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Testimony of Patty Lovera
USDA Leafy Greens Marketing Agreement Hearing
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My name is Patty Lovera and I am the assistant director for Food & Water Watch, a non-profit consumer advocacy organization with offices in Washington DC and San Francisco. Food & Water Watch has 8500 members across the country and more than 120,000 supporters who participate in our advocacy programs, and they are very concerned about the safety of produce such as leafy greens. More than 7000 people signed a petition we circulated last week, urging the USDA not to proceed with this national version of a marketing agreement for leafy greens.

Consumers have been increasingly concerned, and often frustrated, as illness outbreaks and recalls related to produce continue to occur regularly. Many have lost confidence in specific products in the wake of illnesses or recalls and public opinion polling reveals strong support for reform of the food safety system.

But this concern about the need for standards for produce safety should not be confused with a willingness to accept food safety programs that are unworkable for some farms or damaging to the environment. Our members and supporters are extremely concerned about the methods used to produce food, the impact food production has on the environment, and the economic viability of small, diversified, and organic farms and regional and local food systems – and they expect any food safety requirements to be developed with these things in mind.

Because of concerns about the possible negative impacts of the proposed national Leafy Greens Marketing Agreement on these sectors, as well as concerns about the appropriateness of addressing food safety in a marketing arena, Food & Water Watch is opposed to the proposal to create a national Leafy Greens Marketing Agreement. We have several specific areas of concern.

Food Safety is Not a Marketing Issue

Marketing agreements are intended to help an industry solve problems faced in marketing their products. Marketing agreements for produce have been designed on the premise that participating in the agreement offers an advantage in the marketplace. And marketing efforts often try to distinguish between brands on the basis of different product characteristics.

While the industry may view decreasing consumer confidence in the safety of leafy greens as a marketing problem, consumers are less likely to view the safety of the food they buy as

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something that should be dealt with through marketing claims – or that should vary between brands.

Whether or not a product has been grown and processed in a way that minimizes the chance that it contains pathogens that could cause illness is not a quality attribute. It is a critical issue that rises above other characteristics like size, variety, or appearance. The issue of whether minimum safety practices were followed is not something that should be subject to efforts to distinguish between competing brands. It is unfair to ask consumers to determine which products were produced with which food safety standards – and it is unacceptable to make the penalty for buying the wrong brand an increased risk of illness. Safe food is something that all consumers deserve, no matter what brand they buy.

AMS Is Not a Food Safety Agency

Simply put, we believe that the Agricultural Marketing Service is the wrong government agency to deal with the safety of leafy greens. The expertise of AMS is in economics and marketing, not food safety. As the Administrator of AMS, Rayne Pegg, stated this summer before a House Oversight and Government Reform subcommittee, “AMS is not a food safety agency.” Her statement reiterates the position taken by her predecessor, Lloyd Day, who said the same thing to a House Agriculture subcommittee in 2007.

The role of AMS in a marketing agreement is not the same as that of the Food and Drug Administration, the agency with jurisdiction over the safety of produce, when dealing with a regulation. Serving as an auditor, the role AMS would play under the proposed agreement, does not offer the public the same oversight and protection as the development and enforcement of a regulation.

Allowing the leafy greens industry to develop its own standards with the blessing of AMS, an agency with expertise in marketing, is not sufficient assurance for consumers. And it is a poor substitute for a regulation developed in a transparent public process by an agency with expertise on food safety, such as FDA. Establishing minimum standards for safety is a function of the government, not the market, and should be done by a government agency that is accountable to the public through oversight by Congress, not by the industry itself.

The Proposed Agreement

Food & Water Watch has several specific concerns with the proposed agreement.

First, as currently written, the proposal provides no way for consumers to be involved in the development of the metrics that are the heart of the agreement. In the proposal, there is no participation by consumers required on the Technical Committee that sets the actual metrics to be followed by the industry. The option to name a consumer member to the marketing committee is not sufficient. The marketing committee’s job is to sell this program, not to ensure that the program is based on standards that are adequately protective of public health.

Another concern is the structure of the committees that administer the agreement. Specifically, the way the proposal divides the country into zones raises several questions. One is the significant difference in growing conditions and climate between states that have been put in the same zone. It seems unfair to ask representatives to the various committees to adequately understand the growing conditions across such a wide geography. Another concern is that the largest players in the leafy greens industry are in different zones, potentially allowing them to control the seats from several zones and control the makeup of the committee. Some sectors of the leafy green industry are extremely consolidated, with a small number of companies controlling the vast amount of the market. For example, last year two firms controlled almost 80 percent of the fresh cut bagged salad market. Given this consolidation, it is vital that the structure include some safeguards to ensure that the largest players in the industry do not control the process.

On top of the absence of consumers on the committee, we believe that small and organic producers could be left out of this process as well. This could increase the likelihood that the metrics developed for the agreement are more achievable for larger operations. It would also mean that the committees could fail to identify conflicts between the marketing agreement's metrics and other requirements like organic standards or environmental protection programs.

Finally, we are concerned with the scope of the proposed agreement. There is a real void in what we know about the risk posed by different production and processing methods for leafy greens. It is past time for research to be done to understand these risks. But what we do know is that while no segment of leafy greens production is risk-free, not all leafy greens are the same. We think that the proposal's inclusion of products that are eaten raw as well as those that are normally cooked misses the opportunity to focus on the highest priorities for reducing risk. We are also concerned that the proposed agreement does not have enough emphasis on processing, especially of ready to eat fresh cut products. These products have been involved in many of the recalls and illness outbreaks involving leafy greens and while research is limited, some studies indicate an elevated risk of pathogen contamination in bagged fresh cut products.

Impacts of the California Agreement

After two years in operation, the California Leafy Greens Marketing Agreement offers valuable insight into the impacts of a marketing agreement focused on food safety and cause for concern.

The California agreement's focus on growing conditions, with less attention paid to processing, has led to dramatic changes in the way some farms are operating. Other speakers at this hearing can offer more detail on these changes and the impact the agreement has had on water quality protection efforts, wildlife habitat, and other methods encouraged or required by organic certification. But initial research has shown some disturbing trends – the majority of Central Coast growers surveyed in spring 2007 reported that they had adopted at least one measure to discourage or eliminate wildlife, ranging from removing vegetation to poison

baiting. In 2009, researchers reported that the pressure to comply with food safety programs, both the LGMA and other programs, could be having a chilling effect on participation in federal conservation programs such as the Environmental Quality Incentives Program. After decades of effort to improve agriculture's impact on the environment, and in light of the requirement that certified organic producers work to minimize their environmental impact and protect biodiversity, it is disheartening to see that food safety metrics under this agreement, and in private supermetrics that continue to be used, in such direct conflict with conservation and environmental goals.

It is also important to note that the requirements often cited as being in conflict with environmental and conservation goals – such as removal of vegetation from buffer zones, a focus on encroachment by all animals including those that may not pose a risk of pathogen transmission, and discouragement of natural soil amendments – could in fact be the wrong approach. Conservation practices not only protect land and water quality and wildlife habitat, they could also improve food safety by utilizing vegetative buffers that filter pathogens like E. coli and hedgerows that filter dust and airborne contaminants, and building healthy soils that make it harder for pathogenic bacteria to take hold.

The controversy over the California agreement among small, diversified, and some organic growers is also troubling. Consumers are responding as never before to efforts to rebuild local and regional food systems, connect farms and institutions, and promote less industrialized models of food production. It is exactly these types of farms who are leading the way in this effort that have objected to the California agreement. So it is vital that these operations be able to comply with and flourish under any new type of food safety program. The experience with the California marketing agreement casts doubt on whether the marketing agreement model can achieve this.

Finally, from a consumer perspective, the fact that several recalls of leafy greens produced under the California LGMA offers a reason to pause and consider if the agreement is providing real protection to consumers. It again begs the question of the California agreement's weaker emphasis on processing and the potentially riskier types of products like ready to eat bagged products.

Conclusion

Food & Water Watch believes that the proposed national marketing agreement does not meet the criteria outlined for the purpose of marketing agreements. It will not eliminate confusion in the marketplace, because it shifts the responsibility for determining if food was produced with good practices to consumers, who must depend on a label to tell them if minimum standards were followed. The agreement does not have any authority to stop the proliferation of supermetrics or other food safety protocols. This growing body of private standards not only creates pressure on farms to take measures that may run counter to good conservation or wildlife practices, but also puts food safety in the realm of proprietary industry driven processes rather than transparent public standards. The agreement could also serve as a barrier that

prevents some producers from entering wholesale or retail markets, effectively trapping them in niche markets and hurting efforts to diversify production and re-establish local and regional food systems.

Consumers are anxious for some movement on produce safety. But that does not mean that this flawed proposal should go forward. Consumers deserve more than a plan that lets the leafy green industry write its own standards, that might be impossible for small or organic producers to achieve, and that introduces yet another label into a marketplace already crowded with competing claims. Food safety is too important to be relegated to being a marketing issue and it should not be the subject of a national marketing agreement for leafy greens.

Thank you.

