

Testimony to National Leafy Greens Marketing Agreement proposal
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Steve Gilman
NOFA Interstate Council Policy Coordinator
Ruckytucks Farm
130 Ruckytucks Road
Stillwater, NY 12170

My name is Steve Gilman

I'm here as a former farmer with 30 plus years experience specializing in small scale leafy greens production for farmers markets, stores, restaurants and a CSA in the Saratoga NY area 100 miles east of here. I'm currently working as the Policy Coordinator for the Interstate Council of the Northeast Organic Farming Association, known as NOFA. And I'm also here as an eater deeply concerned about the safety of our nation's food supply – but more about that in a minute.

NOFA is one of the oldest organic farming groups in the country with seven independent chapter organizations in NY, VT, NH, CT, MASS, NJ and RI and over 5,000 members who are farmers, gardeners and consumers working together to promote healthy food, organic farming practices and a cleaner environment. The NOFA Interstate Council is comprised of representatives from each of the state NOFAs to coordinate organizational initiatives and provide a regional presence in the food system. NOFA is also a founding grassroots member of the National Organic Coalition (NOC) and the National Sustainable Agriculture Coalition (NSAC) and as the NOFA-IC Policy Coordinator I have been serving as a core member of a nationwide joint NOC/NSAC food safety task force. Kate Mendenhall, Executive Director of NOFA-NY is also here to testify today.

Ever since the hearing schedule has been released I have been in touch with farmers all over the seven-state NOFA area about their deep concerns with the Agreement and to ask them to come to Syracuse to testify at this hearing. And although we have some farmers here today who have generously sacrificed their busy farming time to testify, there were many more who finally ruled out making the trip. Here is a fairly typical reply:

"I have been following this issue with interest and concern, in what time I have available for it -- but I'm still in full market and production mode, and in fact am doing a market on October 21st, which means that much of the harvest and pack needs to be done on the 20th, which means I can't show up in Syracuse on that day.

I do wonder about the timing of these meetings. While they might have thought that

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tomato growers would be frosted by then, not thinking that small scale people grow a lot of different crops, they can hardly have thought that the leafy greens season in the Syracuse area would be over by October; so I wonder whether timing is designed to prevent smaller growers from showing up. The large guys have more people involved, and I'm sure less difficulty getting someone to meetings while the season's still on."

It also needs to be underscored that this highly formalized hearing format precludes participation by a much larger number of citizens. If the AMS really wants to get a valid understanding of the depth of grassroots opposition to this agreement then I suggest you hold a set of open listening sessions around the country, with some of them personally conducted by Secretary Vilsack – as were recently held about USDA's attempts to extend government animal health surveillance through its proposed National Animal Identification System program, for instance.

After studying the proposed rules, attending the webinar, reviewing transcripts and conferring with farmers and others about the construction and implications of this Agreement, I have many concerns with this proposal. For my testimony today, however, I am going to confine my comments to just five aspects, from a farmers' point of view.

1. Regionality

Here in the northeast I think it's fair to say that agriculture has a different flavor than some other parts of the country. Thanks to the grinding of the glaciers we have mineral-rich soils and our temperate climate is accompanied by ample rainfall. Even our frigid winters provide a great ecological service for farmers in curtailing pest, disease and weed populations.

That's why it's curious that here in what the proposed marketing agreement calls Zone 5, Vermont and Florida are somehow included in this same category. Zone 5 is not even an eastern states designation – Georgia is plucked out and placed in Zone 4 with Wisconsin and Michigan and by some further logic New Mexico, Iowa and Minnesota are part of Zone 3. While these zones make little geographic or agricultural sense, they do form the basis for how the Agreement's governing Administrative Committee is constituted, and as much previous testimony has already pointed out -- this puts the big handlers who are promoting this agreement in the driver's seat in each and every zone.

Since the administrative committee, after consultation with the technical review board, has the power to create the governing metrics that are supposed to be "science-based, scalable and regionally applicable in order to accommodate compliance of varying size and types of operations" -- the skewed zones and top heavy proponent representation

is major conflict of interest. So much for establishing the “equitable relationship between membership and zones” as described as an AMS goal in section **970.40(c)(3)**.

2. “Voluntary” Standards

While this proposal is depicted as a voluntary agreement, in all practical aspects it is not. Once created, the national LGMA standard becomes the 900-pound gorilla ruling the marketplace. After the big volume handlers become signatories it will be very difficult for other handlers to decline to sign if they want to be able to remain in the business.

For farmers it is much worse. They hold a distinct minority position on the administrative and technical committees and have little say in the developing and approving of the metrics in a process that takes place after the Agreement is approved. And the fact is, in today’s consolidated marketplace for growers there is often little choice of buyers for their products. Further, there have been reports from coalition farming groups that some members have been afraid to testify against the LGMA even though they will be deeply affected by this Agreement, for fear of losing their market access. It would also be easy in this regard to stack the farmer representation categories on the committees with growers captive to the industry interests. For farmers, therefore, this is to all intents and purposes a nationwide Marketing Order that they would be required to follow.

3. Wider Effects in the Marketplace

One reason the “localvore” movement has taken off so well in the northeast is that the craggy terrain lends itself well to an interspersing of farms with towns and urban areas. In addition to the nationwide, industrialized central production and multi-state distribution system – increasing numbers of communities are well-served directly by the farmers in their midst through Farmers Markets, CSAs, roadside stands and Buying Clubs as well as local restaurants, stores, schools and Coops. Thanks to appropriate technology hoop houses, root cellars and value added production methods these markets thrive on a year-round basis.

However, in this new day of USDA initiatives such as “Know Your Farmer, Know Your Food” it’s critical that AMS fully understands the potentially destructive effects of top-down market-based regulatory schemes on small farm businesses. Just when their local small business marketing opportunities are soaring, farmers are being confronted with a wide range of inappropriate one-size-fits-all regulations that could severely impact this entire agricultural sector. In this regard, as footnotes to my testimony today, I’d like to enter into the record two excellent reports outlining the potential negative effects of governmental initiatives

on the small farm paradigm and how to address them. One is “Bridging the GAPS – Strategies to Improve Produce Safety, Preserve Farm Diversity and Strengthen Local Food Systems” (1) co-authored by Food and Water Watch and the Institute for Agriculture and Trade Policy. And the other from the National Sustainable Agriculture Coalition food safety task force, “Food Safety on the Farm – Policy Briefs and Recommendations, October 2009” (2).

Farmers, at least, well understand the King Kong implications of an official USDA food safety label in the marketplace. While section **970.69** states the certification mark will be licensed to complying signatories for use on bills of lading and manifests – there are no restrictions for its wider use as a marketing tool. At this time California LGMA signatories routinely use the “service mark” on invoices, letterhead and websites, for example. Even if the mark never appears on packaging at the retail level, retailers, restaurants and those in the trade well understand the liability and insurance protections the Agreement provides – thus expanding the market for the signatories at the expense of independent growers and the businesses that deal with them.

As to the proponents’ assertions that the national LGMA would erase the chaotic proliferation of overlapping GAPs and other standards that growers are presently subject to by creating a single set of metrics for farmers to comply with – there is nothing in the Agreement that would prevent different companies from requiring growers to follow protocols that exceed or differ in some way from the national metrics. Such “supermetrics” could be employed as a marketing strategy by buyers and retailers to gain a competitive advantage by saying that their product is superior because it exceeds existing standards. A USDA LGMA would only add to the proliferation of food safety metrics already required of growers.

4. AMS Purview

With all due respect for the Agricultural Marketing Service’s long time expertise providing marketing research, news services, promotion programs and economic data to assist in the orderly marketing and distribution of farm commodities – it lacks the expertise, experience and purview to develop and regulate food safety provisions. And even major tweaks to various aspects of the agreement cannot rectify this basic deficiency. Food safety is not some measurable “quality” trait like USDA prime cut, or fat content or cosmetic standards that can be labeled with official governmental marketing designations to provide the basis for price differentials and orderly competition among producers.

Rather, food safety is an ongoing process that is based on standards that are fully protective of public health. Food safety it is a fundamental, pre-

competitive condition; it is the basis for all food in the marketplace and as such has no place as a specified value-added governmental label designed for price-enhancement and promotion in the marketplace, let alone by a government-backed marketing message that says this food is safer than that food because a marketing agreement with the industry defines it as such. And already on the record at previous hearings is the documentation that both the present and former Administrators of AMS have testified before various House sub-committees, saying succinctly that "AMS is not a food safety agency."

Where food safety regulations are necessary, they should be scale and risk appropriate and scientifically developed in an open, public and transparent process with the lead role going to a duly constituted food safety agency such as FDA, or in some cases, the States. This should be done in close coordination with USDA and here there is a role for AMS consistent with its expertise – in implementing some food safety provisions, monitoring pathogens and providing research data with testing protocols developed by an appropriate food safety agency.

5. Bona Fide Food safety

Food safety is a major national issue and a primary responsibility at every link in the food system from farm to plate. Most governmental initiatives, including this one, are defining this solely in terms of microbial contamination – whereas there are proven major food safety impacts from a wide range of food system related contaminants including pesticide poisoning; leaching of chemicals from packaging; handling and processing chemicals; soil, water and air contamination and the potentiation or synergistic toxic effects of their combinations which are endemic in today's industrialized food supply. And even in the microbial arena we are having to deal with virulent new strains of pathogens that have been traced to industrialized farming practices, while we are losing important antibiotic protections because of their widespread sub-therapeutic use in confined livestock operations. Yet these integral aspects of the food system affecting public health remain largely unaddressed by today's food safety initiatives.

Most disconcerting to organic farmers especially are the misguided "sterilization" metrics that have been embraced as gospel by the California Leafy Greens Marketing Agreement and the retailer/buyer "supermetrics" designed to one-up them. As testimony at the Monterey hearing by the Wild Farm Alliance and others indicate, there is meager science to back up these assertions.

In this regard I'd like to introduce as footnotes into the record three studies showing the benefits of vegetated buffers:

1. Dabney, S.M., Moore, M.T., Locke, M.A.; Integrated management of in-field, edge-of-field, and after-field buffers (USDA ARS); Journal of the American Water Resources Association. 42(1): 15-24, 2006

Research from USDA's Ag Research Service shows that vegetative buffers such as filter strips, constructed wetlands, and contour buffer strips can retard, retain, and metabolize pollutants. Buffers restrict pollution by reducing drift, increasing sedimentation, increasing uptake by plants, and increasing microbial activity. Vegetated ditches and constructed wetlands can process pollutants in runoff.

2. Kenneth W. Tate, Edward R. Atwill, James W. Bartolome and Glenn Nader (from UC Davis and the UC School of Veterinary Medicine); Significant Escherichia coli Attenuation by Vegetative Buffers on Annual Grasslands; J Environ Qual 35:795-805 (2006)

In 2006, UC Davis researchers tested the effectiveness of vegetated buffers at filtering E. coli in runoff from cattle grazing lands in California. They found that even narrow vegetative buffers can filter between 95% and 99.99% of total E. coli. These results support the assertion that grassland buffers are an effective method for reducing animal agricultural inputs of waterborne E. coli into surface waters.

3. Nokes RL, Gerba CP, Karpiscak MM. (Department of Soil, Water and Environmental Science, University of Arizona); Microbial water quality improvement by small scale on-site subsurface wetland treatment; J Environ Sci Health A Tox Hazard Subst Environ Eng. 2003 Sep;38(9):1849-55.

Researchers from the University of Arizona show that large and small-scale constructed wetlands can reduce levels of fecal coliform and other pathogens in water by up to 97%. A similar study (Hench et al, 2003) showed that constructed wetlands can reduce Salmonella levels in runoff by 93-96%.

And finally, as an eater – and aren't we all? – I think it is paramount that civil society arrives at modern and effective bona fide food safety parameters that truly give us protections from contaminated food in the marketplace. Such constraints must be risk-based and scale appropriate so as not to give particular sectors of the agricultural economy a marketing advantage or a place to hide from warranted public oversight.

Thank you.

Footnoted Reports:

(1) Starmer, Elanor, Food and Water Watch and Kulick, Marie, Institute for Agriculture and Trade Policy; "Bridging the Gaps – Strategies to

Improve Produce Safety, Preserve Farm Diversity and Strengthen Local Food Systems”; 2009

www.foodandwaterwatch.org/food/pubs/reports/bridging-the-gaps

(2) National Sustainable Agriculture Coalition; “Food Safety on the Farm – Policy Briefs and Recommendations, October 2009”; 2009

<http://sustainableagriculture.net/wp-content/uploads/2008/08/NSAC-Food-Safety-Policy-Brief-October-2009.pdf>

(3) Dabney, S.M., Moore, M.T., Locke, M.A. (USDA ARS)); Integrated management of in-field, edge-of-field, and after-field buffers; Journal of the American Water Resources Association. 42(1): 15-24, 2006

(4) Kenneth W. Tate, Edward R. Atwill, James W. Bartolome and Glenn Nader (from UC Davis and the UC School of Veterinary Medicine); Significant Escherichia coli Attenuation by Vegetative Buffers on Annual Grasslands; J Environ Qual 35:795-805 (2006)

(5) Nokes RL, Gerba CP, Karpiscak MM. (Department of Soil, Water and Environmental Science, University of Arizona); Microbial water quality improvement by small scale on-site subsurface wetland treatment; J Environ Sci Health A Tox Hazard Subst Environ Eng. 2003 Sep;38(9):1849-55.

