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National Leafy Greens Marketing Agreement

Response to Growing Food Contamination: Corporate Agribusiness Proposes Regulating Itself Instead of Stricter Governmental Oversight

**Analysis and Proposals by
The Cornucopia Institute
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Should the US Department of Agriculture support an initiative that serves the interests of large-scale, monoculture growers and threatens the small-scale, organic and diversified farms that are the backbone of a movement toward safer food for all? While industry representatives proposed the National Leafy Greens Marketing Agreement (LGMA) supposedly to improve food safety, they have not been able to show that this marketing scheme would protect citizens from further foodborne illness outbreaks.

Yet this proposed marketing agreement would allow industry representatives to write a set of standards, forcing leafy green growers to choose between following these standards or potentially being shut out of the market. Handlers who sign on to the agreement would be entitled to use a USDA-backed certification seal (similar to that of the "USDA Inspected" meat seal) that would be prohibited at farmers markets, community supported agriculture (CSA) farms, roadside stands—possibly misleading consumers into thinking that processed, bagged leafy greens are safer than produce from small-scale, local and organic farms.

Meanwhile, the USDA and FDA are completely silent on addressing the root of most of the contamination: manure from animal agriculture that has been contaminated with pathogenic salmonella and e. coli.¹ Improper management of the mountains of manure found on livestock factory farms threatens to contaminate the surrounding countryside and water with these dangerous pathogens.

¹ Ruminant animals are reservoirs of the pathogenic bacteria E. coli O157:H7 and approximately 30% of feedlot cattle shed E. coli O157:H7. Researchers have repeatedly demonstrated that populations of total E. coli were higher in grain-fed than in forage-fed cattle (Callaway et al. 2009)

How does a national Leafy Greens Marketing Agreement threaten local, small-scale and organic farmers?

A National Leafy Greens Marketing Agreement will help representatives of large-scale, monoculture agriculture dominate the entire leafy greens farming community. As currently proposed, “Audit metrics [practices] shall be recommended by the Committee to USDA for approval after consultation with the Technical Review Board.” The Committee and the Technical Review Board will consist primarily of large-scale handlers and producers, with only two small-scale grower representatives on the Committee and one token USDA National Resource Conservation Service (NRCS) representative on the Technical Review Board. These committee members will set the rules, and they will most likely do so with their industry’s interests in mind. While the proposal states that rules will be “science-based, scalable and regionally applicable,” it is unclear how one set of rules can accommodate both large-scale, monoculture growers in California and small-scale, diversified farms, as an example, in the Northeast. Rules that may be appropriate for one type of operation may put unnecessary burdens on another—and with the large-scale growers represented on the Committee, chances are the smaller-scale and diversified farms’ needs and concerns will be the first to go.

The Leafy Greens Marketing Agreement will create unfair economic disadvantages for small-scale growers. The proponents of the national LGMA have written that “*Some small handlers and growers may be concerned about the cost of implementing the program, to address their concerns the proponent group will develop cost studies to present to small handlers and growers for review.*” Some have estimated that the average cost of compliance to the California leafy green standards (a similar program put in place two years ago) has been \$18,000—a cost that is prohibitive for many small-scale growers. Basic additional costs of compliance include monthly water tests, soil amendment tests, and documentation costs that will disproportionately affect small-scale growers who do not benefit from economies-of-scale.

The Leafy Greens Marketing Agreement will give industry representatives control over food safety, doing a disservice to our citizenry’s need for safer food. Industry representatives do not necessarily have the concerns of citizens in mind—their primary concern is with the reputation and profitability of their industry. Having an industry-dominated panel is no substitute for oversight by independent governmental regulators (current debate in Congress should give the FDA increased funding and capacity).

Improvements in food safety should be driven by one sole concern: to protect the citizenry from illness and possible death. If we agree that food safety standards should be a public service, it currently falls under the purview of government agencies. Proposing to merge marketing agreements and food safety shows that these industry proponents have their own interests in mind, not the safety of the citizenry.

The LGMA is a way for industry to potentially avoid regulation that could put what they view as unnecessary burdens on them. Instead, they will be able to regulate themselves. While the proposal specifies that any proposed standards will be subjected to “notice and comment” by the public, it is likely that the public’s only chance to comment will be after

the first draft of the rules has been written by industry. This is very different from standard regulatory procedures, in which government agencies usually solicit comments from all stakeholders, including concerned citizens, farmers, consumers and environmentalists, before drafting new regulations. While this system is not perfect, the opportunity for public engagement is preferable to the industry-driven and dominated model proposed in the LGMA.

Furthermore, although the LGMA plan is voluntary for handlers, this does not mean that growers will be free to choose whether they will be affected by the national metrics. The LGMA proponents claim they represent more than 50% of the nation's leafy green vegetable handlers. They expect that most handlers will become signatories. A grower who may not want to sign on will have no choice but to follow the national metrics if his or her primary wholesale customer(s) becomes a signatory. Growers who do not want to follow the metrics may have a difficult time selling their crops. In this sense, the proposed marketing agreement is not entirely voluntary for growers, and will likely allow industry representatives to establish a national set of standards that will become, de facto, mandatory.

In addition, a USDA marketing agreement is not the right vehicle to tackle food safety concerns. Our food safety system is fractured and fragmented as it is, and involving yet another government agency in food safety would be counterproductive and further contribute to this fragmentation. Currently the FDA, not the USDA, has the regulatory authority and responsibility to oversee the safety of the nation's fruits and vegetables.

The National Leafy Greens Marketing Agreement, with a USDA-backed “certification mark” (“seal of approval”) will create a second-class citizen status for non-signatories like organic, small-scale and diverse vegetable direct marketers. Only signatories will be able to use the official “food safety seal” in their marketing efforts—the proposed marketing agreement currently excludes growers selling at farmer's markets, CSAs and roadside stands, and directly to retailers. This may very well create the impression among many consumers that their leafy greens are less safe. As a result, many may choose bagged leafy greens from a grocery store, with the certification mark, over bunches of leafy greens from an organic farmers market stand without the certification mark. But in reality, the bags of leafy greens on supermarket shelves have been shown to be more likely to be implicated in foodborne illness outbreaks than organic produce bought directly from the farmer.² This will create an unfair marketing disadvantage for producers selling direct to consumers, possibly inhibiting the growth of a local food system that the USDA and others have been promoting and which is part of the solution to our nation's food safety woes.

A National Leafy Greens Marketing Agreement will undo many of the conservation and habitat improvements made over the past several decades that have softened agriculture's footprint on the environment. Experiences in California have shown that food safety measures are not always written with adequate consideration for

² See Community Alliance with Family Farmers' analysis and chart of e. coli O157:H7 outbreaks in leafy greens, available at: <http://www.caff.org/policy/foodsafetylg.shtml>

environmental laws and biodiversity concerns. The current and similar marketing agreement, covering California, has resulted in loss of wildlife habitat and destruction of natural vegetation even though it has not been conclusively proven that these are material factors in food contamination. The metrics and FDA guidance documents currently list deer as animals of significant risk and encourage fencing and other measures that interfere with environmental protection and biodiversity. Scientific studies show that deer are not to be considered animals of significant risk.

A National Leafy Greens Marketing Agreement will not create safer food, at least not in the near future. The current state of science does not allow for developing metrics that can confidently eliminate food safety risks from leafy greens to consumers.

First, the LGMA metrics will do nothing to tackle the root of the problem, which is, in most cases, tainted manure from confined animal feeding operations.

Second, not enough scientific evidence exists to develop standards that can confidently prevent contamination and further outbreaks.

Third, some of the existing standards in California and the FDA Guidance documents have been shown by scientific studies to be ineffective in eliminating foodborne pathogens—chlorine, for example, has been repeatedly shown to be ineffective in eliminating pathogenic e. coli.

Fourth, bacterial contamination is only one of many food safety concerns. The proposed marketing agreement suggests that metrics will be silent on reducing pesticide use and use of other agrochemical residues, and additional practices that will make food safer.

Fifth, in the summer of 2009, two signatories to the California Leafy Greens Marketing Agreement were involved in recalls due to salmonella contamination of their leafy greens.³ This shows that metrics have not been able to prevent contamination and a certification mark on packages would create a false sense of security.

For these reasons, this proposal for a marketing agreement is an industry-serving initiative that does not deserve the backing of the USDA. The Administrator of the Agricultural Marketing Service, Rayne Pegg, said in a Congressional hearing that “AMS is not a food safety agency.” We agree.

Until the proponents can show that this initiative will make foods safer, a USDA-backed food safety initiative is inappropriate, misleading to consumers, and potentially counterproductive to the growth of local food systems.

³ Ippolito International recalled 1,715 cartons of spinach on September 18, 2009 due to Salmonella contamination. Tanimura and Antle, on July 23, 2009, recalled bulk and wrapped romaine lettuce heads after the Wisconsin Department of Agriculture, which conducted random tests, found it tested positive for salmonella. Both are signatories to the California LGMA.

If enacted, The Cornucopia Institute proposes the following changes to the proposed rule:

Eliminate 970.69 “Official Certification Mark.”

The driving force behind any food safety measures should be the protection of public health. By proposing to merge food safety and marketing, the proponents have shown that their interest in food safety measures is not primarily driven by concerns for public health, but marketing, corporate liability protection, and profit.

If food safety measures are truly about protecting people’s health and not about marketing, then any food safety measure that can be shown to decrease the likelihood of illness and death among our citizens should be implemented for public protection, not as a marketing tool. Scientific studies have not been able to show which measures would be sure to decrease food safety hazards. Measures that could be effective as shown through scientific studies, such as feeding cattle forage or pasture-based diets, or switching cattle to hay-based or forage-based diets before slaughter, have not been implemented.

Until signatories can show that their leafy greens are safer as a result of the metrics, they should not be allowed to use a USDA-backed “certification mark.” Such a mark will lead to a false sense of security among consumers, and may even lead some away from safe sources of local produce that don’t carry the official certification mark. If food safety is truly about protecting lives, not marketing, then there is no reason why the signatories should be allowed to use a USDA-backed food safety seal until they can prove their products are truly safe.

However, the agribusinesses that have proposed this initiative have tremendous economic clout in Washington and we need to address specific elements, and defects, in their proposal in the event that the marketing agreement is established by the USDA.

Change 970.75: “Research and Promotion” to “Food Safety Research”

If the proponent’s concern is food safety, then their research efforts, if paid by funds from the assessments on cartons of leafy greens, should focus on food safety. Given the lack of scientific consensus on specific ways to reduce food safety risks in leafy greens, it would only make sense that the funds be channeled toward such scientific research. Currently, the proposal is to pay for market research and paid advertising to promote the signatories—not research on food safety. This shows once again that the proponents are concerned first and foremost, perhaps solely, with marketing. Unless signatories can show, through science-based research, that their leafy greens are safer than leafy greens from non-signatories, such advertising as is proposed here could constitute false and misleading advertising. USDA should not officially back claims for which there is no scientific proof. There is precedent for not allowing claims about one agricultural product being superior to another, and this is not the place for the USDA to start making such claims.

Consider:

The organic seal is backed by the USDA, but it is a seal that indicates that the food was produced using a certain process. USDA has explicitly refused to associate organic foods with nutritional benefits or food safety benefits. If USDA refuses to make any claims of the nutritional or food safety benefits of organic foods, for which a growing body of scientific literature exists, why should it allow a seal that suggests leafy greens by signatories is safer, when no data exists to back this claim?

Government agencies have even made a special effort to prevent food producers from suggesting to consumers that one process for producing food is safer than another. Dairy producers whose production process excludes the use of rBST have been prohibited from claiming that their product is therefore safer. Why, if the government is so intent on preventing food producers from suggesting that one type of production process is somehow safer than another, would it now suddenly throw its weight behind a marketing agreement that aims to do exactly that: convince people that one way of producing food is safer than another—especially when no scientific consensus exists that one process is indeed safer than another?

Add an exemption for small-scale and organic growers to 970.72

If the USDA proceeds with the leafy green marketing agreement and the use of the seal, any certified organic and/or small-scale grower should be exempt. There is currently no scientific consensus that the metrics in California or the FDA guidance standards improve food safety. While there may be some suggestions that such produce is safer, this has by no means been proven through scientific research and documentation. Yet there exists some scientific research suggesting that certified organic methods lead to better food safety outcomes. In addition, organic growing methods lead to food safety benefits that will not be matched by all signatories of the LGMA, such as reduced pesticide residues. Until scientific studies can show that the metrics adopted by the LGMA lead to better food safety success than certified organic standards, both sets of standards, which as an example both contain strict regulations on the handling and composting of animal manures, should automatically be entitled to use the mark.

Handlers who handle only certified organic produce should be allowed to use the official certification mark by virtue of being organic. Certified organic growers selling direct to consumers or retailers should also be entitled to use the mark, to prevent consumers from being confused about one type of product being safer. Until processors can show that a bag of fresh-cut spinach in a grocery store is safer than a bunch of spinach at a farmer's market stand, both should be entitled to the same certification mark.

The industry proponents of the LGMA did not want to narrow the scope of the marketing agreement to bagged leafy greens – the riskiest product sold to consumers—because they were afraid that it would connote to consumers that bagged produce is more dangerous.

Most costs should be borne by the operations responsible for the primary source of contamination: animal agriculture

Water and soil amendment tests by growers, and their documentation costs, will be called for in the leafy green metrics to determine if manure from animal feeding operations has contaminated a grower's water and fields. These costs should be borne by the animal industry, not the leafy green industry. Confined animal feeding operations already externalize most of their costs of production, and the cost of pathogenic contamination from their animal manure should not be shifted to vegetable growers.

Ideally, the USDA should establish an assessment system for CAFOs, to fund tests and documentation costs for pathogens that originate on CAFOs. Since this would not be within the scope or authority of a simple leafy greens marketing agreement, it provides another argument against the merging of food safety and marketing agreements. Rather than making the food safety system more fragmented, we propose that the USDA explore a unified approach that would allow CAFOs to be assessed to pay for testing for the pollution and pathogens that they create.

Limit the scope of the marketing agreement to “fresh-cut” leafy greens only

If the USDA decides to allow a national marketing agreement and the use of a certification mark, and does not allow direct marketers to use the seal, then we propose that the marketing agreement be limited to “fresh-cut” produce only, which is riskier than whole produce. Creating the impression that a bag of lettuce with a food safety seal is safer than a bunch of spinach sold at a farmers' market is both unfair and misleading.

Add “organic representation” to 970.40(b)

Currently, 970.40(b) specifies that “two producers [on the Administrative Committee] must be small producers as defined in the rules and regulations.” This represents one-third of the producer representatives. Currently, there is no specification for organic representation.

Should the USDA approve a marketing agreement, there must be specific organic representation as well. The following language should be added: “and two producers must be certified organic.” Similarly, handlers should also represent small-scale and organic stakeholders. Add the following language: “four handlers [on the Administrative Committee] must be small-scale and/or organic handlers.” Additionally, the committee should also have a seat for a representative from an environmental organization and a representative from an organic/sustainable farming organization.

For background information, supporting evidence for assertions in this document, and citations, please refer to the Appendix.