

**COMMENTS OF
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At

**United States Department of Agriculture
Public Hearing of the Proposed Leafy Green Marketing Agreement No. 970
Monterey, California
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Good morning. My name is Elisa Odabashian. I am the West Coast Director of Consumers Union, the nonprofit publisher of *Consumer Reports* magazine, with 4 million subscribers, and *Consumer Reports Online*, with more than 2.5 million subscribers. We appreciate today's opportunity to comment on the proposal to create a national Leafy Green Vegetables Marketing Agreement (LGVMA).

We applaud the industry's concern with improving its safety practices. The broad consumption of leafy greens is essential to the health of consumers, both to insure proper nutrition and to help fight the current epidemic of obesity in the United States. However, we oppose this proposal, as we opposed the establishment of the California Leafy Green Marketing Agreement two years ago, and as we generally oppose marketing agreements as the wrong way to go about ensuring food safety.

One stated purpose of this public hearing is to determine "whether the proposed agreement...would effectuate the declared policy of the Agricultural Agreement Marketing Act of 1937." We believe the answer to this question is No, for the following four reasons:

First, allowing the leafy green industry to set and oversee its own safety standards, without public input, is undemocratic and contrary to key legal precedents in the regulatory field. Historically, food safety problems in this country have been addressed by passing laws that direct a federal or state agency—USDA, FDA, CDFA—to, establish rules and regulations through a process that allows the public an opportunity to give meaningful input. This process has the beneficial effect of garnering input from a wide array of experts, some of whom may have been previously unknown to the drafters of the standard. The proposed marketing agreement presently under consideration would allow the leafy green industry to develop its own safety standards virtually all by itself, with only a minor tip of the hat to public input. In terms of product safety, consumers are rarely benefited when industry polices itself.

While the Secretary of Agriculture would be required to put the safety standards developed by the primarily industry-led Administrative Committee out for public notice

and comment, we believe that public input at this late stage in the process would be unlikely to affect meaningful change. Furthermore, the proposal does not lay out what exactly would be reviewed or for how long.

The proposed LGVMA would set up an Administrative Committee, a Technical Review Board, and a Marketing Review Board to propose food safety standards to the Secretary of Agriculture, oversee the implementation of safety standards, and promote itself to the public, all of which would be overwhelmingly made up of and chosen by industry representatives. The 23-member Administrative Committee would include only one public representative, and that one chosen by the leafy green industry. The 14-member Technical Review Board would include five industry representatives, five food safety experts from agriculture schools—all of whom would be selected by industry—and one representative each from USDA, EPA and two from FDA—not an independent, non-governmental, food safety consumer representative in the bunch. The nine-member Market Review Board, tasked with advising on how to “maximize consumer confidence through market acceptance and recognition of the program,” would also be made of and/or chosen by industry, including the three consumer representatives, none of whom would have any say about safety standards. This latter committee reminds us that part of USDA’s charge is the promotion of the industry, and for that reason, it is neither wholly independent nor the most appropriate overseer of leafy green safety.

From a consumer perspective, it is obvious that there is no way to ensure that safety standards are “science-based, scalable and regionally applicable” when they are being developed by committees made up of and controlled by industry, which has an inherent financial stake in reducing production costs. The proposed rule states that “the metrics would reflect Good Agricultural Practices and Good Manufacturing Practices,” such as those developed by FDA. The ambiguous word “reflect” suggests that the committee can deviate from FDA’s GAPs and GMPs if they so desire, possibly weakening them or changing them in ways that reflect industry needs over the needs of consumers, organic and sustainable producers, or the environment.

We have only to look at the standards developed by the larger handlers who oversee safety metrics for the California Leafy Greens Marketing Agreement to see what can go wrong, from sustainable agriculture and ecological perspectives, when there is not broader public input into the development of safety standards or independent government oversight of them. A story published in the July 13th *San Francisco Chronicle* exposed a range of environmental problems caused by standards set by the California Leafy Green Marketing Agreement. One farmer near Watsonville told of the need to create sterile buffers around his fields, with no vegetation, water or wildlife of any kind permitted. Previously, he had planted hedges of fennel and flowering cilantro around his fields to harbor beneficial insects as an alternative to pesticides. Those plants had to be ripped out. One of his fields showed evidence of deer tracks, but no evidence of plants having been eaten. He was forced to destroy all crops within 30 feet of each side of the tracks. An environmental scientist at the Central Coast Regional Water Quality Review Board spoke of demands to create 450-foot dirt buffers around fields, which removes the agencies’ primary means of preventing

pollution from entering streams and rivers. Other farmers were told that using ponds to recycled irrigation water was unsafe, so they were forced to bulldoze them. Another farmer, in Santa Cruz County, was told that no children younger than five-years-old could be allowed on his farm for fear of contamination from diapers. The California Leafy Green Marketing Agreement's "scorched earth tactics" do not promote farming that is sustainable, organic or ecologically rational.

A second major concern for Consumers Union is that, since participation in the marketing agreement is voluntary, not all leafy green growers and processors will be covered. Consumers cannot, therefore, be assured that all leafy greens that reach the marketplace will be as safe as possible. The Arizona Leafy Greens Marketing Agreement, for example, only covers 75% of the leafy greens produced in the state. Experts agree that government standards and enforcement of GAPs on every farm and GMPs and Hazard Analysis Critical Control Point (HACCP) programs at every processing facility are essential to maintaining the safety of leafy greens, and thereby consumer confidence and the financial health of the industry. If not all leafy greens in the marketplace are subject to these Best Practices, the door remains open for contaminated produce to reach consumers, with all the attendant negative health effects and negative publicity that incurs.

Thirdly, we are concerned that the LGMA proposes the use of a USDA certification mark to convey to consumers that leafy green products from those participating farms and processors are subject to Best Practices. In essence, this approach turns safety into value added in the marketplace. Consumers have a right to expect, and government authorities must guarantee the highest level of safety for all food that enters the marketplace. Safety should not be something that consumers must search out and possibly pay extra for. Furthermore, if romaine lettuce, for example, is implicated in a future *E. coli* contamination incident, many consumers will not stop to ask whether produce has a safety seal—they will simply stop buying all romaine lettuce for a period of time.

Finally, Consumers Union is concerned that this proposal for a national marketing agreement to set safety standards for leafy greens, through a predominantly closed, industry-led process, is being considered at a time when Congress is in the midst of passing legislation that would require FDA to develop safety standards for leafy greens, through an open, public, and democratic process. HR 2749 overwhelmingly passed the House and SB 510 is pending in the Senate. The authorization of both FDA and USDA to set and oversee leafy green safety standards will likely lead to two different and potentially conflicting sets of standards, possibly confusing and harming both consumers and industry.

In summation, because of the insular, exclusive way in which safety standards for leafy greens would be developed and overseen under the LGVMA, and more importantly, because this process would not cover all leafy green growers and processors in the United States, Consumers Union believes that this agreement will not provide industry with the extremely high standard of safety that it must achieve in order

to keep and expand its market. We are also deeply concerned about beginning to view the safety of foods as something that can be used as a marketing tool, and we oppose the use of a certification mark to suggest an added level of safety on some leafy green products and not on others. Consumers Union strongly supports legislation in Congress that would require FDA to issue regulations governing the safe growing and processing of leafy green vegetables—essentially turning its Guidances into mandatory regulations.