposed NLGMA are to increase public confidence in the food supply and decrease buyer reliance on their own audit programs

while improving best practices on all farms. I can anticipate many objections to my suggestions some were addressed yesterday in comments made by proponent witnesses.

1. Although it was stated that consumers respect US Government auditors more than private, it was acknowledged that out of country equivalency works. USDA auditing of a program is not a prerequisite to public acceptance
2. It was pointed out that private auditors like Primus are fully respected by buyers and that to be successful NLGMA would have to achieve status on par with primus. The GFSI approach puts the strength of private auditing to work on behalf of industry and buyers.

If the proponents want a marketing agreement targeting food safety to add industry weight to the process of restoring public confidence in their products, they need to take the approach of fully developing their program through a transparent process that is accessible to and meaningfully inclusive for all of the stakeholders whose support they seek. The proponents need to complete their proposal by developing metrics that demonstrate their commitment to harmonizing the competing mandates of conservation, GAPs, local and regional food supplies, diverse farms, AND affordable safe food for all consumers, reflecting the strong and diverse agriculture that our public demands. They can then submit their program to be vetted against global food safety standards for such private programs. If the proposal is going to move forward it should do so in a different venue: that of a free, competitive marketplace under the guidance of global food safety standards for supporting public confidence and enhancing operations through best practices and continuous improvement. USDA/AMS should not develop a National Leafy Greens Marketing Agreement.