

UNITED STATES OF AMERICA

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DEPARTMENT OF AGRICULTURE

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PUBLIC HEARING

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IN THE MATTER OF:	:	Docket Nos.
	:	A0-FV-09-0138
A PROPOSED PROMULGATION	:	AMS-FV-09-0029
OF A NATIONAL MARKETING	:	FV09-970-1
AGREEMENT FOR GREEN	:	
LEAFY VEGETABLES	:	

Tuesday,
October 20, 2009

Lafayette Room
Renaissance Syracuse Hotel

701 East Genesee Street
Syracuse, New York

The above-entitled matter came on for
hearing, pursuant to notice, at 8:30 a.m.
BEFORE:

Marc R. Hillson

Chief Administrative Law Judge

APPEARANCES:

ON BEHALF OF THE USDA:

ANTOINETTE M. CARTER, Technical Assistant to
the Chief, AMS
BRIAN T. HILL, ESQ., Office of General Counsel
DONALD HINMAN, Economic Analysis Branch of
Food and Vegetables Program, AMS
MELISSA SCHMAEDICK, Senior Marketing
Specialist, AMS
ANTHONY J. SOUZA, Federal Program Manager, AMS

ON BEHALF OF THE PROPONENTS:

HENRY GICLAS, Western Growers
KATHY MEANS, Produce Marketing Association

JASON RESNICK, Western Growers

ON BEHALF OF THE NATIONAL ORGANIC COALITION:

STEVEN ETKA

T-A-B-L-E O-F C-O-N-T-E-N-T-S

WITNESS	DIRECT	CROSS	REDIRECT
Brian Hill	3723	3731	3772
Maureen Torrey	3779		
Jeff Kubecka	3811	3813	
William Pool	3838	3852	
Richard Bonanno	3912	3922	
Lou Johns	3942	3951	
Kathy Means	3961	3970	4006
Amanda Gormley	4008	4017	
Charlotte Vallaeys	4029	4042	
Kate Mendenhall	4064	4077	
Steve Gilman	4093	4117	
Tim Wersan	4135	4140	
Michael Hansen	4145	4165	
James Graiff	4184	4188	
Al Murray	4206	4220	

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1 P-R-O-C-E-E-D-I-N-G-S

2 8:34 a.m.

3 JUDGE HILLSON: Good morning,
4 everybody. Today is October 20th, 2009, and
5 we're in Syracuse, New York, for the
6 continuation of the Leafy Greens Proposed
7 Marketing Agreement Hearing.

8 This is our sixth location and
9 it's our tenth day of hearing. My name is
10 Marc Hillson, I'm the Chief Administrative Law
11 Judge at USDA.

12 I'm here to run the hearing, but
13 I'm not a factor in terms of making any
14 decisions on the issues that we're talking
15 about at the hearing.

16 Just for the record, the Docket
17 Numbers for the hearing are AO-FV-09-0138,
18 AMS-FV-09-0029, and FV09-970-1. This is a
19 formal administrative hearing.

20 That means all testimony is under
21 oath. I'll be swearing people in before they
22 testify. Anyone who testifies is subject to

1 examination by the USDA Panel, who is seated
2 to my left, as well as anyone else here who's
3 interested to, can ask questions.

4 So, we have a proponent panel on
5 the right and, on my right, and they we have
6 people, I guess, characterized as the
7 opposition, who are here as well today.

8 And just also for the record,
9 because this is, and this is more for the
10 people putting the transcript together. This
11 is not Page 1 of the transcript, but this is
12 a continuation of the transcript so that we
13 have one transcript with one series of
14 numbers.

15 And the same for exhibits. Our
16 last exhibit was, introduced into evidence,
17 was Exhibit 108. So, we'll be starting with
18 Exhibit 109.

19 And, are there any housekeeping
20 matters before we move on? Okay, not seeing
21 anybody, I'm going to ask, I think, I need to
22 have the people who are here in a

1 representational capacity to introduce
2 themselves for the record, one time, and I'll
3 ask the USDA Panel to go first, Mr. Hill.

4 MR. HILL: This is Brian Hill from
5 the USDA's Office of the General Counsel.

6 MS. CARTER: Antoinette Carter with
7 USDA Air Cultural Marketing Service.

8 MS. SCHMAEDICK: Melissa
9 Schmaedick, USDA, AMS.

10 MR. SOUZA: Anthony Souza, USDA,
11 AMS.

12 DR. HINMAN: Don Hinman, USDA, AMS.

13 MR. RESNICK: Jason Resnick,
14 Western Growers, Counsel for the Proponent
15 group.

16 MR. GICLAS: Hank Giclas, Western
17 Growers.

18 MS. MEANS: Kathy Means, Produce
19 Marketing Association.

20 MR. ETKA: Steve Etko, National
21 Organic Coalition.

22 JUDGE HILLSON: I can't think of

1 anything else preliminary, Mr. Resnick, so I
2 guess the, I think everyone's agreed that
3 you're going to call your witnesses, but we
4 will, first, but we're going to accommodate
5 anyone who needs to get out of here by a
6 certain time, so we may go out of order a
7 little bit. But, for now, I'm going to let
8 Mr. Resnick call his first witness.

9 MR. RESNICK: Thank you, Your
10 Honor. The Proponent Group calls Brian
11 Reeves.

12 JUDGE HILLSON: This is the witness
13 stand over here, by the way. And if you have
14 written statements, I'll get them distributed.

15 MR. REEVES: I had one thing that
16 said four copies and one that said 15 copies.

17 JUDGE HILLSON: All I care about is
18 my copy, but four copies is the official, is
19 what the rules say. So if you have four
20 copies, you're okay. And if you have less
21 than we'll --

22 MR. REEVES: Yes, I'll take one for

1 myself.

2 JUDGE HILLSON: That's a good idea.

3 MR. REEVES: You can have the rest.

4 JUDGE HILLSON: And I'm going to
5 mark Mr. Reeves' written statement as Exhibit
6 109.

7 (Whereupon, the document referred
8 to was marked as Exhibit Number
9 109 for identification.)

10 Whereupon:

11 BRIAN REEVES
12 was called for examination by the Proponent
13 and, having first been duly sworn, assumed the
14 witness stand and was examined and testified
15 as follows.

16 JUDGE HILLSON: Can you please
17 state your name and spell it for the record?

18 MR. REEVES: Brian Reeves, B-r-I-a-
19 n, R-e-e-v-e-s.

20 JUDGE HILLSON: Okay, and you have
21 a statement you want to read, sir?

22 MR. REEVES: Yes.

1 JUDGE HILLSON: Go ahead, then.

2 DIRECT EXAMINATION

3 MR. REEVES: My name is Brian
4 Reeves, from Reeves Farms in Baldwinsville,
5 New York, we're about 15 minutes from here.
6 We grow about 300 acres of fresh market
7 vegetables and send them to New York.

8 I guess my overall feeling about
9 the proposed activity is that I'm kind of in
10 favor. I guess I'm overall in favor of a
11 national program to fit us all in kind of a
12 level playing field and some of the things a
13 national program would entail.

14 However, I have several concerns
15 and that's mainly what I'd like to address
16 here today. I guess, the devil's in the
17 details, that sort of thing.

18 Number 1, when I read about how
19 the zones will be determined, I think that
20 there could be better grouping than there
21 currently is, by climate, topography, growing
22 practices, etcetera.

1 For instance, New York is in Zone
2 5. I feel I have a lot more in common with my
3 practices and so forth with, let's say,
4 Michigan, Wisconsin, other northern states,
5 Ohio, than I do with South Carolina, Georgia,
6 Florida.

7 Yet, with the developing of
8 metrics and the determination of a zone and
9 the makeup of the committee, we will be put
10 all together. I think those zones could be
11 realigned better, for more accurate formation
12 of the committees.

13 Also, it appears to me the makeup
14 of the committee is skewed a little more
15 towards handlers than producers. I'm a
16 producer, I'm a farmer, obviously I want to
17 see more farmers involved in the process.

18 If my math serves me right, on the
19 makeup of the national committee, there could
20 be as few as four or six farmers on a
21 committee of 23. And I think, and there would
22 be quite a few handlers.

1 And, if I understand it correctly,
2 if you are a handler farmer, you can't be on
3 the committee as a handler. You have to be
4 purely a handler, to on a committee as a
5 handler.

6 And so I think the representation
7 of farmers actually is probably less on this
8 committee than I would like to see.
9 Especially since this committee will be
10 charged with developing metrics that we
11 haven't seen yet, I think if you think about
12 the flow of producer to handler to whatever,
13 final consumer, whatever, my experience is
14 there's each step you go along there
15 continuum, the people, at a given step, are
16 happy to raise the bar higher for the people
17 who came before them.

18 They would, you know, in other
19 words, I find that retailers quite often would
20 love to have the bar very high for the
21 producer. Because that comes before them in
22 the flow of produce.

1 I guess if somebody is creating
2 metrics for my industry, I would like that
3 have people in my industry, very involved, in
4 the formation of those metrics.

5 And not be on the sideline at the
6 mercy of someone who is downstream from them
7 in the flow of produce. To often, in those
8 situations, I see the legal department and
9 handlers and wholesalers and retailers talking
10 more than the actual people on the ground who
11 are handling the problem, because of liability
12 issues and so forth.

13 And we don't want to see super
14 metrics, what some people in the industry
15 termed super metrics, develop. We want to see
16 metrics that address food safety.

17 Another concern I have is while a
18 national agreement could be a very good thing,
19 to put us all on the same plane and to provide
20 some level of uniformity, so that we can
21 address this issue of, I'll call it audit
22 fatigue.

1 Being asked by several different
2 entities to do different audits for different
3 crops. The idea a national thing could help
4 address that, the bad news is is that it's
5 strictly leaf greens at the moment we're
6 talking about.

7 I mean I am very concerned about
8 what happens when the tomato people come
9 along. What happens when the cucumber people
10 come along. What happens when the cooking
11 vegetable people come along, winter squashes.

12 I mean I would hope in the long
13 run that there would be a melding together of
14 these metrics. There's no sense in having a
15 USDA audit on my farm for ten of the crops I
16 grow, and then have to have a separate audit
17 for the leafy greens.

18 I mean that just, that creates an
19 issue instead of solving an issue. I think it
20 can be handled, but I just want to make sure
21 it's handled.

22 We have been fortunate so far, we

1 have had a USDA audit for three seasons now,
2 '07, '08, and '09, and I've had two different
3 retailers suggest or, they haven't forced me
4 to do it, but they've all but forced me to say
5 that, well, we really, don't really want the
6 USDA audit.

7 We want a different audit. And
8 I'm trying to fight tooth and nail to avoid
9 that. When I've examined other audits, I see
10 like virtually no difference between the
11 metrics they use and what they measure.

12 What I do see is another travel
13 expense and another visit by someone to my
14 farm and another time that I've got to sit
15 down and show them documents.

16 And another check I have to write.
17 But I don't see the food being any safer. So
18 this idea of multiple audits has to be
19 addressed.

20 And the one negative here, is I
21 don't see this thing, this piece of
22 legislation or whatever you want to call it

1 here, marketing, potential marketing order, I
2 don't see that it does enough to address that
3 issue.

4 It could do some things to address
5 that issue, but I don't see it definitely
6 addressing, and that concerns me.

7 Also, to finish up, I don't think
8 there should be any exemptions from this, if
9 we have this national leafy greens agreement.
10 There should be no exemptions from it. I
11 don't care if you're a big farm, small farm,
12 organic farm.

13 If you're conventionally farming
14 or if you're Amish or whatever, you still need
15 to follow the tenets of good food safety and
16 good worker hygiene and so forth.

17 What we would hope is that the
18 zones would be made up properly and that
19 production agriculture would be represented
20 properly, so that those sectors of agriculture
21 would be considered in the metrics.

22 So that someone that's maybe using

1 horses to run their equipment, in Amish
2 country in Pennsylvania, can have a way to
3 still ensure that the food that they're
4 harvesting is clean and not covered with horse
5 manure, let's say.

6 Or whatever. But, again, those
7 can be addressed with the specific formation
8 of metrics. But I don't think there's such a
9 thing as saying, well, this group is safe, we
10 can exempt them. I don't agree with the
11 exemption idea. In the written document, I
12 kind of put those things down in more of a
13 bullet form.

14 I'll be glad to illuminate more or
15 answer more questions, but I think some of the
16 things you've heard, and I didn't think I'd
17 have to go in to explain and reinvent the
18 wheel here.

19 So I kind of just did the bullet
20 from on the written thing. But I'll, at this
21 point, be glad to answer any questions or
22 anything anybody, that they'd like to.

1 JUDGE HILLSON: Okay, thank you,
2 Mr. Reeves. I'll receive your written
3 statement as Exhibit 109. Let me first ask
4 Mr. Resnick if any direct?

5 (Whereupon, the document referred
6 to, previously marked as Exhibit
7 Number 109 for identification, was
8 received in evidence.)

9 MR. RESNICK: Not at this time.

10 JUDGE HILLSON: Okay, let me ask
11 the USDA Panel if they have questions. Ms.
12 Schmaedick.

13 CROSS EXAMINATION

14 MS. SCHMAEDICK: Good morning.
15 Melissa Schmaedick, USDA, and thank you, Mr.
16 Reeves, for your testimony. I'd like to start
17 out today by learning a little bit more about
18 your farm.

19 You mentioned that you have about
20 300 acres of fresh market vegetables?

21 MR. REEVES: Right.

22 MS. SCHMAEDICK: Which commodities

1 do you grow?

2 MR. REEVES: I'll kind of start
3 chronologically. Strawberries, zucchini,
4 yellow squash, peas, cucumbers, cherry
5 tomatoes, grape tomatoes, roma tomatoes,
6 regular tomatoes, bell peppers, hot peppers,
7 cubanelle peppers, eggplant, pumpkins, several
8 varieties of winter squash, cabbage,
9 blueberries. The blueberries are organic.

10 This year was the first year we
11 did some other crops organically. We had a
12 few tomatoes and a few peppers organically, to
13 just try to learn about doing it and kind of
14 dabble in it a little bit.

15 As far as leafy greens go, I think
16 the only thing I have is cabbage, we have
17 about four acres. The other crops are, the
18 biggest acreage is sweet corn at 130.

19 The smallest acres is an acre of
20 eggplant, so, I don't know, it's very
21 diversified. We have a farm market, we have
22 pick-your-own. About 95 or 98 percent of our

1 business is wholesale to local chains, chain
2 stores and food service.

3 And we do ship some to some
4 terminal markets, Philadelphia, mainly. With
5 the organic items this year, we've reached out
6 to New York City a little bit, and if we
7 continue with organics that will continue,
8 probably.

9 I don't, does that kind of give
10 you an idea of what we do?

11 MS. SCHMAEDICK: Yes, thank you.
12 Are you familiar with the Small Business
13 Administration's definition of --

14 MR. REEVES: In some of the
15 material I read preparing for this hearing, I
16 saw it but, like I didn't sit down and say,
17 oh, where do I stand?

18 You know, I don't know where I
19 stand, but I saw some definition of a big
20 farm, small farm or whatever.

21 MS. SCHMAEDICK: And the threshold
22 is \$750,000.00 gross receipts.

1 MR. REEVES: Yes, we're above that.

2 MS. SCHMAEDICK: But when we're
3 trying to assess the impact of leafy greens,
4 would you say that your portion of gross
5 revenues attached to leafy green production is
6 about or below that threshold?

7 MR. REEVES: Way below it, way
8 below it. With four acres of cabbage, there's
9 not a lot of money there.

10 MS. SCHMAEDICK: And you mentioned
11 that you deliver to wholesalers, is that
12 correct?

13 MR. REEVES: Yes.

14 MS. SCHMAEDICK: Do they currently
15 have in place any standards that you're
16 required to meet?

17 MR. REEVES: Yes and no. I was
18 going to say there's three wholesalers that
19 come to mind, that I do, as far as wholesale,
20 just wholesale that we're talking about now.

21 All three I know have been, they
22 deal with national restaurant chains, and I

1 know they have been told that they need to
2 have GAPS in place and two of them have said,
3 gee, when you get your GAPS certificate, fax
4 it to us.

5 You know, that you've passed an
6 audit. The third one never has, although I
7 know that they need to meet that test. In
8 other words, there's some kind of, little bit
9 of GAPS versus what they maybe have to do,
10 what they should do and what they're telling
11 me I have to do.

12 You know, there's a little
13 communication thing. Usually what I do is,
14 the last three summers when I finally get my
15 audit certificate that I passed the USDA
16 audit, I just start faxing people.

17 Because, if they want it, great.
18 If they don't need it, great. They've got it
19 in their file. But there are some times,
20 which is a different subject, but I find this
21 to be true of liability insurance also.

22 Many companies are like a dog on a

1 bone. You've got to have liability coverage
2 and name us as additional insured. And I've
3 got other people that I deal with who have
4 never, in the history that I've dealt with
5 them, asked me for liability insurance or to
6 be covered on the policy.

7 But I bet you it's part of their
8 corporate policy, there's just some GAPS there
9 sometimes with follow through.

10 MS. SCHMAEDICK: So you mentioned
11 that you received the USDA audit verification
12 for GAPS?

13 MR. REEVES: Yes.

14 MS. SCHMAEDICK: Do you work with
15 any other programs?

16 MR. REEVES: No, no. So far I've
17 been trying, and I don't know if I care which
18 one I do, but I've been trying to stick with
19 one audit.

20 I started with USDA because some
21 of the first, well Wegman's was one of the
22 first people to request us to do this. They

1 brought, they had training sessions.

2 They brought in USDA people, okay
3 fine. And I got to kind of know their audit
4 a little better. To begin with, one of the
5 first programs, Wesley Kline in New Jersey,
6 I attended a vegetable grower's meeting
7 several years ago.

8 And many of the instructions he
9 gave were towards the USDA audit, as kind of
10 template. And, in New York at least, it's
11 administered by the people from the New York
12 State Department of Egg and Markets.

13 And their main office is at the
14 New York State Fair, which is like ten minutes
15 from my farm. So, you know, no toll calls, no
16 long distance travel expenses, why not use
17 them.

18 You know, it seems to work for me.
19 And I'd like to keep it that way, now that
20 I've kind of started down that road. And I
21 have had a couple of chains say, well, I don't
22 know.

1 One chain says we don't really
2 recognize them as if they're, you know, Swiss
3 cheese or whatever. And I'm kind of like why
4 wouldn't you recognize it?

5 And I guess as a farmer, I'd say
6 either, if there is such a think that some
7 audits are lacking and some other entities are
8 better, well, let's get them on the same page.

9 If somebody is overdoing their
10 job, let's remove some of those super metrics
11 from the program. And if somebody is lacking,
12 like they aren't really checking the things
13 they should check, well let's get them up to
14 snuff.

15 But let's try to get this national
16 thing on a level playing field, so that you
17 can call up a retailer and say I've got audit
18 from A, and he'll go great.

19 He or she will say that's
20 wonderful, audit A will do it. Because audit
21 A is the same as audit B and audit C and audit
22 D, you just pick which one you want.

1 And we're not seeing that quite
2 yet. And from a producer standpoint, that's
3 a real bugaboo.

4 MS. SCHMAEDICK: In your opinion,
5 would a national program lend itself to a
6 stronger representation of the proposed audit
7 program in terms of discussions and
8 negotiations with buyers?

9 MR. REEVES: I think I, if what
10 you're getting at is, I think that if it was
11 a national program and the buyer had heard, he
12 talked to 20 suppliers that day, and 19 or 20
13 of them all had been, I think sooner or later
14 they get the message.

15 Well, this must be what we can go
16 with. So, yes, I think a national program
17 would have that advantage.

18 One of my concerns is we're
19 nationally talking about leafy greens now.
20 There's a whole lot of other crops that we're
21 not talking about. And while this may be a
22 very worthy thing to do for leafy greens, we

1 could still end up having duplicative audits
2 or nearly duplicative steps for other crops I
3 grow.

4 And you can see, from the mix I
5 told you, there's four acres of cabbage, I
6 don't lose sleep at night over four acres of
7 cabbage. But I don't want to see a separate
8 audit be done for four acres of cabbage, when
9 I'm growing 250 acres of something else, of
10 ten different crops. You follow me?

11 MS. SCHMAEDICK: Yes.

12 MR. REEVES: So, I really hope
13 there's some uniformity there. But, B, I
14 think the nationalized network would maybe
15 carry some weight, sure. And again, with the
16 idea that representation from different areas
17 of the country, because there are different
18 seasons, different ways the crop is sold.

19 And the flow, the stream of the
20 produce. So the metrics might be slightly
21 tweaked depending on where you're growing and
22 how you're growing.

1 MS. SCHMAEDICK: In your opinion,
2 is the proposed program, does it allow for
3 recognition of differences in producing areas?

4 MR. REEVES: Well, it attempts to
5 by splitting the country into zones. But I've
6 mentioned, I think we, just my opinion, when
7 you're trying to develop metrics, for
8 instance, we've heard, I've heard people talk
9 about size of farm being a big important
10 thing. And it can be.

11 There really are some differences
12 with a, call it a Mom and Pop operation who
13 plants, weeds, harvests, packs and ships their
14 own stuff.

15 There's a certain amount of
16 oversight control that doesn't not exist with
17 a large organization that has many ranches and
18 many different growers and many different
19 whatever.

20 That, the bigger entity has to
21 take special steps to make sure the oversight
22 happens. It's very doable and many of them,

1 I'm sure, are doing fine at it.

2 But we talk about size quite
3 often, when we build metrics, one size doesn't
4 fit all. Well, I'm pretty a little less
5 concerned with the size of the operation,
6 because you can be a big operation and not
7 wash your hands.

8 Just as much as a smaller
9 operation can not wash their hands, after
10 using the restroom. I'm less concerned with
11 size, maybe more concerned with growing
12 practices and the flow of produce, how it's
13 packaged.

14 If I were a ranch in California
15 and I harvested a whole bunch of lettuce or
16 spinach, we pack it in bulk bins and just took
17 to a processor and that was the last, I washed
18 my hands of it.

19 The things that I need to look
20 over, many of them would be the same as what
21 we look out for. But there's going to be some
22 different things that you'd look out for, for

1 someone who maybe cuts that spinach in the
2 field, trims, cleans and boxes themselves and
3 takes it directly to a retailer or even sells
4 it directly on their fruit stand.

5 That same entity, spinach. But
6 you can see the metrics might have to be
7 different for those types of entities. And
8 it's less about size and it's more about
9 growing practices and the flow of produce to
10 the consumer.

11 So, yes, the idea with zones could
12 allow for that, quite a bit. But, as I
13 mentioned, I think some of the zones are
14 misaligned.

15 If I'm a New York farmer, I think
16 I have much more in common with Michigan,
17 other northern states. States that have a
18 frost, states that have a break in their
19 season, than I do in Florida or Georgia, where
20 there is some production nearly year-round.

21 MS. SCHMAEDICK: Have you had the
22 opportunity to fully read the proposed

1 language?

2 MR. REEVES: I believe so.

3 MS. SCHMAEDICK: So is your
4 understanding --

5 MR. REEVES: In the Federal
6 Register?

7 MS. SCHMAEDICK: Yes.

8 MR. REEVES: Yes.

9 MS. SCHMAEDICK: So your
10 understanding of zones, based on your
11 statement, you are attaching to term zones to
12 the development of metrics?

13 MR. REEVES: Well, I believe the
14 zones will determine the percentage and makeup
15 of the board, which will, in turn, determine
16 the, it's not a steering committee, but the
17 committee that actually comes up with the
18 metrics. It's kind of like, you know, I have
19 opinions on healthcare and I vote for this
20 Congressman over here.

21 Well, this Congressperson didn't
22 make healthcare but you're both very skewed to

1 how it's going to be determined. Well, the
2 same thing.

3 The makeup of these zones is going
4 to determine our representation as a farmer
5 and as a New Yorker farmer. And that, in
6 turn, is going to determine in how we come up
7 with metrics and how they're going to be
8 suggested to finally be voted on and be
9 brought into play.

10 So, I guess I would like to make
11 sure my zones are very representative of
12 northeast agriculture. And I'd like to make
13 sure the representation of a mixed vegetable
14 farm, which many of us in the northeast are.

15 And I would hope that the
16 percentage of people on these committees and
17 boards, would be skewed a little more toward
18 producer and a little less toward handling.
19 And, ultimately, those percentages can
20 determine the validity of the metrics.

21 Hopefully that makes some sense of
22 that logic.

1 MS. SCHMAEDICK: And, based on your
2 statement, what is your understanding in terms
3 of the number of producers that can be on the
4 administrative committee, Section 970.40?

5 MR. REEVES: Well, I did this, I
6 should have probably written it down. I did
7 it once when I was thinking through this.
8 Point to me where the committee saying is?

9 MS. SCHMAEDICK: 970.40.

10 MR. REEVES: Point four?

11 MS. SCHMAEDICK: Four, zero.

12 MR. REEVES: All right, well if
13 you, I think if you lay it up here, you've got
14 23 individuals, possibly. You've got six and
15 four is ten, three is 13, 16, 19, 20, 21, 22,
16 it looks like 23 individuals and one, two,
17 three, four and two, there's six that say
18 producer. So, at first glance, there looks
19 like there could be as many as six producers
20 out of 23 individuals on the primary
21 committee.

22 I think the wording goes down to

1 talk about, you know, if you're a
2 handler/producer, you can't be considered as
3 a handler.

4 And I forget, right now, without
5 trying to come up with it, I forget where I
6 came up with the idea that maybe there could
7 be as many as six.

8 That would be, the most there
9 would be is six, but there could be as few as
10 four, depending on where that producer/handler
11 thing came down.

12 And as specifically in the zone
13 I'm in, it looks like there could be one
14 producer from the zone we're in, and two
15 handlers.

16 But, the same thing, one-third.
17 And the voting quorum is pretty much majority
18 only. And if you've got the board made up of,
19 I'll just say again, if we stick with that six
20 out of 23 number, which is like one-fourth.

21 Three-fourths are non-farmers.
22 Then I'm a little uncomfortable with the input

1 for metrics, who they're going to weigh
2 heavily on the farm community.

3 It seems like that percentage
4 would be a little bit nicer if there was a few
5 more farmers involved. And you might say,
6 well, why?

7 You know, that's like the fox
8 guarding the hen house. Well, we're going to
9 have to all live by those metrics anyway. And
10 there are other people on the committee that
11 aren't going to let you get away with soft-
12 stepping it.

13 But, again, my experience is, is
14 when you talk about the flow of produce, from
15 producer to a handler to a whatever, to a
16 processor to a retailer, whatever, when you gl
17 up that flow, and they begin to talk about
18 people behind them, why not raise the bar
19 right up through the roof? Why not have super
20 metrics?

21 Because we don't have to go out in
22 that field and actually institute these

1 metrics. We don't have to make sure they're
2 valid, we don't have to anything.

3 But I've got a legal department
4 that I have to keep happy. And I've seen it
5 all the time. I've seen it with insurance
6 requirements, I've seen it with hold harmless
7 agreements.

8 And I'm beginning to see it with
9 the audits of food safety. And I think, when
10 we, when that happens, we get away from things
11 that really make food safer, and we begin to
12 get into the realm of keep the lawyers happy.

13 Keep the litigation down. Keep
14 our insurance companies happy. And I realize
15 those are realities of business, I deal with
16 it myself, but I'm more concerned with making
17 food safe and having realistic metrics that
18 farmers are going to institute on their farm.
19 If there's something that they feel is kind of
20 arduous or very difficult, then they're going
21 to start trying to cut corners.

22 They're going to try and not do

1 it. So these metrics, when they're developed,
2 have to be very doable. Hence, it makes sense
3 to have producer input.

4 You know, what would you be
5 willing to do on your farm to ensure food
6 safety? What is a reasonable measure of the
7 things you do to help food safety? So, that's
8 my opinion.

9 MS. SCHMAEDICK: No further
10 questions.

11 JUDGE HILLSON: All right, anything
12 else from the USDA panel? Ms. Carter?

13 MS. CARTER: Antoinette Carter with
14 USDA. Just a few, a couple of followup
15 questions for you, Mr. Reeves.

16 You mentioned that you currently
17 have the USDA GAP verification audits
18 conducted?

19 MR. REEVES: Yes.

20 MS. CARTER: Could you describe for
21 us what are the major components that are
22 looked at, as a part of that audit

1 verification?

2 MR. REEVES: Sure. The, well it's
3 divided into several parts. I'll probably
4 screw up the order here, but you've got a
5 whole farm review, which is general, you know,
6 do you have a food safety plan, written plan?

7 In general, where is your farm
8 located? In general, you know, is it right
9 next to a feed lot? What are your water
10 sources? Are they downstream from a feed lot?

11 You know, some of the obvious
12 questions about the general layout of the
13 farm. You have to have a map of your
14 facility, the different buildings and what
15 they're used for.

16 Then, I think, the next part deals
17 mostly with worker hygiene and training. You
18 know, do you train your workers about using
19 the restroom, washing their hands?

20 Do you have restroom facilities
21 available? Are they maintained? Do you have
22 a, and much of this has to be documented.

1 Yes, we've maintained restrooms.

2 Yes, I've rented the port-a-johns.

3 Whatever your method may be. So it's a big,
4 big emphasis on worker hygiene, training and
5 making sure people who are touching produce,
6 their hands are clean and things are done to
7 keep them clean.

8 The field harvest facilities, we
9 field pack cabbage, zucchini, yellow squash,
10 strawberries. So there's field harvest
11 activities.

12 You know, are there port-a-johns
13 handy. And the workers trained again. Are
14 they new containers, are they clean
15 containers, where do you store your
16 containers?

17 The packing house facility,
18 because some of our produce gets packed and it
19 comes to the main packing shed and we wash it
20 and grade it and pack it. Do you have a pest
21 control program on place on, both on the whole
22 farm, but also the packing shed.

1 Do you, are you checking the
2 temperatures in your cooler? Any rooms where
3 there's a really cold cooler or a tomato room
4 where it's not quite as cold?

5 Daily checking of temperatures and
6 log all this information. Much written
7 documentation. Heavy emphasis on the food
8 chains, temperature control. Heavy emphasis
9 on pest control, heavy emphasis on worker
10 hygiene and hand washing.

11 Heavy emphasis on the water you
12 use. The water you use for irrigation, where
13 does it come from? Water is tested for e.
14 coli, other pathogens.

15 We use some well water. Oh, is
16 that tested, is it potable water. You need to
17 have potable water for washing your produce,
18 you need to have it for workers to drink when
19 they're working.

20 This one is kind of strange, but
21 you need to have potable water when you put it
22 in a sprayer to fill with pesticides, which

1 could be poisonous.

2 But it's got to be potable water
3 when you put it in, you know, they don't want
4 dirty water going into the sprayer. So, those
5 are the main points that come to mind.
6 Traceability also.

7 Can you trace your product, one
8 general rule is one step forward and one step
9 back. You know, for any given day, here's a
10 box of peppers.

11 Can you tell me it came from that
12 flock or that field, and can you tell me who
13 it got sold to, and that sort of thing.
14 Generally, that's very general.

15 MS. CARTER: Are there any that you
16 find, what's, I guess, in your opinion, how
17 you found these verification audits to be
18 beneficial and, if so, why?

19 MR. REEVES: Yes, I have. Probably
20 my story is similar to a lot of farmers'
21 stories. I went to a meeting about five years
22 ago, and heard someone speaking on food

1 safety.

2 They were from Florida, I believe,
3 and of course, in a way they presented kind of
4 worst case scenario for farmers. And you go
5 out of that meeting saying, no way in hell I'm
6 going to do that stuff.

7 You know, it's just paperwork and
8 this is stupid and, you know, it's like, what
9 is it, the stages of grief? It was first it
10 was resistance or whatever, you know.

11 Then you hear more and you hear
12 more. And then you get the call or, in my
13 case, I happened to sit in a meeting and I
14 heard the speaker from one of the chain stores
15 saying they were going to start demanding
16 that.

17 I hadn't received a letter or
18 anything. It turns out my letter was in the
19 mail. That from starting two years from now,
20 you're going to have to have audits, whatever.

21 So then you realize, this is a
22 pretty good customer and I guess I've got to

1 religion here, one way or the other. And I
2 was very fortunate, that same meeting, that
3 afternoon, they were having a food safety
4 session.

5 So, I guess I know where I have to
6 be this afternoon. I'm going to sit down and
7 try to learn some of this stuff and see what
8 I need to do.

9 And I learned a lot of things.
10 That if it's done right, it is doable. It is
11 important to do. It's not just some, it's not
12 just the legal department telling you you need
13 to do this to reduce liability.

14 It is important to do. And, at
15 some point, you go from that resistance, oh my
16 God I'm going to stall this as long as I can,
17 to acceptance, to, and to answer your
18 question, yes, the beneficial.

19 I mean we used to, we used to have
20 restrooms available most places, but not
21 everywhere on the farm. But now they're
22 available everywhere on the farm. We had, you

1 know, hand sinks most places, but not
2 everywhere.

3 Well, now they're everywhere on
4 the farm. I got in and out of my cooler ten
5 times a day. I guarantee you I can tell you
6 the temperature within two degrees any time
7 I'm in or out of it, if something is wrong.

8 Because I just do it. But I never
9 wrote it down. Well, you know what, when you
10 write it down you kind of make sure it
11 happens.

12 And when you write it down you
13 kind of make sure it's within two or three
14 degrees. So, yes, it's been beneficial.

15 We, I can honestly tell you today,
16 we wash our hands more than we did three years
17 ago. We monitor where, we do use manure, by
18 the way, that's another part of the audit, if
19 you use manures, when do you use them how do
20 you used them, you know.

21 We do use some animal manures. We
22 taking time to figure out, you know what,

1 we're not going to put them out in the spring
2 anymore. We're going to put them on in
3 September, the year before.

4 So we have a longer time period
5 for it to compost and decay in the soils,
6 before there's a crop to put on it.

7 I don't think I'd be doing that,
8 if it wasn't for the audit, pointing that out
9 that that's important. So, yeah, it has been
10 beneficial to us.

11 I'm convinced we're doing things
12 to make, to reduce risk in our foods that we
13 produce and I think it's been good for us
14 overall.

15 Do I enjoy the paperwork? No. Do
16 I enjoy having to go through an audit? Nobody
17 does. I mean, you know, that's obvious. But,
18 are we a better farm because of it? Yes, we
19 are, no doubt about it.

20 It has done some things that have
21 been go for us. Even though, four or five
22 years ago I would have said, I don't need

1 that, my food is safe. It's been good, it's
2 improved us.

3 MS. CARTER: Thank you, that's all
4 I have.

5 JUDGE HILLSON: Anything else from
6 the USDA panel? Donald Hinman.

7 DR. HINMAN: Don Hinman, USDA, good
8 morning. You mentioned that based on growing
9 practices in a particular part of the country
10 that you're growing in, you were concerned
11 that if the future market agreement existed,
12 that the metrics might not account for your
13 particular growing differences, is that
14 correct?

15 MR. REEVES: I think the odds are a
16 little better that they might not account for
17 it, as well. There's no guarantees on any of
18 this. Let's face it, this document, if you're
19 asked to sign up to this, there are no metrics
20 here.

21 You've got to have a lot of faith
22 in the committee and the things that they come

1 up with, and if they're going to be realistic,
2 achievable and accurate, in what they try to
3 do.

4 So, yes, I'm concerned about that.
5 There's a possibility that the way the zones
6 are determined and the way the makeup of the
7 committee is, it could have a definite outcome
8 on how the final metrics on any such audit
9 will be determined.

10 And so I'm concerned about that,
11 yes.

12 DR. HINMAN: And could you provide
13 a few examples of a metrics that you think may
14 be inappropriate. And, if you were speaking
15 for a future, you know, technical review
16 committee, how you would change it to make it
17 appropriate to an operation such as yours?

18 MR. REEVES: Well, one thing I've
19 heard cited in some of the, actually previous
20 testimony, I think, and I've thought of it
21 myself.

22 Many of our fields in central New

1 York, they can be anywhere from one to 15. If
2 you have anything over a 15 acre field for a
3 lot of vegetable farms in the state, that's a
4 big field.

5 So, and what I mean by fields,
6 it's surrounding by woods or hedge row or
7 swamp or something. Our topography is pretty
8 well split up.

9 So those field borders are
10 important. They can harbor wild animals, you
11 know, you name it, birds, racoons, anything.
12 Those could be sources of animal feces.

13 The flip side to all that is they
14 provide variable wind breaks. They provide
15 habitat for beneficial insects. And birds eat
16 a lot of insects, too.

17 You know, we don't want birds to
18 poop on our produce, but we're glad they eat
19 the insects. You know, so you got to make
20 choices. And I'm not sure every area of the
21 country has quite as many issues with hedge
22 rows and woods and things like that. Maybe

1 they do, but I know we do in central New York.

2 And I know that on our farm we
3 make realistic attempts to control the wild
4 animal population. My family all hunts deer.
5 We allow other hunters to come in and hunt
6 deer during the season.

7 We have friends who hunt geese. I
8 don't hunt geese, but we have friends that do.
9 We're glad that they kill some geese, because
10 the year round population of geese is getting
11 a bit out of hand up here in the northeast.

12 Again, I don't know, in other
13 parts of the country it may not exist, but in
14 the northeast it is. And anybody who's had
15 geese around here knows that they like to poop
16 everywhere.

17 I don't care if it's a public park
18 or where it is. So that's an issue. Well, we
19 take some steps to try to control that wild
20 population.

21 But, I don't know if, I mean
22 somewhere, this is ludicrous. But somebody

1 can pass a metrics that says if ever a goose
2 is seen wandering, one goose wandering in your
3 field, you have to quarantine that field and
4 not pick a thing.

5 So that's, that would be overkill.

6 But I think to have a program in place where
7 hunters come in and hunt geese, and you
8 monitor your fields and you try your best to
9 segregate the geese out of the fields and keep
10 them in the wild areas, then, that's probably
11 a good faith effort to try to reduce intrusion
12 of animals.

13 But, and I guess there's been some
14 controversy on that subject in the west, I
15 believe. On field borders and how big a
16 border. And those border areas also serve to
17 buffer our runoff and water going into
18 streams.

19 So, there are people who really
20 like some wild areas around your fields, to
21 act as a buffer, whether it's pesticides or
22 fertilizer washing into waterways.

1 And then someone else would say,
2 gee, I'd love it if that was just clean,
3 pristine, bare soil where no animal could
4 exist.

5 Because now I have to worry about
6 them wandering into my field and leaving
7 manure. So there's a balance that needs to be
8 struck.

9 So, I don't know if I'm making
10 kind of an example. There could be an idea of
11 super metrics where it's overkill.

12 And my general, I don't have
13 statistics to back this up, but my general
14 feeling of a farm that five years ago didn't
15 to an audit, and just kind of did things the
16 way we did them versus today.

17 Well, just training your workers
18 to wash their hands, having readily available
19 toilet facilities and sinks to wash their
20 hands, that's like a major gain in my book in
21 the food safety continuum, let's say.

22 Preserving the cold chain. Using

1 new containers. I mean, monitoring your water
2 that you irrigate with. Those are like, you
3 know, you do one step and, man, you're just
4 moved yourself up the continuum a lot, to
5 ensure safer food.

6 And then, well for instance,
7 there's one thing that we don't do. Three
8 years in a row in the audit I've lost these
9 points on some scoring, let's say.

10 And that's covering your loads of
11 produce when you bring them up from the field.
12 Just the trip from the field to the packing
13 shed, making sure the loads are covered.

14 A guess so if a bird flies over or
15 something, you know, they're covered. We do
16 not do that. Our fields are all between one,
17 the farthest corner of the farm is three miles
18 from the packing shed.

19 The time it would take my help to
20 tarp a load, to start down the road, the load
21 would be at the barn.

22 Or they'd have another load

1 loaded, which is sitting in the field, in sun
2 and birds can fly over that, too.

3 So, our attitude is get the stuff
4 loaded, get it to the barn, don't take your
5 time tarping it.

6 On the USDA audit that's worth
7 five points. That's five points I'm willing
8 to give up, but I don't think there's much
9 gain in food safety or risk to tarp those
10 loads.

11 I really don't. Now, I'm done,
12 wherever, it could be anywhere in the country,
13 but let's say Florida because I've witnessed
14 it Florida.

15 I've got a packing shed somewhere,
16 a tractor trailer load of peppers comes into
17 that packing shed, it was an hour and a half
18 away. The fields were an hour and a half
19 away.

20 It drove on interstates, it was
21 out and about for an hour an a half. Well, if
22 that was my truck, the son of a gun would be

1 tarped. I mean it's on interstate highways,
2 it probably has to be anyway for DOT
3 regulations, I don't know.

4 But, that's a good idea. It's out
5 there for an hour and a half exposed. My
6 trucks are exposed from the field to the barn
7 in five minutes or so.

8 I don't want to take ten minutes
9 to put a tarp over a wagon or truckload of
10 produce that's going to be out for five
11 minutes.

12 That might be an example of one
13 thing, and I don't think there's much to be
14 gained there for food safety, on my farm.
15 But, again, that scenario with the fields far
16 from the packing shed, oh, there could be
17 quite a big gain maybe there.

18 So, that gives you an idea of
19 different farms and how important metrics are,
20 I don't know.

21 DR. HINMAN: One more question,
22 thank you. If you think back, you mentioned

1 like three years ago was it, maybe the time
2 period in which the food safety requirements
3 you've had on your farm have gone up
4 substantially?

5 And would you please able to say
6 that from, you had at some previous point, in
7 order to take these USDA audits and other
8 practices, could you maybe state a percentage
9 increase in the costs that you perceive for
10 having done that, from your previous
11 operations?

12 Eventually you ran your farm to
13 this new position, with much more food safety
14 activity, a percentage cost increase?

15 MR. REEVES: I couldn't really.

16 DR. HINMAN: That's fine.

17 MR. REEVES: I'd be really doing a
18 wild-ass guess. I do, if you're trying to get
19 an idea of impact, I can't really much with
20 the dollars, although it's there.

21 If you're just asking me, top of
22 my head, what's the biggest worst thing? It's

1 just all the paperwork. The notion is if it
2 isn't written down, it didn't happen. So many
3 of the things that we've, I don't want to try
4 to paint a picture that five years ago we were
5 a bunch of cowboys out there, rubbing animal
6 feces all over things, we weren't, but we
7 didn't right it down.

8 We didn't document it. So, and
9 much that falls on me, personally, being a
10 small, family-run operation. And I just spend
11 a lot more time now just writing down, yes,
12 here's the date.

13 And, yes, I walked into the
14 cooler. And, yes, it was 42 degrees. You
15 know, like I've done the last 63 days. And
16 then you just add that up.

17 That only took five seconds. But
18 add it up with the pest control, add it up
19 with this, add it up with that, and you have
20 a stack of papers this big and you've got
21 writer's cramp.

22 And all of us farmers, I hear it

1 every time I go to a meeting. We got in this
2 business to farm. And, we understand we also
3 have to be accountants, we have to be business
4 people, we have to kiss a buyer's butt.

5 We have to do all kinds of things
6 besides just farm. But it's getting to where
7 you're doing less and less of the farming and
8 more and more of this other stuff.

9 And it gets frustrating for
10 farmers. But that's the nature of the beast.
11 You know, if it was easy, everybody would be
12 doing do it.

13 DR. HINMAN: Thank you, no further
14 questions.

15 JUDGE HILLSON: Anything else from
16 the panel? Does anyone, if anyone has
17 questions they can come up to the mic. And
18 please identify yourself when you get there,
19 sir.

20 MR. JOHNS: My name is Lou Johns.

21 JUDGE HILLSON: Spell your last
22 name?

1 MR. JOHNS: Johns, J-o-h-n-s. I'm
2 an organic vegetable farmer in, near the
3 Ithaca area. I guess the only question I have
4 of Brian, was, five years ago, did you have
5 incidents of health safety issues occurring on
6 your farm, before you started having to be
7 required by our buyers for GAP and other kinds
8 of safety metrics?

9 MR. REEVES: No, this was, and you
10 probably know the answer to this. This was,
11 none of this was a response to problems on our
12 part, we better get our house in order.

13 This was kind of, well, it's been
14 an evolving thing, but the Spinach incident,
15 watershed incident, everybody knows that.
16 And, after that, it was like, hey, we better
17 circle the wagons here and we're going to
18 start making these demands and that's what it
19 was.

20 But we didn't have any issues on
21 our farm, we never have.

22 MR. JOHNS: Thanks.

1 JUDGE HILLSON: Any other
2 questions? Any redirect?

3 MR. RESNICK: Yes, Jason Resnick,
4 Western Growers.

5 REDIRECT EXAMINATION

6 MR. RESNICK: Thank you, Mr.
7 Reeves, for your testimony this morning. I
8 just wanted to clear up some possible
9 confusion.

10 As you understand, there is a
11 committee that is made up of individuals in
12 the zones you were talking about?

13 MR. REEVES: Umm hmm.

14 MR. RESNICK: Is that a yes?

15 MR. REEVES: Yes.

16 MR. RESNICK: And are you aware of
17 the technical review board's function under
18 the marketing agreement, proposed marketing
19 agreement?

20 MR. REEVES: When I read this I
21 was, but, you know, I'm not saying I'm ready
22 for the final exam here.

1 MR. RESNICK: Well, I'll help you
2 through it.

3 MR. REEVES: I think you're going
4 to illuminate me a little, aren't you.

5 MR. RESNICK: It's open book.

6 MR. REEVES: Okay.

7 MR. RESNICK: So if you look at
8 Section 970.45, please?

9 MR. REEVES: Point 45, yes.

10 MR. RESNICK: I'll just read the
11 first part of that. The technical review
12 board is hereby established for the purpose of
13 assisting the committee in developing audit
14 metrics in 970.67, and any other function that
15 the committee may recommend and that sector
16 improve.

17 Is it your understanding that the
18 technical review board is the body that
19 develops the metrics?

20 MR. REEVES: Yes.

21 MR. RESNICK: And then, as we go
22 down that same section, the technical review

1 board shall consist of 13 members as follows.
2 One representative from each zone who's
3 elected by the committee, producer and handler
4 members from the corresponding zone.

5 One produce food safety expert
6 from a land grant university within each zone,
7 elected by the producer and handler members
8 from the corresponding zone.

9 One representative from USDA
10 natural resources conservation service,
11 appointed by the secretary. One
12 representative of the U.S. EPA, designated by
13 the administrator.

14 And two representatives from FDA
15 designated by the Commissioner. Do you
16 understand that these are the individuals that
17 would help to develop and recommend metrics?

18 MR. REEVES: Yes.

19 MR. RESNICK: And then moving on to
20 the next sentence. The technical review board
21 may appoint subcommittees, as necessary, to
22 facilitate input and review from regions

1 throughout the production area.

2 And I want to emphasize the word
3 regions. Do you understand that term to be
4 different or the same as zones, as defined in
5 the proposed agreement?

6 MR. REEVES: Well, it's a, I know
7 government language, it's not the same as
8 zones or else they would have defined it as
9 zones.

10 But the same idea, I guess,
11 different areas of the country.

12 MR. RESNICK: Would it be helpful,
13 in your opinion, if there were a separate
14 definition of regions in the marketing
15 agreement?

16 MR. REEVES: Well, if they want,
17 you know, anything in this agreement that can
18 be defined ahead of time, would make it more
19 clear. And that's not defined at the moment.

20 MR. RESNICK: Okay, I appreciate
21 that. So, reading 970.45, is it your
22 understanding that the metrics will take

1 distinctions between zones, excuse me, between
2 regions that would contemplate climate,
3 topography and other growing conditions?

4 MR. REEVES: Yes, it does indicate
5 that it will, and it has all along. I think
6 my concern is that, and regions may be
7 different than zones, but the zones, in and of
8 themselves, I don't think were the most
9 advantageous, so maybe the regions could be
10 advantageous, I'll grant you that.

11 But, again, I'd kind of like it
12 defined here that it's going to be that way.
13 Not to leave it up to somebody later to,
14 that's why I had my input today, so that
15 whoever determines these things, knows it's on
16 the record that somebody cared about it.

17 The other thing is, again, the
18 members of the technical review board, who
19 will have a direct impact on these metrics,
20 again, one from each zone elected from a
21 majority of handlers and producers and, again,
22 this gets us back to where there's still

1 producers to vote for this person.

2 It's just, you know, I would like
3 better, a few more numbers for producers. I
4 guess that's my take home message. But, yes,
5 I understand how a technical review board
6 functions.

7 But, again, it's like a chain of
8 democracy. You vote here and that vote still
9 carries through to here. So you would like to
10 have the representation here, to have good
11 parity, so that you end up down here with the
12 proper representation.

13 So, does that make sense to you?

14 MR. RESNICK: It does. I
15 appreciate that, thank you.

16 MR. REEVES: One thing, I'm just
17 looking here quickly on 970.45, it talks about
18 13 members, correct? The technical review
19 board?

20 MR. RESNICK: That's what it says.

21 MR. REEVES: And just looking ahead
22 here, am I right, there's five zones?

1 MR. RESNICK: Yes.

2 MR. REEVES: So there's five
3 people. A produce safety expert from land
4 grant. A USDA conservation service, and two
5 from FDA. Why do I come up with ten people
6 there? Where am I not, missing here.

7 MR. RESNICK: You know, the land
8 grant, I think that we found an issue with
9 that number and that number will be corrected
10 later.

11 MR. REEVES: Oh, okay.

12 MR. RESNICK: I think there was a
13 mathematical error, so thank you for clearing
14 that up.

15 MR. REEVES: Right.

16 MR. RESNICK: So, you passed the
17 test, good job.

18 MR. REEVES: I was worried.

19 MR. RESNICK: Thank you, I have
20 nothing further.

21 JUDGE HILLSON: Any further
22 questions for Mr. Reeves? Okay, thank you,

1 sir, you may step down. Thank you for
2 testifying. Why don't we just move on, Mr.
3 Resnick, and call your next witness.

4 MR. RESNICK: Yes. The Proponent
5 Group calls Maureen Torrey.
6 Whereupon:

7 MAUREEN TORREY
8 was called for examination and, having first
9 been duly sworn, assumed the witness stand and
10 was examined and testified as follows.

11 JUDGE HILLSON: Please state your
12 name and spell it for the record?

13 MS. TORREY: Maureen J. Torrey, M-
14 a-u-r-e-e-n, middle initial J, last name
15 Torrey, T-o-r-r-e-y.

16 JUDGE HILLSON: Okay, Ms. Torrey,
17 you have a written statement you want to read?

18 MS. TORREY: Yes, I do.

19 JUDGE HILLSON: Go right ahead.

20 DIRECT EXAMINATION

21 MS. TORREY: Good morning, I'm
22 Maureen J. Torrey and I'm Vice President of

1 Torrey Farms, Inc. Torrey Farms, Inc. Is a
2 twelfth generation farm which has been located
3 in western New York for over 200 years.

4 Torrey Farms grows over 6,000
5 acres of vegetables with about 900 acres of
6 cabbage and they're all leafy green.

7 Our farm has always been a strong
8 supporter and participant of the Boston Safest
9 Farming Practices in growing our commodities
10 for market.

11 We are pleased that if the USDA
12 moves forward on the NLGMA agreement, that is
13 voluntary and not mandatory, that there are no
14 exemptions for size of farms or if
15 conventional or organic.

16 I do question the makeup of the
17 zones in the NLGMA. I wonder if it wouldn't
18 be more feasible to put states, that have an
19 extended cold period, together, as their
20 growing practices are more compatible than
21 with states that don't experience extended
22 cold periods.

1 I feel that if the zones were
2 changed it would help us more easily develop
3 regional, flexible metrics that would be more
4 matched to the growing regions.

5 I also feel that the cost to
6 implement the NLGMA on our farm would be
7 minimal, as we are already in conformance with
8 the FDA's good agriculture practices and good
9 handling practices.

10 In concluding, I would like to
11 formally state that we're a strong proponent
12 to the NLGMA, and we feel that as we are so
13 many generations away from the farm, it is a
14 way to ensure the consumer that their food
15 supply is safe and that the best practices are
16 being used on our farm. Thank you.

17 JUDGE HILLSON: Thank you, Ms.
18 Torrey. I'm going to receive your written
19 statement in evidence as Exhibit 110. I'm
20 going to ask Mr. Resnick if he has anything on
21 direct?

22 (Whereupon, the document referred

1 to, previously marked as Exhibit
2 Number 110 for identification, was
3 received in evidence.)

4 MR. RESNICK: Not at this time,
5 Your Honor.

6 JUDGE HILLSON: Okay, let me ask
7 the USDA panel if they have questions of Ms.
8 Torrey? Ms. Schmaedick.

9 MS. SCHMAEDICK: Melissa
10 Schmaedick, USDA, good morning, Ms. Torrey,
11 thank you for your statement. I wanted to
12 begin with your statement that you're pleased
13 that the proposed agreement is voluntary, not
14 mandatory.

15 Can you expand on that statement
16 as to what the difference is and why you
17 support that?

18 MS. TORREY: Why do I support that?
19 I don't feel that the Government should be
20 giving us mandatory programs. And I think the
21 industry should have the option to be
22 voluntary.

1 And it also overlies the fact
2 that, though it isn't a demand and a set in
3 concrete marketing tool.

4 MS. SCHMAEDICK: At the same time,
5 you believe that there should be no exemptions
6 for size of farms or the type of practice,
7 farming practice used?

8 MS. TORREY: Correct, and I'm a
9 very strong believer of that. I feel that
10 everyone from, no matter if they're growing a
11 quarter of an acre to 10,000 acres or more,
12 they should practice good farming practices
13 and good handling practices.

14 And it's going to be that one bad
15 apple that's going to ruin it for all of us in
16 the industry.

17 MS. SCHMAEDICK: So, your ideal
18 scenario would be across-the-board voluntary
19 participation in this program?

20 MS. TORREY: Correct.

21 MS. SCHMAEDICK: You made a comment
22 on the zones. Do you have any suggestions on

1 alternate definitions of zones?

2 MS. TORREY: I would think if we
3 could put our northern, eastern and central
4 states together as one example, just because
5 we have an extended cold period.

6 And it also affects how we
7 irrigate, how we handle our cabbage. It's a
8 lot more compatible than putting me with
9 somebody who grows in Florida or in the
10 southern states.

11 Or the same way as the central
12 part of the country, like Mississippi, or a
13 state that doesn't have an extended cold
14 period and cultural practices are different.

15 MS. SCHMAEDICK: Do you understand
16 that in the proposed language, zones would
17 primarily serve the purpose for representation
18 on an administrative committee and not
19 necessarily in the development of metrics?

20 MS. TORREY: I realized that after
21 the previous speaker was questioned and a
22 definition, more was explained to us.

1 MS. SCHMAEDICK: So, I guess my
2 question then is if you were to redefine the
3 zones, and you knew the zones were important
4 in terms of the allocation of membership
5 representation on the administrative
6 committee, how would you do it differently?

7 MS. TORREY: I still think I would
8 put the northern states together, as far as
9 volume and the type of commodities grown
10 versus the southern, and change that zone
11 area.

12 MS. SCHMAEDICK: Do you think that
13 representation should be reflected by volume
14 of production in an area?

15 MS. TORREY: I think it should be a
16 consideration and the type of commodities
17 grown in that zone.

18 MS. SCHMAEDICK: Would you look at
19 that based on percentage of volume of national
20 production of all leafy greens or how, what
21 kind of ratio would you look at?

22 MS. TORREY: I know that if you

1 look at the northern section and across the
2 central and eastern states, you see a heavier
3 concentration of, say, for example cabbage
4 versus leafy greens, where you have pockets of
5 leafy greens that are grown.

6 I think you've got to look at
7 percentage. I mean you know that the west
8 coast is a primary producer of leafy greens,
9 but yet we have some pockets, northern and
10 southern, that also produce, not significant
11 amount but the next level of volume after the
12 west coast does.

13 So I think that by looking at the
14 type of leafy greens produced in the different
15 zones and the percentage and the cultural
16 practices, too.

17 Besides just administrative. I
18 think it would be easier to have
19 representation and like commodity
20 representation, if we just did some changing
21 of the zones.

22 MS. SCHMAEDICK: If a different

1 configuration of the administrative committee
2 were to be considered, do you think a
3 membership of more than 23 people would be
4 feasible?

5 MS. TORREY: No. I think you don't
6 want to get into a larger committee. You want
7 to have a workable size committee.

8 MS. SCHMAEDICK: So the number, 23
9 you think is a good number?

10 MS. TORREY: That's a good number.
11 I would like to see a little bit more heavier
12 towards producers. I believe producers, you
13 can have up to four producers, if I'm correct.

14 And I'd like to see more
15 producers. Especially in the east, and here
16 in New York state, most of us are not only the
17 producer, we're also the handler. And that
18 tends to be the tendency on the east coast
19 more so than on the west coast.

20 MS. SCHMAEDICK: So is it your
21 understanding that if you are a
22 producer/handler, you could not sit on the

1 committee?

2 MS. TORREY: I've had people
3 suggest that idea to me and I have read the
4 proposal. I'm interpreting that no, that I
5 could still sit on the committee. Is that
6 correct?

7 MS. SCHMAEDICK: I'm not in a
8 position to testify, but, based on my
9 understanding handlers, producer/handlers
10 would have a position.

11 MS. TORREY: Right. I mean, if
12 that's not true, then it definitely needs to
13 be changed.

14 MS. SCHMAEDICK: You state that you
15 are currently in conformance with USDA's GAP
16 and GHP Programs, is that correct?

17 MS. TORREY: Correct. We have
18 third party audits.

19 MS. SCHMAEDICK: Okay, and so what
20 type of handling practices do you use on your
21 farm? How are you a handler?

22 MS. TORREY: We grow and we ship

1 and we pack, we run a packing facility and we
2 transport our commodities to markets along the
3 eastern seaboard.

4 MS. SCHMAEDICK: How wide is your
5 distribution area?

6 MS. TORREY: We don't, we're very
7 lucky to be within 40 percent of the
8 population in the country. So we go east, up
9 to Maine. We go south to Florida.

10 We will go as far west as Texas,
11 and on rare occasions, when there's a need, we
12 have gone all the way to California.

13 MS. SCHMAEDICK: And so you handle
14 your own product or a product from other
15 people?

16 MS. TORREY: No. Everything we
17 ship and handle is, we also grow ourselves.

18 MS. SCHMAEDICK: Okay, so strictly
19 your own product.

20 MS. TORREY: Correct. And that's
21 what you find, quite a few operations like
22 that on the east coast.

1 MS. SCHMAEDICK: And how long have
2 you been following GAP and GHP practices?

3 MS. TORREY: Basically all our
4 lives. Before, because we realized that it
5 was important to the success of our farm
6 operation and also to our liability.

7 And once everything came into play
8 and it became an official title we've been a
9 strong proponent of it.

10 MS. SCHMAEDICK: So would it be
11 fair to say that practices that you were
12 naturally following on your farm, were what
13 you found in the GAP or GHP Program?

14 MS. TORREY: The majority of them,
15 yes, with just a little tweaking tool.

16 MS. SCHMAEDICK: In your community
17 are there, are you aware of smaller farm
18 operations that are GAP or GHP compliant?

19 MS. TORREY: Yes.

20 MS. SCHMAEDICK: To your knowledge,
21 have they had difficulty in meeting those
22 requirements?

1 MS. TORREY: No.

2 MS. SCHMAEDICK: Are some of them
3 organic?

4 MS. TORREY: I'm sorry, I didn't
5 hear what you said?

6 MS. SCHMAEDICK: Are some of them
7 organic producers?

8 MS. TORREY: Yes and some CSA
9 farms.

10 MS. SCHMAEDICK: Do you have any,
11 based on your discussions with these other
12 producers, do you have any idea why they have
13 opted to follow GAP procedures?

14 MS. TORREY: I guess we all have a
15 strong desire to produce the safest food
16 supply we can. We know that we cannot have
17 liability if we want to continue farming.

18 Many of us want our farms to go to
19 our next generation, and we take pride and
20 care in what we do.

21 MS. SCHMAEDICK: In your program,
22 is there a correlation between a consumer's

1 perception of product quality and the absence
2 of contamination?

3 MS. TORREY: I think it depends on
4 what the media attack is that week. Last
5 week, unfortunately, here in New York state,
6 we had our State, U.S. Senator announce that
7 the food supply was not safe and she was going
8 to introduce legislation.

9 She wasn't going to have unsafe
10 food put on the shelves. And when you're
11 talking 400,000 people every year get ill in
12 western New York, those are dangerous
13 statements.

14 And I feel, you know, practicing
15 GAPs, show that we care and we care what we
16 do. I think the longevity of our farms and
17 the role that they take in our rural
18 communities, also show our local consumers
19 that we do take this very seriously.

20 And I think with the trend of
21 local movement developing more and more,
22 people are looking to see where there food is

1 coming from and connecting with actual people
2 that are producing it.

3 MS. SCHMAEDICK: How long have you
4 been aware of the proposed national marketing
5 agreement?

6 MS. TORREY: From the first days of
7 the talk of it. Basically, after the Spinach
8 scare in September. And I'm very active on
9 the national level.

10 Our industry really is very small.
11 So, my peer group across the country, we've
12 had many discussions at different communities
13 that I belong to and different meetings and
14 just general conversations.

15 MS. SCHMAEDICK: So based on your
16 experience, this is a subject that has been
17 widely discussed within your industry?

18 MS. TORREY: There's been the
19 opportunity for anyone that grows any type of
20 leafy greens to participate in a discussion.
21 It's been in our trade publications, it's been
22 at our trade shows, workshops.

1 The opportunity for anyone who
2 wanted to come and express their opinion or
3 ask questions. Myself, recently, I wasn't
4 reading it the right way.

5 And about a month ago I had a good
6 chance to sit down and get some answers to
7 some of my questions and it was going to be
8 interpreted.

9 MS. SCHMAEDICK: At previous
10 hearing locations the idea of including an
11 educational component has been proposed.
12 Education for grower and handler entities to
13 become familiar with GAP and GHP programs.

14 Based on your experience, would
15 that be a helpful attribute to add?

16 MS. TORREY: I think so, if you
17 live in a state that hasn't really endorsed
18 it. I mean we've been very fortunate with
19 Cornell University.

20 I mean they were some of the early
21 proponents of it, worked with the grass roots,
22 helped develop a good program. New York State

1 Egg and Markets, grasped it right away.

2 And I do realize that there are
3 some states that the growers do not have that
4 benefit. And we've been very fortunate.

5 MS. SCHMAEDICK: Those are all of
6 my questions, thank you.

7 JUDGE HILLSON: Any other questions
8 from the USDA panel? Mr. Souza.

9 MR. SOUZA: Anthony Souza, USDA.
10 Good morning, Ms. Torrey. Could you, in your
11 statement you state that you grow 900 acres of
12 cabbage and that's the only leafy green
13 product that you grow.

14 Could you give us an overview of
15 the cultural practices from seed to harvest,
16 including the irrigation methods used in that?

17 MS. TORREY: Okay, we basically
18 grow two kinds of cabbage in New York State.
19 One basically for fresh market and one for
20 storage.

21 Fresh market is what we cut out of
22 the field and, in our case, we shed pack it

1 and pre-cool it and then ship it to the
2 marketplace, whether it be the retail or a
3 wholesaler or the food service industry.

4 Our storage cabbage, which is
5 grown along, grown in western and central New
6 York, because of the temperature and the
7 weather that the Great Lakes afford us.

8 We will start harvesting this
9 cabbage some time this week, and we keep it
10 until June and July. We put it in
11 refrigerated storages, or we do have some
12 farms that have a CA, you basically stop the
13 respiration process and put it to sleep.

14 We take it out all winter and we
15 trim it and then package it to go to market.
16 And some of it does still end up in the
17 retail. We have been able to provide retail
18 up until the month of May with storage
19 cabbage, but most of it goes to the food
20 service industry.

21 Our early cabbage we start
22 planning like the first part of April. We

1 bring plants from Georgia and Maryland. And
2 plant those.

3 We also start a seed bed and those
4 supply our plants later on. We plant cabbage
5 from, hopefully from about the 4th or 5th of
6 April, all the way to the end of July.

7 So we're harvesting continuously.
8 We are not a big proponent of irrigation with
9 our cabbage, because it's very important that
10 it makes a good root and can hold the head and
11 make the frame of the plant.

12 We do, rarely do irrigate, and
13 that is, when we do, we have several options.
14 We have water from public sources, they come
15 out of the fire hydrant.

16 We also do overhead irrigation,
17 pivot or we also do real irrigation. The
18 water, the majority for that is coming from
19 drilled wells.

20 Years ago, we stopped taking water
21 out of the streams.

22 MR. SOUZA: Thank you. Currently

1 you stated that you have GAP, GHP Programs in
2 place. Over a given year, approximately how
3 many audits does your company forego?

4 MS. TORREY: Since, where are year
5 is July, and since July we've had two. And
6 I'm sure we'll have some more during the
7 winter.

8 MR. SOUZA: Are those audits that
9 you request or are those third party audits?

10 MS. TORREY: Third party audits.

11 MR. SOUZA: Okay, I have no further
12 questions.

13 JUDGE HILLSON: Is there anything
14 else from the USDA panel? Don Hinman.

15 DR. HINMAN: Don Hinman, USDA, good
16 morning. You stated that your, the cost to
17 you from having a national marketing agreement
18 to come in effect, would be minimal. And so
19 it is, your financial impact would be small
20 because you're already undergoing the
21 practices that would be specified under
22 certain future metrics?

1 MS. TORREY: Correct.

2 DR. HINMAN: Are there any costs
3 that you think might go up that would affect
4 your operation?

5 MS. TORREY: If we developed and
6 went into some other leafy greens, yes, I
7 could see some additional cost and some
8 additional start up cost.

9 And maybe we'd have to broaden our
10 staff a little bit more. But our feeling has
11 always been that it's a good insurance policy.
12 And to do the audits, better than having to
13 pay to get into litigation, and we also
14 provide our insurance company with our GAP
15 audit to show that we are complying with
16 product liability. And making a good faith
17 attempt.

18 DR. HINMAN: Thank you. And then,
19 just for, we try to identify all witnesses in
20 terms of where they stand as, you know,
21 growers of leafy greens in this case, and that
22 is the small growers, \$750,000.00 in annual

1 sales of leafy greens.

2 And, above that would be large.

3 And you do qualify as a large grower?

4 MS. TORREY: I would qualify as a
5 large grower?

6 DR. HINMAN: Thank you, no further
7 questions.

8 JUDGE HILLSON: Anything else from
9 the USDA panel? Mr. Souza.

10 MR. SOUZA: Good morning, Anthony
11 Souza, USDA. One quick question. Do you
12 think having a GAP, a good agricultural
13 program eliminates the possibility of
14 contamination?

15 MS. TORREY: I don't think anything
16 ever eliminates anything 100 percent. That
17 makes a good attempt to eliminate it and it
18 gives a good safety net that it's being
19 followed and being practiced. And I think
20 it's our link with the consumer that we're
21 making a good faith effort to do everything we
22 can to continue to provide the safest food

1 there is.

2 MR. SOUZA: Thank you.

3 JUDGE HILLSON: Anything from the
4 rest of the panel? Any questions from
5 interested parties? You can come up first.
6 Just identify yourself.

7 MR. JOHNS: I'm Lou Johns again. I
8 have two questions. One is do you have a
9 sense where most of food borne illnesses are
10 arising from, at the consumer level?

11 MS. TORREY: I have my own
12 theories, but I do not have any scientific
13 evidence.

14 MR. JOHNS: Do you want to share
15 those with the panel?

16 MS. TORREY: I am a strong believer
17 in scientific evidence, and I don't care to
18 share my personal thinking beliefs on it.

19 MR. JOHNS: That's okay. You were
20 asked about whether you might incur additional
21 expenses because of this possible agreement
22 put in place. There's been, well in

1 California, for instance, it's already
2 implemented a marketing agreement that is
3 being sort of offered up as a possible model
4 for the national agreement.

5 There are farms in California now
6 that are being forced to, like, completely
7 fence in their entire property. I just
8 wondered how you'd feel about having to fence
9 in 900 acres of cabbage to meet the metrics
10 that might come down in a marketing agreement
11 like this?

12 They were talking like deer
13 exclusionary fences like nine or ten feet
14 tall, that you can see them on the web that
15 some farms are putting in.

16 MS. TORREY: I'm not aware of what
17 they've done in California as far as fences.
18 I do know that California has a lot different
19 growing areas and a lot more urban pressure
20 than we have in western New York and central
21 New York. I'm hoping that the administrative
22 board and the representatives from my zone,

1 that are going to be setting the metrics,
2 would look out for the best interests of the
3 producers.

4 And I think a comment like you
5 just made is a scare tactic and, to scare
6 growers and I think we need to look at the
7 benefits that this can do for our industry.

8 MR. JOHNS: Yeah, I mean the
9 question wasn't offered to scare anybody. It
10 was only to put it sort of reality-based
11 what's already happened for growers that are
12 working under a marketing agreement like this
13 one that's being suggested.

14 So, you know, I can understand
15 your concern.

16 MS. TORREY: I would like to be,
17 have you present some names of people who had
18 to do this, so I can contact them. But, we
19 can do that some other time.

20 JUDGE HILLSON: He's asking
21 questions, you're giving answers, are you all
22 done?

1 MR. JOHNS: Yes.

2 JUDGE HILLSON: Okay. Mr. Etko,
3 you had some questions?

4 MR. ETKO: Steve Etko with National
5 Organic Coalition. The last name is E-t-k-o.
6 Thank you for your testimony. I have just a
7 few questions.

8 Are you aware that the National
9 LGMA as proposed, only allows handlers to be
10 signatories to the agreement?

11 MS. TORREY: Like I said, I've read
12 it many times and I think it's an area that's
13 very gray. And I think everyone has a
14 different interpretation of it.

15 MR. ETKO: Are you aware that
16 handlers that sign on to the National LGMA,
17 must agree to source product only from growers
18 who meet the metrics required by the
19 agreement?

20 MS. TORREY: Yes, I do.

21 MR. ETKO: Does a grower who's
22 handler is a signatory to the agreement, have

1 the choice of whether or not to follow those
2 metrics, if their handler is --

3 MS. TORREY: They have a choice of
4 who their handler is. They could change
5 handlers, if their handler is part of this
6 agreement.

7 MR. ETKA: So, in other words, the
8 only choice that the grower has is to stop
9 selling to that handler?

10 MS. TORREY: Stop selling to that
11 handler, or if this agreement is put into
12 place, to follow good agricultural practices.

13 MR. ETKA: And if the majority, or
14 all of the handlers in a growers area are
15 signatories to the agreement, do they have a
16 choice about whether to follow those metrics?

17 MS. TORREY: Handlers come from all
18 over the country. There could be a handler
19 from California selling a grower's product in
20 New York State.

21 It happens every day. Handlers
22 are not just from one significant area. That

1 isn't how our industry operates.

2 MR. ETKA: So, when you hear people
3 talking about the agreement being voluntary,
4 from a grower perspective, what you're saying
5 is that's true because the grower can choose
6 to not sell that product to that handler?

7 MS. TORREY: Correct. In more
8 cases, at that level, that grower is going to
9 be the handler themselves, either selling it
10 at a farm market, selling it at a farm auction
11 site.

12 And that's their choice at that
13 point. That's their choice where there going
14 to, what handler and how they are going to
15 market their product.

16 MR. ETKA: Another question. Are
17 you aware that USDA has organic standards in
18 place now for, that organic farmers are
19 required to comply with to remain certified?

20 MS. TORREY: Yes.

21 MR. ETKA: Do you think that if
22 this agreement were to move forward, that the

1 metrics developed under those standards should
2 take into consideration organic standards?

3 MS. TORREY: I don't know the
4 metrics under the organic well enough to
5 comment on that. I do know that I have to
6 cover, I have to follow some of my customers'
7 metrics for the products that I grow.

8 And I don't, you know, this is one
9 way to end up, we're looking for, to get
10 something that's uniform, across all types of
11 farming, whether it be conventional or
12 organic, small farm or large farm, to have one
13 set of guidelines.

14 But I cannot comment on what is
15 under the organic, because I'm not that aware
16 of them.

17 MR. ETKA: Thank you.

18 MS. TORREY: Thank you.

19 JUDGE HILLSON: Any other
20 questions? Come up and identify yourself and
21 ask your question.

22 MR. REEVES: Brian Reeves. Maybe

1 not so much a question, maybe a clarification
2 on the standard Section 970.40. It talks
3 about the makeup of the zones and the
4 committee. But, let's say in our zone, Zone
5 5, we have two handlers and one producer.

6 And each zone has a certain number
7 of producers, so total there's six producers,
8 total, on the committee. But, anyway, on B,
9 Section B underneath there, it says a majority
10 of the producer members of the committee shall
11 not otherwise be engaged in the handling of
12 leafy green vegetables or the manufacturing of
13 fresh cut, so on and so forth.

14 So I read that to mean that if
15 there were six producers total, a majority
16 can't be, so that means only two could be
17 producer/handlers, and four would have to be
18 just purely producers.

19 That's the way I read this. So, I
20 guess, in theory, you could, a
21 handler/producer could be on a committee, but
22 there's only room for two of them, and then

1 the other four would be pure producers.

2 JUDGE HILLSON: Was there a
3 question there?

4 MR. REEVES: That might clarify it
5 a little bit. There's no question.

6 JUDGE HILLSON: Oh.

7 MR. REEVES: Earlier in the
8 testimony there was a question directed and
9 it's written in here that no one seemed to
10 find. So, just trying to clarify that.

11 JUDGE HILLSON: Okay, well you've
12 already been sworn in, so I guess we'll
13 consider that part of your testimony.

14 MR. RESNICK: Can we probe that a
15 little further? I don't think that math adds
16 up.

17 JUDGE HILLSON: Well, do you have
18 questions, first of all?

19 MR. RESNICK: Well, I would have
20 asked Mr Reeves a question on that but, no, I
21 have no questions for Ms. Torrey.

22 JUDGE HILLSON: Okay, thank you,

1 you may step down. Do you want to call Mr.
2 Reeves back to ask him to answer a question?

3 MR. RESNICK: No, I think it's
4 self-evident, that's okay.

5 JUDGE HILLSON: Why don't we call
6 another witness?

7 MR. RESNICK: Thank you, Your
8 Honor. The Proponent Group calls Jeff
9 Kubecka.

10 JUDGE HILLSON: I'm going to mark
11 Mr. Kubecka's statement as Exhibit 111.

12 (Whereupon, the document referred
13 to was marked as Exhibit Number
14 111 for identification.)

15 Whereupon:

16 JEFF KUBECKA
17 was called for examination and, having first
18 been duly sworn, assumed the witness stand and
19 was examined and testified as follows.

20 JUDGE HILLSON: Okay, can you
21 please state your name and spell it for the
22 record?

1 MR. KUBECKA: Jeff Kubecka, J-e-f-
2 f, K-u-b-e-c-k-a.

3 JUDGE HILLSON: Okay, you have your
4 statement you'd like to read?

5 MR. KUBECKA: Yes, I do.

6 JUDGE HILLSON: Please proceed.

7 DIRECT EXAMINATION

8 MR. KUBECKA: Good morning, my name
9 is Jeff Kubecka and I'm an owner/operator a
10 150 acre fresh market vegetable farm. I grow,
11 pack and deliver a wide variety of vegetables,
12 including leafy greens.

13 My customers range from large
14 retailers to wholesalers to sales directly to
15 consumers. This type of an operation is very
16 common in New York.

17 I'm already required or strongly
18 encouraged to have a GAPS audit in order to
19 sell to my retail customers. And you know
20 it's only a matter of time, or I feel it's
21 only a matter of time before these
22 requirements will be by wholesalers in that

1 the FDA is looking into making mandatory
2 audits also.

3 Thus, I am in support of the
4 proposed national leafy greens agreement,
5 because all stakeholders in the industry will
6 have representation on these committees that
7 will guide the agreement. Regional
8 differences will be taken into account in the
9 audit system.

10 Although, I do prefer more north
11 and south distinction in the zones. A
12 nationally accepted audit performed by local
13 USDA certified auditors will save time and
14 money and be more meaningful, I feel.

15 Also, the imported food, we need
16 to be audited to meet the same standards to be
17 included in these agreements for handlers.
18 And, in conclusion, all growers and handlers,
19 no matter the size or location, are concerned
20 with food safety and the ramifications of a
21 problem.

22 The concern with food safety, as

1 the ramifications of a problem are serious,
2 and affect the whole industry. I believe that
3 a self-imposed voluntary national food safety
4 agreement for leafy greens at this time is the
5 best way to try to address this challenge.

6 JUDGE HILLSON: Thank you, sir.

7 I'm going to receive your written testimony
8 into evidence as Exhibit 111, and I'll ask the
9 USDA panel if they have any questions. Ms.
10 Schmaedick, please go first.

11 (Whereupon, the document referred
12 to, previously marked as Exhibit
13 Number 111 for identification, was
14 received in evidence.)

15 CROSS EXAMINATION

16 MS. SCHMAEDICK: Melissa
17 Schmaedick, USDA, good morning and thank you,
18 Mr. Kubecka, for your testimony. You
19 mentioned that you are an owner and operator
20 of 150 acre fresh market vegetable farm.

21 Can you describe the types of
22 vegetables that you grow?

1 MR. KUBECKA: Cucumbers, pepper,
2 sweet corn, cabbage, broccoli, lettuce,
3 squash, potatoes, melons, tomatoes, eggplant,
4 strawberries, although they're not vegetables.

5 MS. SCHMAEDICK: And what
6 percentage of your production would be
7 considered leafy greens?

8 MR. KUBECKA: A little less than
9 five percent.

10 MS. SCHMAEDICK: You mentioned that
11 you're currently working under a GAP Program,
12 is that correct?

13 MR. KUBECKA: We're currently
14 making the farm a food safety plan and hoping
15 to get audited here soon.

16 MS. SCHMAEDICK: In your opinion,
17 would you be doing anything different for the
18 five percent of your farm that's leafy green
19 versus the rest of your farm and the other
20 vegetables you produce?

21 MR. KUBECKA: No, we would be doing
22 the same thing with the same, I'd be doing the

1 same jobs. My employees would be doing the
2 same jobs.

3 They don't just pick the leafy
4 greens, they pick the other commodities, too.
5 And they go on the same trucks and in the same
6 coolers and sold to the same customers.

7 So they would be handled in a
8 similar manner.

9 MS. SCHMAEDICK: You state that, in
10 your opinion, a nationally accepted audit
11 performed by local USDA certified auditors,
12 will save time and money and be more
13 meaningful. Can you explain the time and
14 money savings and why they would be more
15 meaningful?

16 MR. KUBECKA: Well, there's a
17 savings of time because you're not dealing
18 with more than one auditing agency and having
19 more appointments and more tours and more
20 audits and more time spent sending different
21 reports to the different places and having
22 different auditors come in.

1 Even though they may be looking
2 for the same thing, they all have their
3 different points, I assume.

4 So, one of the big savings would
5 be a savings in time. As, I'm the
6 owner/operator, the seeder, planner,
7 harvester, leader, plower, tractor driver,
8 there's not a lot of extra time for a lot of
9 extra recording and those kind of things.

10 It's hard to come up with money to
11 hire someone to do that for me. And it's a
12 very important thing, so I've got to make sure
13 that I do have time to do that.

14 So the savings in time is just the
15 savings in not have to be doing things twice.
16 And as far as more meaningful, that was in
17 reference to local, original USDA staff doing
18 these audits or training the auditors that do
19 them, so they know what to look for in the
20 regions that they serve.

21 MS. SCHMAEDICK: Do you grow
22 conventional or organic?

1 MR. KUBECKA: Straight
2 conventional.

3 MS. SCHMAEDICK: Conventional. You
4 mentioned that you're in the processing of
5 developing a food safety plan, is that
6 correct?

7 MR. KUBECKA: Yes.

8 MS. SCHMAEDICK: What types of
9 things are you needing to do differently,
10 under your newly developed program, that you
11 weren't doing before?

12 MR. KUBECKA: One thing that wasn't
13 done as much before is sanitizing knives and
14 things like that. There weren't signs saying
15 that employees need to wash their hands every
16 time they come to work and every time they
17 return to work and after they eat and use the
18 bathroom.

19 Those kind of things were just
20 assumed and maybe not, on some of them, given
21 as much importance, but it has to be shown
22 that you're doing that and shown that you're

1 teaching, requiring employees to do that.

2 That's one thing. A lot of things
3 were already being done. I was not testing
4 water before, but now I'm testing water. The
5 other thing is, it was brought up before, is
6 a lot of the recording things that you do, of
7 course.

8 As Brian said, walking in the
9 cooler every day it seems like 100 every
10 times, but it can't actually be that many
11 times, because the door would be open all the
12 time. But, I can tell if it's warmer than it
13 should be or cooler than it should be.

14 But, that doesn't cut it in an
15 audit. It has to be checked off and written
16 down on a piece of paper. So, maybe that
17 doesn't take all that long, but all those
18 things add up.

19 MS. SCHMAEDICK: How long have you
20 been aware of this proposed agreement?

21 MR. KUBECKA: I believe I heard
22 something about it almost a year ago. I think

1 they were looking for advisors to start
2 creating this plan. I haven't heard too much
3 until just recently about it again.

4 MS. SCHMAEDICK: And would you say
5 that your growing community is aware of the
6 proposed agreement?

7 MR. KUBECKA: Slightly aware. I
8 don't know too many others that have actually
9 read all the pages and trying to familiarize
10 themselves with all the definitions and
11 everything.

12 MS. SCHMAEDICK: Okay, thank you.

13 JUDGE HILLSON: Anything else from
14 our panel? Ms. Carter.

15 MS. CARTER: Antoinette Carter with
16 the USDA. I just wanted to just ask you a
17 question with regards to one of the
18 statements.

19 You indicated that imported food
20 would need to be audited to meet the same
21 standards to be included in the agreement.
22 So, is it your understanding that imported

1 products or leafy green vegetables that are
2 defined in the proposed agreement, would be
3 covered if they are sourced by a signatory
4 handler?

5 MR. KUBECKA: If they are sourced
6 by a signatory handler.

7 MS. SCHMAEDICK: Do you support
8 that component of the agreement?

9 MR. KUBECKA: Yes, I do.

10 MS. SCHMAEDICK: And could you
11 explain why you support it or why you think
12 that should be included?

13 MR. KUBECKA: Well, because it's
14 all ending up on the same shelf. I believe it
15 should all have to meet the same or we all
16 need to be on the same playing field so we're
17 reducing our risks of exposure to a problem.

18 MS. SCHMAEDICK: Thank you.

19 JUDGE HILLSON: Anything else from
20 the panel? Mr. Souza.

21 MR. SOUZA: Good morning, Mr.
22 Kubecka. Anthony Souza, USDA. You mentioned

1 in your testimony that you've been doing
2 things in the past on your farm but now you're
3 required documentation.

4 That documentation, do you feel
5 that that makes you focus a little bit more on
6 individual practices that you've been
7 conducting in the past?

8 MR. KUBECKA: Yes, because I'm now
9 aware of it, that it's being done. And maybe
10 why.

11 MR. SOUZA: By being a little bit
12 more aware of it, do you think that it's made
13 the program that you have at your ranch or
14 farm, a better program?

15 MR. KUBECKA: I believe so. I
16 believe that there's maybe a few less risks.
17 Or the risks are being addressed.

18 MR. SOUZA: Could you elaborate a
19 little bit further on that?

20 MR. KUBECKA: Well, I guess like
21 the, it never really crossed my mind to have
22 people have to wash their hands after coming

1 back from lunch, before they start working.

2 But once you actually here that
3 that needs to be done, the logical backtrack
4 thinking says, well, I guess that is important
5 because when you're eating your hand is
6 probably going into your mouth and now that
7 hand is going on to a head of lettuce.

8 And, if that person was sick, it's
9 possible that those germs could be
10 transferred.

11 MR. SOUZA: Thank you.

12 JUDGE HILLSON: Anything else from
13 the panel. Dr. Hinman.

14 DR. HINMAN: Good morning, Don
15 Hinman, USDA. You cited a couple of examples
16 there of things you're now doing that were
17 different from before.

18 The record keeping, the water
19 testing. Is it your impression that what
20 you're already doing is fairly similar to what
21 you would expect to be doing under a national
22 growers marketing agreement?

1 MR. KUBECKA: I hope so.

2 DR. HINMAN: And, if so, do you
3 expect there to be a minimal financial burden,
4 additional burden from, if the agreement was
5 to go into affect?

6 MR. KUBECKA: That is my hope and
7 belief, and that all will depend on, I guess,
8 who is the actual committee people and the
9 subcommittees and things that get appointed
10 and what their main objective is.

11 And, as long as there's the cross
12 section of the different groups, I feel that
13 that's the best way, I guess, to do what needs
14 to be done in a fair way.

15 DR. HINMAN: And I'm also asking
16 all the witnesses to identify themselves as a
17 small business or large, you know, grower
18 under the Small Business Administration
19 definition of \$750,000.00 per year on sales of
20 leafy greens.

21 Are you a small grower under that
22 definition?

1 MR. KUBECKA: Small.

2 DR. HINMAN: And are you also a
3 small grower of all vegetables put together,
4 under that definition?

5 MR. KUBECKA: Yes.

6 DR. HINMAN: Thank you.

7 JUDGE HILLSON: Anything else from
8 the USDA Panel. Ms. Schmaedick.

9 MS. SCHMAEDICK: Mr. Kubecka, we've
10 talked a little bit about documentation and
11 I'm curious. In your plan, would the
12 documentation that you are now being required
13 to undertake, does that or would that provide
14 a system for carrying out a trace back in, if
15 there were a contamination event?

16 MR. KUBECKA: We are not
17 documenting specifically for a trace back.
18 But, if, I'm trying to figure out how to say
19 this. On our farm, if something is traced to
20 us, I know that the peppers are here and
21 that's where they are.

22 I know that the tomatoes are

1 there, that's where they are and it's
2 documented on my plan, these are, this field
3 has tomatoes, this small field and this has my
4 peppers.

5 And I was the one who told the
6 crews where to pick and what to pick, so I
7 know that. Now, we've not gotten to the point
8 where our boxes are labeled with my, all the
9 boxes are not labeled with our name, as of
10 yet, but we're moving towards that direction.

11 And once that happens, then I
12 guess trace back for a small farm is complete.
13 I mean we're not purchasing from other farms
14 to fill in.

15 MS. SCHMAEDICK: Do you believe as
16 an industry, it is important to have a method
17 or, a method to search information to help
18 identify causes in a contamination event?

19 MR. KUBECKA: I think that it's
20 important to identify the cause so that we can
21 try to stop it from happening again.

22 MS. SCHMAEDICK: Thank you.

1 JUDGE HILLSON: Are there any
2 questions from other interested parties? Mr.
3 Johns is here.

4 MR. JOHNS: Thanks, my name is Lou
5 Johns again. Not being redundant, I just feel
6 like it's important to get things, questions
7 like this on the record.

8 I'm just curious, how long have
9 you been farming in upstate New York?

10 MR. KUBECKA: Well --

11 MR. JOHNS: Maybe like all your
12 life?

13 MR. KUBECKA: Yeah, since I could
14 go out and walk in the field.

15 MR. JOHNS: But, what, more
16 specifically the farm you're operating now,
17 does it have any history of fruit
18 contamination issues?

19 MR. KUBECKA: None that I'm aware
20 of.

21 MR. JOHNS: Thanks.

22 JUDGE HILLSON: Mr. Etko.

1 MR. ETKA: Steve Etko with National
2 Organic Coalition. I just had a question, in
3 your last statement, last sentence of your
4 statement, you say I believe that a self-
5 imposed regulatory and national food safety
6 agreement for leafy greens is the best way to
7 address this challenge.

8 What do you mean by self-imposed?

9 MR. KUBECKA: Well, it's self-
10 imposed as it's not forced on us by the
11 government. And we get to choose who
12 represents us and who is making the agreement.

13 MR. ETKA: Are you aware that FDA
14 is in the process and has already published a
15 proposed guidance for food safety regulations
16 for --

17 MR. KUBECKA: I'm aware that --

18 MR. ETKA: In your view, would, if
19 FDA continues that process and puts our
20 guidance and ultimately regulations on leafy
21 greens, and this proposed LGMA were to go
22 forward and create its own metrics, is it your

1 opinion that growers and handlers would have
2 to follow the FDA standards or have to follow
3 the metrics created by LGMA?

4 MR. KUBECKA: Well, if FDA's actual
5 regulations are enforceable, then that's what
6 we have to follow.

7 MR. ETKA: With regard to your
8 point about, in your testimony, about avoiding
9 duplication. What, if FDA were to go forward
10 with their regulations for leafy greens, what
11 would be the benefit of this process of
12 creating a separate voluntary agreement
13 through AMS for leafy greens?

14 MR. KUBECKA: I'm under the
15 impression that we're going forward with a
16 voluntary agreement so that it wouldn't be
17 mandated regulation.

18 If there's a mandated regulation,
19 then just, by law I guess that one would
20 supercede a voluntary one. And that's what
21 we're trying to avoid.

22 MR. ETKA: Thank you.

1 JUDGE HILLSON: More questions?

2 MR. GILMAN: My name is Steve

3 Gilman, G-I-l-m-a-n. Jeff, I just had a quick
4 question. You're in the process of getting
5 GAP certified, is that correct? And so you're
6 just in the beginning part of that process?

7 MR. KUBECKA: Well, no, it's been
8 an ongoing process for about a year and a half
9 now.

10 MR. GILMAN: Have you got to the
11 audit point yet?

12 MR. KUBECKA: I haven't gotten to
13 the audit point yet.

14 MR. GILMAN: Okay, could you give
15 me some idea of how much time commitment
16 you've put into this process so far?

17 MR. KUBECKA: If I add up hours, a
18 few weeks worth of time, just, I mean a few
19 hours here, a day there, some training here.

20 MR. GILMAN: And then once you go
21 through the audit provisions and the
22 documentation do you, is there a ballpark

1 figure of how much time and commitment there
2 would be in any given season to comply with
3 that?

4 MR. KUBECKA: In my own mind, I'm
5 figuring I will have to put aside at least
6 five hours a week to make sure things are
7 going as they're supposed to.

8 MR. GILMAN: And your GAPS audit
9 would cover all the different vegetables you
10 grow on your farm, correct?

11 MR. KUBECKA: I could get one, I
12 could do that to cover all the vegetables, but
13 right now I'm just starting with white
14 cabbage.

15 MR. GILMAN: I see.

16 MR. KUBECKA: And then adding to
17 that as we get through that one.

18 MR. GILMAN: Okay, so --

19 MR. KUBECKA: And the hope is that
20 we'll piggyback on that since, if we're doing
21 these things already, there's only a few new
22 things we'd have to add in to that to include

1 squash or tomatoes.

2 MR. GILMAN: And is there a demand
3 in your, from your markets to cover more
4 vegetables at this point?

5 MR. KUBECKA: Yes.

6 MR. GILMAN: So, if this national
7 leafy greens marketing agreement comes
8 through, do you foresee there'll be just
9 another whole layer of audit requirements?

10 MR. KUBECKA: Well, my hope is that
11 if the national leafy greens thing comes
12 through, that takes care of the leafy greens.

13 MR. GILMAN: Right. You would
14 still be in a position, though, to have to
15 deal with all the rest of the other vegetables
16 you grow.

17 MR. KUBECKA: We would have to
18 figure that out, yes.

19 MR. GILMAN: Okay, thank you.

20 JUDGE HILLSON: Anything else from
21 interested parties? Any redirect, Mr.
22 Resnick?

1 MR. RESNICK: No, Your Honor.

2 JUDGE HILLSON: Okay, oh, Ms.

3 Schmaedick, another question?

4 MS. SCHMAEDICK: Yes, I do.

5 JUDGE HILLSON: Go ahead.

6 MS. SCHMAEDICK: Mr. Kubecka, have
7 you had an opportunity to read the proposed
8 language?

9 MR. KUBECKA: Yes.

10 MS. SCHMAEDICK: Based on your
11 understanding of the proposed language, what
12 would the, would FDA have a role in the
13 agreement and development of metrics?

14 MR. KUBECKA: I believe there's a
15 representative from FDA on the technical
16 committee, so I believe they would have some.

17 MS. SCHMAEDICK: And, to your
18 knowledge, do some of the definitions, for
19 example, the definition of good agricultural
20 practices. Do they tie directly to FDA
21 documents?

22 MR. KUBECKA: I believe that some

1 of them do. I guess I missed that as a fact,
2 but I believe so.

3 MS. SCHMAEDICK: Is it your belief
4 that the intent of the proposal is to
5 coordinate this program with any FDA guidance
6 that may already exist or might be issued in
7 the future?

8 MR. KUBECKA: Well, it's my belief
9 that it would encompass any regulatory
10 agencies or other agencies concerned. So that
11 it would satisfy them so that they don't have
12 to make a sweeping regulation.

13 MS. SCHMAEDICK: So if the goal
14 were to coordinate this proposed program with
15 FDA regulation, would it, in fact, result in
16 duplication or could it result in the
17 streamlining of regulation?

18 MR. KUBECKA: In my view it would
19 be streamlined.

20 MS. SCHMAEDICK: Thank you.

21 JUDGE HILLSON: Anything else? Mr.
22 Giclas.

1 MR. GICLAS: Good morning, Hank
2 Giclas, Western Growers. Mr. Kubecka, thank
3 you for your testimony this morning. I just
4 have one question along these lines.

5 As a producer, are you aware,
6 historically, of FDA being focused on, you
7 know, any specific set of commodities that's
8 potentially higher risk?

9 MR. KUBECKA: I know there are some
10 commodities with higher risk. I don't know if
11 that comes from an FDA statement or not.

12 MR. GICLAS: Do you know what some
13 of those commodities might be?

14 MR. KUBECKA: Those leafy greens
15 and some other herbs.

16 MR. GICLAS: Thank you, I don't
17 have anymore questions.

18 JUDGE HILLSON: Okay, thank you for
19 your testimony, you may step down. Just
20 before we take our morning break, just a
21 reminder that this is a public hearing so that
22 even, I have some people still to testify that

1 aren't on Mr. Resnick's list or Mr. Etkka's
2 list, but it's a public hearing, if there's
3 anyone else who signed up to testify, you'll
4 get a chance to testify.

5 And, if anyone has time
6 constraints, let me know that. My intention
7 is that when we come back, Mr. Resnick,
8 according to my list, has two more witnesses
9 to call and then we'll, Mr. Etkka has a list.

10 One of them has to get out before
11 lunch, so we should try to get, at least get
12 those three on and then we'll just continue
13 until we're done.

14 Okay, so let's take a, I have
15 exactly 10:30, let's come back at 10:45. Off
16 the record.

17 (Whereupon, the
18 proceedings went off the
19 record at 10:30 a.m. and
20 came back on at 10:45
21 a.m.)

22 JUDGE HILLSON: Let's go back on

1 the record. I just thought I'd tell you that
2 during the break I discovered that we have a
3 total of now 17 witnesses signed up, of which
4 we're heard three, so we can all do the math
5 and figure it's going to be a long day. I
6 told Mr. Resnick he could call his next two
7 witnesses, that would finish off the
8 Proponents case and then I'm going to hear
9 from Mr. Bonanno who has to get our of here
10 soon.

11 And then I'm going to let Mr.
12 Etko, has also one witness who has to get out
13 of here before lunch, basically.

14 And, depending on where we are,
15 after those four witnesses that might be the
16 time we take for lunch, and we'll have to work
17 everyone else in afterwards. So, Mr. Resnick,
18 call your next witness.

19 MR. RESNICK: Just one housekeeping
20 point, I need to restart my computer, and
21 sometime in the next two minutes my computer
22 will make a sound that I cannot control.

1 (Laughter.)

2 JUDGE HILLSON: You do know that
3 you shut the volume off on your computer.
4 Well, maybe we'll have one of our high tech
5 people, because this has happened a lot.

6 MR. RESNICK: So, I apologize if it
7 happens again.

8 JUDGE HILLSON: Oh, it will happen
9 again if they don't figure how to shut that
10 off. There's many people here to help you
11 with that.

12 So, while we're waiting, call your
13 next witness, please.

14 MR. RESNICK: Thank you, Your
15 Honor. The Proponent Group calls William
16 Pool.

17 JUDGE HILLSON: I'm going to mark
18 Mr. Pool's written statement as Exhibit 112.

19 (Whereupon, the document referred
20 to was marked as Exhibit Number
21 112 for identification.)

22 Whereupon:

1 WILLIAM POOL

2 was called for examination and, having first
3 been duly sworn, assumed the witness stand and
4 was examined and testified as follows.

5 JUDGE HILLSON: Please state your
6 name and spell it for the record.

7 MR. POOL: William Pool, P-o-o-l.

8 JUDGE HILLSON: Okay, and you have
9 a statement you'd like to read?

10 MR. POOL: Yes, I do.

11 JUDGE HILLSON: Go right ahead.

12 DIRECT EXAMINATION

13 MR. POOL: Good morning, my name is
14 Bill Pool, I'm the Manager of Agricultural
15 Production and Research for Wegman's Food
16 Markets. We're based in Rochester, New York.

17 We're a family-owned business with
18 grocery stores located in New York,
19 Pennsylvania, New Jersey, Maryland and
20 Virginia.

21 We have 74 retail locations, two
22 distribution centers, 37,000 employees, give

1 or take a few. We started out in 1960 as a
2 produce push cart, and today have buying
3 relationship with about 550 local growers in
4 our marketing area.

5 I'm here today to express our
6 support for a national marketing agreement for
7 leafy greens. After the spinach outbreak in
8 September of 2006, a tremendous amount of work
9 was done by the industry to address ongoing
10 food safety challenges and food safety
11 concerns of large retail and food service
12 buyers of lettuce and leafy greens.

13 We were an integral part of that
14 buyer led coalition that demanded a plan from
15 the produce industry to deal with repeated
16 food safety problems.

17 One of the outcomes of those
18 efforts was the updated commodity specific
19 guidance for lettuce and leafy greens, which
20 was developed by the industry in conjunction
21 with academia and regulatory agencies, several
22 years earlier.

1 In addition to updating the
2 commodities specific food safety guidelines,
3 today practices or GAPS document developed by
4 the U.S. Food and Drug Administration in 1998,
5 was updated with specific metrics that would
6 verify compliance with the requirements of the
7 guidance document. As an example, instead of
8 a rather vague use of, or definition of
9 agricultural water meaning that it had to be
10 adequate for its intended use, there was a set
11 of defined standards for water testing.

12 The way you test it, how you test
13 it, how often you sample it, how you would
14 mediate if there was a problem.

15 We certainly think that was a very
16 positive step towards reducing the potential
17 for food borne illness linked to lettuce and
18 leafy greens.

19 Another outcome of the food safety
20 efforts by the industry, following the spinach
21 outbreak, was the California leafy greens
22 marketing implement.

1 And that's the template for the
2 national marketing agreement that's being
3 proposed. That agreement in California has
4 now been expanded to Arizona and raised a
5 uniform set of food safety practices or leafy
6 greens distributed by signatory handlers.

7 The California marketing agreement
8 is a voluntary program. The national
9 marketing agreement for leafy greens will also
10 be a voluntary program.

11 The requirements will only become
12 effective after a handler signs on to
13 participate. The national marketing agreement
14 for leafy greens with the uniform food safety
15 practices for production areas, other than
16 California, and reduce the potential for food
17 borne illness linked to leafy greens from
18 other areas.

19 The produce business is unique in
20 that, how customers respond when there's an
21 outbreak, their perception of the business.

22 When there's an outbreak, the entire industry

1 is affected.

2 It isn't just spinach, it isn't
3 just tomatoes, it isn't just peppers, it's the
4 entire produce category. That doesn't happen
5 with other food groups.

6 It doesn't happen with meat, it
7 doesn't happen with beef or chicken, pork,
8 seafood, but it certainly does happen with
9 produce.

10 Every outbreak dilutes our
11 industry's message that this consumption is
12 good for you, that there's positive health
13 benefits.

14 And that is just a real bad thing
15 for everybody in the business, regardless of
16 whether you're a large grower or a small
17 grower, organic or conventional.

18 After the outbreak in 2006, we
19 knew that produce was at a tipping point and
20 the people were beginning to question the
21 value of increased consumption, beginning to
22 wonder if produce was really good for you.

1 I know that our business was
2 affected and did not begin to respond until
3 well into 2007. We know that other retailers
4 saw lost sales well after that. We estimate
5 the loss at about two million dollars in sales
6 of spinach and other related salad blends.

7 We know the produce industry is a
8 subject of editorial humor, after the
9 outbreak. There were numerous cartoons
10 illustrating that Popeye met his demise
11 because he ate spinach and there were others
12 that were talked about on Letterman and Leno
13 and late night.

14 We were the, kind of the laughing
15 stock of the world. It was not a positive
16 image of the produce business. Changes in the
17 leafy green industry started right after the
18 outbreak.

19 I visited production areas in the
20 Imperial Valley, right after the outbreak and
21 was asked to put on a hair net when I walked
22 in the field.

1 That had never happened before.

2 Some of you my laugh, I had a hairnet, but
3 that tool was an indication that people were
4 taking things seriously.

5 They were looking at things
6 differently than they had. I had the
7 opportunity to visit California last July and
8 we visited and we talked with growers, we
9 talked with people who were involved with the
10 marketing agreement.

11 We accompanies an auditor on an
12 inspection, audit in the field. It was very
13 interesting to have a chance to observe
14 production practices and talk with the harvest
15 supervisor about the knives that were being
16 used to harvest romaine and about the water
17 that was used to take care of those knives.

18 That supervisor knew about ph,
19 knew about chlorine levels, had a test kit in
20 his pocket and really was very well educated.

21 That was a very significant change
22 in the industry and I don't think you would

1 have gotten that kind of response or seen that
2 kind of effort prior to the outbreak in 2006.

3 The marketing agreement in
4 California has been a major reason for this
5 kind of change, and the national marketing
6 agreement for leafy greens, could do the same
7 thing for other leafy greens production areas.
8 In addition to bringing uniform food safety
9 practices in the leafy greens industry in the
10 United States, the national marketing
11 agreement would require handlers to have GAP,
12 GHP and GMP to elevation of verification
13 audits, by USDA licensed inspectors for leafy
14 greens produced in foreign countries.

15 I think this is a great idea. It
16 brings all handlers on to the same playing
17 field. It addresses concerns that consumers
18 have about a product that's been imported.

19 It also helps me talk and brings
20 some comfort to our local growers, when they
21 ask are we held to different standards than
22 imported growers.

1 So we certainly think that it's a
2 positive, that import product would be
3 covered, if it was brought in by a signatory
4 handler.

5 We think that a national marketing
6 agreement for leafy greens, has the potential
7 to address and ultimately reduce the audit
8 fatigue that is now prevalent in the produce
9 industry.

10 You heard about it from Brian, you
11 heard about it from Jeff, and others. There
12 is a tremendous number of redundant,
13 repetitive audits going on in this business.

14 Obviously, that's going to depend
15 on what the final buyer and demand for their
16 grower and supplier. But there is the
17 opportunity to reduce the number of audits.

18 We've taken the position with our
19 California and Arizona suppliers, that as long
20 as they're members of the marketing agreement,
21 able to use the service mark on their bills of
22 lading, we do not require any additional

1 audits.

2 If you're a member in good
3 standing, that's all we're going to ask of
4 you. We appreciate the time and money being
5 spent on duplicate audits and, in many cases,
6 redundant audits and believe that a national
7 marketing agreement provides a way to cut down
8 on the number of audits being required.

9 The California leafy greens
10 marketing agreement has metrics developed by
11 experts from industry, academia and regulatory
12 who sees the metrics complement, with specific
13 guidance for lettuce and leafy greens for the
14 supply chain and provides specific measures to
15 validate the gas programs.

16 For a national marketing
17 agreement, metrics will be recommended to USDA
18 in the proposed national marketing agreement,
19 suggest these metrics will accommodate
20 differences in, and I quote, production and
21 handling environments of different regions and
22 different leafy green vegetable products.

1 We support this concept and also
2 recognize that there will be some metrics that
3 are going to be the same, no matter what area
4 or what geography.

5 You know, it doesn't matter
6 whether you're in California, New York, good
7 personal hygiene is good personal hygiene.
8 Those practices will be the same.

9 We think a national marketing
10 agreement should apply to all handlers of
11 leafy greens, no matter how big or small the
12 operation.

13 Whether it's conventional or
14 organic production practices. Food safety
15 practices need to be in place across the
16 board. I've heard some of those who expressed
17 opposition to a national marketing agreement,
18 saying that small producers or organic
19 producers should be exempt.

20 First, this is a voluntary
21 agreement. If somebody doesn't want to be
22 involved, they don't have to be. Secondly, I

1 really don't know how the food retailer, I can
2 tell my customers that I'm offering them leafy
3 greens that were grown by a producer that
4 didn't want to implement good agricultural
5 practices.

6 Even if I don't come out and say
7 that, I can't, in good conscience bring those
8 products into my market and offer them to my
9 customer.

10 We believe that having lax
11 standards for small and organic, and/or
12 organic production, sends the wrong message
13 about produce safety.

14 As I stated in the beginning of my
15 testimony, we have buying relationship with
16 550 local growers in our marketing areas.
17 Some of them grow leafy greens, and we've been
18 working with them since 2005, to tell them
19 implement GAPS on their files.

20 There's a tremendous number of
21 resources available to small growers. They
22 can help them understand GAPS and how they can

1 then incorporate GAPS into their operations.

2 These include the national GAPS
3 program located at Cornell University
4 Cooperative Extension. Other land grant
5 universities like Penn State and Rutgers, the
6 USDA states Department of Agriculture markets,
7 there's a wealth of resources out there that
8 are available, if people wanted to take
9 advantage of them.

10 There are grants available to help
11 growers offset the cost of audits. I know of
12 at least two retailers in the northeast that
13 have helped, providing financial assistance to
14 growers to help them cover the cost of GAPS
15 audits.

16 I've got some great examples of
17 small growers who have implemented GAPS, and
18 successfully passed the USDA GAPS audit, it
19 can be done.

20 In closing, I wanted to state our
21 support for national marketing agreement for
22 leafy greens. I think this is a good

1 opportunity to ensure the doctrine of science
2 based scalable and regionally flexible metrics
3 combined with good agricultural practices,
4 good handling practices and good manufacturing
5 practices.

6 This is an opportunity to utilize
7 government-trained auditors to verify
8 conformance with these requirements and to
9 minimize contamination of leafy greens whether
10 produced domestically or imported.

11 This is also an opportunity to
12 reduce the number of redundant audits, now
13 taking place in the produce industry and
14 adding significant expense to the process.

15 And, lastly, this is an
16 opportunity to build consumer confidence in
17 the safety of leafy greens and further
18 reinforce our message that produce is good for
19 you.

20 Thank you for the opportunity to
21 participate in this hearing and present our
22 testimony into the record.

1 JUDGE HILLSON: Thank you, Mr.
2 Pool, I'll receive your written testimony into
3 evidence as Exhibit 112 and, Mr. Resnick, do
4 you have any further direct of Mr. Pool?

5 (Whereupon, the document referred
6 to, previously marked as Exhibit
7 Number 112 for identification, was
8 received in evidence.)

9 MR. RESNICK: Not at this time,
10 Your Honor.

11 JUDGE HILLSON: Okay, let me ask
12 the USDA panel if they have questions. Ms.
13 Schmaedick.

14 CROSS EXAMINATION

15 MS. SCHMAEDICK: Melissa
16 Schmaedick, USDA, good morning and thank you
17 Mr. Pool for your testimony.

18 I wanted to start out by talking a
19 little bit about your business. You're
20 representing Wegman's food markets, is that
21 correct?

22 MR. POOL: Correct.

1 MS. SCHMAEDICK: And you are a
2 retail or grocery chain?

3 MR. POOL: Yes, we're a family-
4 owned chain of retail grocery stores locating
5 in, based in Rochester, New York and with
6 stores in five states.

7 MS. SCHMAEDICK: Are you currently
8 involved in any practices that would be
9 considered handling practices, under the
10 proposed program?

11 MR. POOL: We're a retailer, so
12 we're exempt.

13 MS. SCHMAEDICK: Okay, so you don't
14 do any value-added type of --

15 MR. POOL: No.

16 MS. SCHMAEDICK: Okay. You said
17 that you have buying relationships with about
18 550 local growers in your marketing areas.
19 Could you talk a little bit more about that?

20 MR. POOL: We are, I think, one of
21 the first retail chains to promote locally
22 grown product. We started back in the mid

1 '80s, when one of our buyers locked the public
2 market in Rochester and made arrangements with
3 one, small family farm to supply product to
4 one store.

5 Today, we have 550 growers, again,
6 throughout New York, Pennsylvania, New Jersey,
7 Maryland and Virginia, who deliver product, in
8 season, directly to our stores.

9 We bypass the warehouse. The
10 buying operations go directly down to store
11 level.

12 Arrangements are made between the
13 store produce manager and the farmer for
14 delivery. We give them, we give the produce
15 departments, at store level, some guidance on
16 market price and we help set the quality
17 standards, but we're really, you know, let the
18 stores run that program.

19 And now we deal with, it's 550,
20 the last count was 550 local farmers.

21 MS. SCHMAEDICK: On Page 3, of your
22 statement, you indicate that you have leafy

1 greens suppliers in California and Arizona.

2 Is that correct?

3 MR. POOL: We buy from, we buy the
4 majority, the majority of you leafy greens are
5 produced in California and Arizona, that we
6 sell, yes.

7 MS. SCHMAEDICK: So, would those
8 suppliers be included in this 550 local
9 growers?

10 MR. POOL: No.

11 MS. SCHMAEDICK: Are there any
12 leafy green producers included in that 550
13 local growers?

14 MR. POOL: Yes. Brian Reeves was
15 here this morning, Jeff Kubecka, those are
16 two. There's probably close to 100, those 550
17 provide some form of lettuce or leafy greens.

18 MS. SCHMAEDICK: And are you
19 currently requiring that those suppliers abide
20 by the GAP Program?

21 MR. POOL: We require third party
22 audits to verify that they are indeed GAP

1 compliant. For those that are working on
2 their program, we actually said this year, we
3 would need to have a copy of a valid GAPS
4 audit or we'd need a formal, written
5 commitment from you that you will have
6 implemented and passed a GAPS audit this year,
7 in order for us to continue doing business.

8 MS. SCHMAEDICK: I know this 550
9 local growers that you work with, would some
10 of them fall in the SBA definition of small
11 business entity?

12 MR. POOL: Yes. I suspect the
13 majority of them would fall in that definition
14 of small, grower small.

15 MS. SCHMAEDICK: You also, on Page
16 1 of your statement, spoke about your
17 company's role in the development of the FDA
18 commodity-specific food safety guidelines. Is
19 that correct?

20 MR. POOL: No, I said that my
21 company was integral in the buying coalition
22 that was put together shortly after the

1 spinach outbreak, in hope of industry buyers
2 communicating to the greens producers in
3 California and Arizona.

4 We said, you know, there's some
5 food safety challenges here that need to be
6 addressed, and we urge you strongly to put
7 together a plan to address and deal with these
8 issues.

9 That really was the genesis of the
10 metrics development for the GAPS program and
11 guidelines. It really was the genesis of the
12 marketing agreement, when the industry banded
13 together and said we've got to find a way to
14 address food safety issues.

15 MS. SCHMAEDICK: And have you had
16 an opportunity to read the proposed language?

17 MR. POOL: I've scanned it a couple
18 of times, I haven't committed it to memory.

19 MS. SCHMAEDICK: Can you speak to
20 the relationship between FDA and USDA in the
21 proposed agreement and any program that might
22 be developed or implemented?

1 MR. POOL: Well, certainly the GAPS
2 would be, I think, included as part of the
3 national marketing agreement, really developed
4 by the FDA of their guide to reducing
5 microbial contamination and published in 1998.

6 It's referenced in the document as
7 well as the AFDO proposal which is being
8 worked on for practices.

9 MS. SCHMAEDICK: Based on your
10 understanding of the proposed language, who
11 would ultimately implement any metrics that
12 were proposed? Would that be an industry
13 function or would that be a USDA function?

14 MR. POOL: It would be the industry
15 responsibility to implement metrics that are
16 being proposed. And that would come down to
17 actual farm level, where it's got to be
18 implemented.

19 MS. SCHMAEDICK: So, in that sense,
20 are you speaking about implementing as in
21 putting into practice?

22 MR. POOL: Yes.

1 MS. SCHMAEDICK: Okay. Prior to
2 putting them into practice, would the USDA
3 have to approve any metrics?

4 MR. POOL: My understanding from
5 the agreement is that the technical committee
6 would recommend metrics. It would then be
7 approved by USDA.

8 MS. SCHMAEDICK: Thank you. On
9 Page 2 of your statement, you state that a
10 national marketing agreement for leafy greens
11 would bring uniform food safety practices to
12 production areas other than California and
13 Arizona.

14 In your opinion and based on your
15 experience, how would you reconcile a uniform
16 food safety practices with the differences in
17 geography and cultural practices throughout
18 the United States?

19 MR. POOL: I think that's left best
20 to the technical committee and those who are
21 experts, to reconcile that. I'm a food
22 retailer, that's not my background or my

1 expertise.

2 MS. SCHMAEDICK: But, in your
3 opinion, should it be possible for all farms,
4 regardless of their size or whether or not the
5 produce conventionally or organic. Should all
6 farms be able to produce, produce, in a manner
7 that reduces contamination?

8 MR. POOL: Yes, I think that the
9 food safety practices are, can be implemented
10 across the board, regardless of the size of
11 the farm or how, what production practices
12 they follow.

13 And it's knowing where your water
14 comes from. It's controlling manure. It's
15 having good levels of personal hygiene for
16 people that are harvesting.

17 Those things are uniformly
18 applicable to any farm operation, regardless
19 of how big they are or what kind of production
20 practices they follow.

21 So I don't see, that's why we
22 don't agree that they really don't support a

1 differing standard, based on size of the
2 operation or production practices.

3 MS. SCHMAEDICK: In your opinion,
4 is it also important for handlers of leafy
5 green vegetables to comply with good handling
6 practices?

7 MR. POOL: Certainly.

8 MS. SCHMAEDICK: What type of
9 activities would you think might be included
10 in good handling practices?

11 MR. POOL: Well, there's good
12 manufacturing practices. The handlers are the
13 point where the product is, goes from the
14 grower onto a retailer like myself. So
15 there's got to be good hygiene practices. Good
16 adherence and maintenance of cold chain.

17 There's got to be cleaning that
18 ice procedures for equipment, you know,
19 maintenance schedules, transportation, there's
20 all kinds of things that are covered under
21 GMPs and GHPs.

22 MS. SCHMAEDICK: And as a retailer,

1 do you then rely on the entire chain, if you
2 will, from farm through handler, all the way
3 to your level, do you rely on the integrity of
4 that entire system to provide you with a
5 quality product?

6 MR. POOL: Yes, there's, the supply
7 chain from the farm through my shelf on to my
8 customers' table is dependent on each other to
9 make sure that we're all doing our part.

10 That we're not, it doesn't do us a
11 lot of good to avoid contamination at this
12 end, if we contaminate product at the other
13 end, if we don't take care of refrigeration.

14 If we have dirty trucks or dirty
15 handling facilities, we're all dependent on
16 each other to provide safe and healthy product
17 to customers.

18 MS. SCHMAEDICK: I'm sorry, I get
19 nervous when -- I just forgot my question.
20 In your opinion, is there a relationship
21 between your customers' perception of the
22 quality of the product they're buying and the

1 absence of contamination?

2 MR. POOL: Yeah, I think the
3 customers expect the food products that they
4 purchase in our store, or food products that
5 they consume in a food service operation, are
6 going to be wholesome and health and safe.

7 I think that's a reasonable
8 expectation. I don't know if they equate safe
9 and quality, I think they just, they have an
10 expectation that when they come and buy a
11 product from me, or a restaurant operation,
12 that they ought to be able to consume it and
13 consume it without any problems afterwards.

14 MS. SCHMAEDICK: As a retailer,
15 what is your opinion on whether or not the
16 mark that is referred to in the proposed
17 program, should be used on consumer packaging?

18 MR. POOL: I think we have mixed
19 feelings about using the mark on consumer
20 packaging. Only because, why I think it's
21 important to do everything that we can do,
22 throughout the chain, to reduce the potential

1 for contamination and reduce potential
2 problems, the system isn't full proof.

3 And so I'm concerned about perhaps
4 sending or creating false levels of confidence
5 for people, by the fact that you have a
6 service mark that could lead them to think
7 that, you know, this product is, it's
8 impervious, there's nothing that I can do when
9 I get it home to further contaminate it or
10 cause a problem.

11 So I think I would be hesitant to
12 use that on final consumer package. I think
13 it's a very good indicator on a Bill of Lading
14 is to know that it's been handled and grown in
15 accordance with accepted practices.

16 But I would be concerned about
17 putting that on a final product.

18 MS. SCHMAEDICK: On Page 4 of your
19 statement, you indicate that you've been
20 working with some of your leafy green
21 suppliers to help them implement GAPs on their
22 farms?

1 MR. POOL: Yes.

2 MS. SCHMAEDICK: What type of
3 activities have you done to that regard?

4 MR. POOL: I'm trying to think of,
5 we have done a number of activities, to
6 include training sessions where we bring in
7 people, you know, Bob Gravani and Betsy Bihn,
8 from the national GAPs Program at Cornell.

9 We bring in people from USDA, from
10 their GAPs program. We bring in the local
11 folks from either New York State, New Jersey,
12 Pennsylvania.

13 We've worked with Wes Kline at
14 Rutgers. Day-long training sessions where we
15 provide training materials. We would buy the
16 materials from the national gas program.

17 I don't know offhand, I think it's
18 probably an \$85.00 green bag of food safety
19 begins on the farm materials. They're a
20 tremendous resource.

21 We provide that free of charge to
22 growers. We provide breakfast, we provide

1 lunch. We do, we've worked with folks at Penn
2 State when they developed, they started the
3 GAPs training program this winter on a day-
4 long training session.

5 We gave them, made sure they had
6 the names of all of our Pennsylvania growers,
7 so all of them got invited. We made sure our
8 Pennsylvania growers knew about it.

9 And I think we've done, we've been
10 doing our own training sessions now for four
11 years. I was just on the phone last week with
12 Bob Gravani talking about what does he want to
13 do this January.

14 What is the message that we need
15 to get to growers this time. So it's just an
16 ongoing part of our operation.

17 MS. SCHMAEDICK: In your opinion,
18 is education important to the, to a farm's
19 ability to successfully adapt to a GAP type of
20 program?

21 MR. POOL: I think education is
22 critical. And I think, you know, Jeff

1 Kubecka's statement earlier about, you know,
2 I hand wash and it's critical.

3 It's because you bring your hands
4 to your mouth. And if you don't wash your
5 hands afterwards and you'll handle product.
6 You have the potential to transmit or transfer
7 bacteria from one place to another.

8 I think one of the biggest
9 challenges that we've had with our small
10 growers, is getting them past the fear of the
11 unknown.

12 You know, it's one of the biggest
13 challenges. We spend an entire session on how
14 do I write a farm food safety plan. Because
15 the thing that we heard the most from growers
16 is that I don't know how to get started. How
17 do we begin to do this?

18 And I, you know, I put together,
19 we have a small organic farm in Canandaigua,
20 where we're trying to understand the
21 challenges of growing organically in this part
22 of upstate New York.

1 And I put together the farm food
2 safety plan for the organic farm over the
3 winter. And it was real interesting to have
4 the tables turned on myself.

5 Because all the stuff that I've
6 been asking our local folks to do for their
7 farms, I now had to do it for our own small
8 operation.

9 And, unless you've done it before,
10 it can be, you know, a little bit daunting.
11 But I think the biggest challenge that growers
12 have is how will I get started.

13 I think once you, once they get
14 past that getting started point, things begin
15 to make sense. You know, I said in my
16 testimony that I've got examples of small
17 growers who have done this.

18 Who've got a small, you know, Mom
19 and Pop tomato greenhouse operation between,
20 on the other, west side of Rochester. And of
21 all our local growers, I mean, I'm not going
22 to name names, but you know, I would have

1 said, you know, these folks would have
2 struggled to this and they did it.

3 It wasn't easy and they went
4 through some hand wringing and then they spent
5 some time. But they've now past two USDA GAPs
6 audits last year and this year.

7 So they've gotten past that point,
8 I think, that our program helped them get from
9 where they were to where they are today.

10 MS. SCHMAEDICK: As a retailer, if
11 this program were implemented, would you
12 anticipate the cost of leafy green products to
13 increase?

14 MR. POOL: I don't think the costs
15 are going to increase. I think if you take a
16 look at the volume of leafy greens, the cost
17 would be spread over that volume and it's
18 going to be fairly minimal. So, I wouldn't
19 expect to see an increase in cost, if any.

20 MS. SCHMAEDICK: If there were an
21 increase in cost, do you believe that
22 consumers would accept that increase, if they

1 knew that their product was being grown and
2 handled in a consistent and safe way?

3 MR. POOL: I think consumers expect
4 their product today to be grown in a safe
5 manner and a consistent manner. I'm not sure
6 that consumers are willing to pay more.

7 MS. SCHMAEDICK: Those are all my
8 questions, thank you.

9 JUDGE HILLSON: Other questions
10 from the USDA panel? Mr. Hill.

11 MR. HILL: Brian Hill, I just have
12 a couple of quick questions, so you don't have
13 to worry. The first question is, as a
14 retailer, you stated that you've taken the
15 position that members of the California leafy
16 green marketing agreement, would not have to
17 go through any additional audits?

18 MR. POOL: Correct.

19 MR. HILL: Would it be correct for
20 me to assume that your company's position
21 would be the same with the national leafy
22 green marketing agreement?

1 MR. POOL: Yes.

2 MR. HILL: And the second one is
3 kind of a two-parter. One, have you talked to
4 other retailers about this issue and, if so,
5 what sense have you gotten about this audit
6 fatigue that others have gone through?

7 And would they, like you, you
8 think it would help them to mock out some of
9 these audits?

10 MR. POOL: I haven't talked to
11 other retailers specifically about the
12 national marketing agreement. But there
13 certainly has been a tremendous amount of
14 conversation among retailers, among the
15 produce industry, among everybody that's
16 involved in this business, about the audit
17 situation that we have today.

18 I realize, as one of the folks
19 that has, you know, pushing that requirement
20 for audits downstream, it takes up, it can
21 take up a tremendous amount of time.

22 I have friends in the melon

1 business in Arizona that have 30 audits a
2 year. It's just ridiculous. It would be very
3 nice to get to a point where one audit is
4 accepted and it is considered to be all that
5 people are looking for.

6 It would make life much easier for
7 everybody. It might not make it great for the
8 audit companies, but for certainly the
9 producers, the growers, it would make
10 everybody's life easier.

11 It would certainly make my life
12 easier because I would need one piece of paper
13 instead of, you know, filing cabinets full or
14 electronic files.

15 You know, just keeping track of
16 all that can be very time consuming.

17 MR. HILL: That's all I have.

18 JUDGE HILLSON: Anything else from
19 the USDA panel? Mr. Souza.

20 MR. SOUZA: Good morning, Anthony
21 Souza, USDA. I thank you for your testimony,
22 Mr. Pool. Just a few questions.

1 In your statement and in a couple
2 areas you talk about after the spinach
3 outbreak in 2006. And then on Page 4, you
4 talk about working with some of the growers
5 since 2005.

6 What prompted you to start working
7 with growers back in 2005, prior to the
8 Spinach outbreak of 2006?

9 MR. POOL: I was involved with
10 industry efforts that started back in 2004, to
11 develop commodity specific guidance for
12 various segments of the produce industry.

13 I co-chaired the group that put
14 together commodity specific guidance for the
15 melon supply chain. At the same time, there
16 was a group working on lettuce and leafy
17 greens.

18 There was a group that was working
19 on tomatoes. There was another group that was
20 working on green onions and herbs. That was
21 the result of a meeting that was held in
22 Dallas, I believe it was May, 2004, convened

1 by the Food and Drug Administration, with
2 folks from USDA, CDC, and others to really
3 address food safety concerns in the produce
4 business.

5 And if you take a look at the
6 illnesses that are linked to produce, about 75
7 percent of them come from five commodity
8 groups. Lettuce and leafy greens, tomatoes,
9 netted melons like cantaloupes or tuscans,
10 pearls and green onions.

11 Those are now, after 2008, I think
12 probably after, and now add peppers to that
13 list. But those are the commodities that are
14 most often linked to illnesses.

15 FDA and CDC basically said produce
16 industry, we need you to find a way to address
17 these issues, and we'll do anything we can to
18 help you. I, again, co-chaired the group that
19 put together GAPS and guidance document for
20 melons.

21 And, at that point, we started
22 talking with major growers, major suppliers,

1 about good practices and finding out, where
2 are you, what are you doing, what have you
3 done?

4 We started working with small
5 growers because I was really concerned that,
6 you know, there was all this attention being
7 focused on large producers to make sure that
8 they have good safety practice in place, but
9 who's looking at small producers.

10 And we have, again, 550 small
11 producers that we deal with and, you know, we
12 felt we needed to pay attention to them. I
13 would call somebody and say we've got a GAP
14 session going on, we're doing training.

15 And I'd get a message back, what
16 are GAPs and why are you bothering me? So, we
17 felt it was important to bring that message to
18 small communities.

19 MR. SOUZA: So, in your opinion,
20 food safety is not only a large, agriculture
21 producer issue, it's everybody's issue?

22 MR. POOL: Absolutely.

1 MR. SOUZA: Your closing paragraph
2 of your statement on Page 4, you state that
3 this will give the proposed, if implemented,
4 would give an opportunity for government-
5 trained auditors to verify that requirements
6 are met and to minimize microbial
7 contamination of leafy greens, whether
8 produced domestically or imported.

9 Why did you choose the word
10 minimize and not eliminate?

11 MR. POOL: I chose minimize because
12 the produce industry does not have a kill
13 step. The beef industry, chicken if you cook,
14 if you cook properly and handle properly, you
15 reduce contamination at the point of it not
16 being a problem.

17 We don't have a kill step for the
18 produce industry, particularly the way that
19 most lettuce and leafy greens are consumed.
20 They're consumed raw.

21 There is no further preparation or
22 processing. So we need to do everything we

1 can do to minimize contamination up front.

2 MR. SOUZA: So if a national leafy
3 green program were to go forward and go into
4 effect, measures taken would reduce the
5 possibility, not eliminate?

6 MR. POOL: Yes.

7 MR. SOUZA: Thank you, no further
8 questions.

9 JUDGE HILLSON: Anything else? Dr.
10 Hinman.

11 DR. HINMAN: Don Hinman, USDA. Mr.
12 Pool, you stated, didn't you state that about
13 100 of the 550 local growers are, that's the
14 approximate number of leafy green growers are
15 supply you locally?

16 MR. POOL: It's going to be
17 somewhere between 60 to 100, but those, that
18 same number also may provide tomatoes, may
19 provide some of the other, what we refer to as
20 the risk crops or commodities.

21 DR. HINMAN: Then nationally, would
22 you be able to state how many, separating out

1 the local, but other growers, packers,
2 shippers and supply, could you state the
3 number that supply you nationally?

4 Distinguishing that number so we
5 can get a net number of growers?

6 MR. POOL: For leafy greens?

7 DR. HINMAN: Nationally, yes.

8 MR. POOL: Probably ten major
9 suppliers that we get product from national
10 supply. The Doles, the Delmontes, the Ocean
11 Mists of the world.

12 DR. HINMAN: I'm going to read to
13 statements from your testimony and then ask
14 you a question about that?

15 MR. POOL: Sure.

16 DR. HINMAN: On Page 3, from the
17 third paragraph, fifth line down, you say a
18 national market agreement metrics will
19 accommodate differences in, quote, production
20 and handling environments of different regions
21 and different leafy green vegetable products.
22 Do you agree that's part of your testimony?

1 MR. POOL: Yes.

2 DR. HINMAN: Okay, and then on Page
3 4, second paragraph, second line, you talk
4 about ensuring the adoption of science-based
5 scalable and regionally flexible metrics.

6 So, you agree that those two
7 statements are in your testimony?

8 MR. POOL: Yes.

9 DR. HINMAN: Are you aware that
10 previous testimony has cited a potential lack
11 of flexibility as one of the sources of
12 criticism of this proposed marketing
13 agreement?

14 MR. POOL: I've heard that, yes.

15 DR. HINMAN: And if this agreement
16 was to go into effect, can you describe how
17 you would, this might be inaccurate. In other
18 words, that you would, there would be a
19 discussion about this regional and scale
20 flexibility and growers would be taking a
21 position that would support this flexibility
22 that has been cited as a, the lack of it would

1 be a problem.

2 Can you describe how that might
3 play out in the creation of a marketing
4 agreement?

5 MR. POOL: I think that has got to
6 be handled by the technical committee as they
7 review and develop metrics. You've got to
8 take in effect different geographies,
9 different climates, different environments,
10 different production practices.

11 There's got to be an opportunity
12 to -- you can't be one size, or one size fits
13 all. There's got to be flexibility built in
14 there, so those can be used on large farms,
15 small farms, farms in New York versus farms in
16 Florida, as well as farms in California.

17 That's got to be taken into
18 consideration.

19 DR. HINMAN: Thank you. Also, on
20 Page 3, on the second paragraph, you use a
21 phrase that, under the California marketing
22 agreement, we will not require additional

1 audits.

2 MR. POOL: Yes.

3 DR. HINMAN: And I want to go
4 beyond that saying, are you aware that the,
5 will you agree that previous testimony has
6 stated that under the California and Arizona
7 marketing agreements, that metrics beyond
8 those stated by the agreement, have been the
9 practice of some retailer buyers?

10 MR. POOL: I'm aware that there are
11 some retail and food service buyers out there
12 that develop their own set of standards and
13 seem to add on to the standards, it almost
14 seems like if you can do this -- no.

15 If you can meet, if you can attain
16 this level, we'd like you to attain this
17 level, but we want you to do this and this on
18 top of it.

19 The reason we took the position we
20 did with California and Arizona greens that
21 are members in good standing of the agreement,
22 was that we were confident in the quality of

1 the program.

2 We were confident in the caliber
3 of the audits being done. We felt that it was
4 a very good, reasonable program and we didn't
5 feel it was appropriate to require people to
6 go beyond what was being done.

7 Part of that was because we were
8 involved in discussions, as the metrics were
9 being developed. We were involved in
10 discussions as the marketing agreement was
11 being put together.

12 We had a familiarity with the
13 process and were very comfortable with it.
14 Other retailers, who may not have been as
15 involved as we were, may not be as familiar or
16 as comfortable as that and feel the need to go
17 above and beyond.

18 We didn't think that was necessary
19 or appropriate.

20 DR. HINMAN: In your expectation,
21 if there's a national marketing agreement,
22 that Wegman's would take a similar position,

1 that you would work with them to have a set of
2 metrics and they'd be acceptable to you, you
3 would not expect metrics beyond those of the
4 national marketing agreement?

5 MR. POOL: Yes, I don't think we
6 would respond any differently than what we've
7 done with California and Arizona.

8 If you're a member in good
9 standing, that's what we would expect and
10 that's what we would accept.

11 DR. HINMAN: Thank you, no further
12 questions.

13 JUDGE HILLSON: Anything else from
14 the panel from USDA? How about questions from
15 other interested parties? Mr. Etk.

16 MR. ETKA: Steve Etk, National
17 Organic Coalition. Thank you for your
18 testimony. I wanted to ask a few questions.
19 One, I think you made the statement that
20 consumers have an expectation that food is
21 safe, is that correct?

22 MR. POOL: Yes.

1 MR. ETKA: I don't have a copy of
2 your testimony, but I think I heard you say in
3 your testimony that the national, proposed
4 national leafy greens marketing agreement is
5 voluntary, is that correct?

6 MR. POOL: Yes.

7 MR. ETKA: How would your customers
8 feel about the concept that food safety is a
9 voluntary decision on the part of the
10 handlers, given your statement about their
11 expectations?

12 MR. POOL: I don't know. I'm not
13 sure how are customers would react. I think
14 that people have an expectation that their
15 food is going to be safe.

16 MR. ETKA: And extrapolating on
17 that, would you then say that your customers
18 would expect that food safety standards be
19 uniformly applied across the country, and not
20 voluntary?

21 MR. POOL: I think that our
22 customers would expect the food safety

1 standards be applied uniformly, across the
2 country, regardless of how large an operation
3 is or how they produce their product.

4 MR. ETKA: When they buy food,
5 would they expect that one company, one
6 produce company would follow food safety
7 standards and another may not?

8 MR. POOL: I don't know if that's
9 how they think or not. I think, again, they
10 expect the product that we sell, whether it's
11 in a store or a restaurant, is going to be a
12 safe product.

13 MR. ETKA: You, I think in response
14 to some of the questions from the USDA panel,
15 you mentioned that your company is sensitive
16 to the need for reducing the number of audits,
17 is that correct?

18 MR. POOL: Yes.

19 MR. ETKA: And I think many
20 producers would very much appreciate that. I
21 think in response to a question from Mr.
22 Hinman, you also mentioned that you are aware

1 that in the example of the California LGMA,
2 that others of your competitors, other buyers,
3 have not taken that position and have actually
4 required additional and further audit
5 protocols beyond what the California LGMA has
6 required. Is that correct?

7 MR. POOL: Yes.

8 MR. ETKA: Is there anything in
9 this agreement that would prohibit buyers from
10 requiring additional audit metrics beyond the
11 now proposed national LGMA?

12 MR. POOL: No. I mean as a buyer I
13 always can go to my suppliers and make things
14 more stringent.

15 MR. ETKA: Would it be a reasonable
16 expectation that your consumers would have, or
17 let me rephrase that. Would your customers
18 expect that food safety standards for produce
19 would be developed by food safety experts?

20 MR. POOL: I don't think that's an
21 unreasonable expectation.

22 MR. ETKA: Are you familiar with

1 the board and committee structure of the
2 proposed?

3 MR. POOL: Yeah, I took it and I
4 scanned it. I didn't spend a lot of time
5 focusing on the board. I understand that's
6 made up of producers, of handlers, that it's
7 broken up into zones.

8 MR. ETKA: If you don't mind, if we
9 could just look at, do you have that in front
10 of you?

11 MR. POOL: Sure.

12 MR. ETKA: Section 970.45, the
13 technical review board. Do you see there
14 where it talks about the representatives on
15 that board?

16 MR. POOL: Yes.

17 MR. ETKA: Do you see references to
18 food safety experts?

19 MR. POOL: Yes.

20 MR. ETKA: And based on that
21 language, what are the restrictions about who
22 those experts can be?

1 MR. POOL: I'm sorry, what was your
2 question?

3 MR. ETKA: Can you just read the
4 section there about the food safety experts?
5 Starting with --

6 MR. POOL: There will be one
7 representative from each zone, who is selected
8 by the committee producer and handler members
9 from the corresponding zone.

10 One produce food safety expert
11 from land grant university, within each zone,
12 elected by the producer/handler members from
13 the corresponding zone.

14 MR. ETKA: That was the section I
15 was referring to. And so, in other words, the
16 food safety experts are chosen by the
17 producers and the handlers on the board. Is
18 that the way you read that?

19 MR. POOL: They're elected by the
20 producer and handler members from
21 corresponding zones.

22 MR. ETKA: And that would total

1 five food safety experts chosen by the
2 producers and handlers on the board.

3 MR. POOL: Yes.

4 MR. ETKA: What, in terms of the
5 math, would you view that to be a minority or
6 the board members? I think there was some
7 debate about the number. It says 13, it's
8 actually 14.

9 So, of the five, is that a
10 minority of the membership of that board, the
11 food safety experts?

12 MR. POOL: Five is a minority of
13 13, yes.

14 MR. ETKA: Are you aware that this
15 technical review board is merely advisory to
16 the administrative committee and assists the
17 committee in proposing the metrics?

18 MR. POOL: I understand that they
19 make recommendations to the committee on the
20 metrics, yes.

21 MR. ETKA: And are you aware if
22 there's any food safety experts on the

1 administrative committee?

2 MR. POOL: I'm not aware of the
3 makeup of the administrative committee.

4 MR. ETKA: Now, if I can turn you
5 back, and I apologize, I'll be done as soon as
6 this question is over.

7 Section 970.40, excuse me, 970 dot
8 40.

9 MR. POOL: Okay.

10 MR. ETKA: I know this is a long
11 section, but it sort of quickly lays out who's
12 on the committee. Do you see any reference to
13 food safety experts on that committee?

14 MR. POOL: Not upon a quick scan.

15 MR. ETKA: So there, are you aware
16 that this committee is the one that ultimately
17 makes the proposal that's forwarded to USDA
18 about what the metrics will be for food
19 safety?

20 (No response.)

21 MR. ETKA: In other words, USDA is
22 the body that decides what's put forward to

1 the public for the food safety proposal, based
2 on recommendations.

3 MR. POOL: If the administrative
4 committee, heretofore referenced as the
5 committee, yes, in 970.67 audit metrics shall
6 be recommended by the committee to USDA for
7 approval, after consultation with a technical
8 review board.

9 So, even though, from my
10 understanding, it will be with, the committee
11 would provide recommendations after they've
12 reviewed those metrics recommendations with
13 the technical review board.

14 So the food safety expert is on
15 the technical review board where they then are
16 put into the metrics that are being
17 recommended.

18 MR. ETKA: And are you aware of
19 whether the Agricultural Marketing Service of
20 USDA, which is the body that's put forth this
21 agreement for this hearing, are you aware of
22 whether AMS is a marketing agency or a food

1 safety agency?

2 MR. POOL: I'm going to assume that
3 because AMS stands for Agricultural Marketing
4 Service, that they're a marketing agency.

5 MR. ETKA: So, back to my original
6 question. Would your customers be concerned
7 that food safety regulations are being put
8 forward by a group that has a minority member
9 of food safety experts that are chosen by the
10 industry, for ultimate decision by an agency
11 that does not have food safety expertise, and
12 is ultimately a voluntary decision on the part
13 of the produce companies?

14 MR. POOL: I'm not sure that's
15 relevant to my customer's buying decision.

16 MR. ETKA: Okay, thank you very
17 much.

18 JUDGE HILLSON: Any other questions
19 from interested parties? Do you have any
20 redirect, Mr. Resnick?

21 MR. RESNICK: Yes.

22 JUDGE HILLSON: Oh, I'm sorry, come

1 on up. Never mind, Mr. Resnick, thank you.

2 I have a late pop up here. If you could

3 identify yourself, too, please?

4 MR. CHAMBERS: My name is Albert
5 Chambers. I'd like to ask some questions of
6 the witness, and through him, I suppose to the
7 proponents concerning the impact of this on
8 imports.

9 JUDGE HILLSON: Can you spell your
10 last name, please?

11 MR. CHAMBERS: Chambers, C-h-a-m-b-
12 e-r-s.

13 JUDGE HILLSON: Okay, are you with
14 anybody, are you affiliated with anyone or
15 just by yourself?

16 MR. CHAMBERS: I'm just, I'm here
17 representing some clients in Canada.

18 JUDGE HILLSON: Okay.

19 MR. BONANNO: If you need further
20 information --

21 JUDGE HILLSON: No, I'm just
22 asking.

1 MR. BONANNO: That's fine, I'm a
2 consultant in Canada and I've been studying
3 this matter for some time. I think the
4 witness would agree that the proposal covers
5 both domestic and imported product and that
6 the justification, if you'd had a chance to
7 read that of it, indicated that there were
8 suppliers primarily from Mexico and Canada,
9 with other sources of leafy greens.

10 We've had, there's been previous
11 testimony which you may have read, at earlier
12 hearings describing how the inspection or
13 verification would take place.

14 Of whether or not handlers, who
15 were selling to his firm, had implemented the
16 agreement themselves and on farm.

17 It seemed to assume that there
18 would be direct verification audits by USDA or
19 other inspectors. And what I'm really
20 inquiring of, is to whether he would see the
21 agreement or how it's being operated, work in
22 such a way that because there are other

1 programs elsewhere in the world, that cover
2 much of this same turf, in terms of both
3 handlers and farms, in terms of has a base
4 from safety management systems, etcetera,
5 global GAP, Mexico GAP, there are programs in
6 Canada, etcetera.

7 Whether he would see USDA entering
8 into some kind of equivalence determination as
9 to whether or not those programs met the
10 requirements in designating inspectors then,
11 or a process for designating in the
12 import/exporting countries, as to whether or
13 not they were equivalent.

14 So as to avoid duplicate audits by
15 USDA inspectors coming up to inspect what
16 might be taking place in terms of a
17 certification scheme in the exporting
18 countries.

19 That was a long question, I
20 apologize.

21 JUDGE HILLSON: I believe that's
22 the longest question we've had at the hearing

1 so far.

2 (Laughter.)

3 MR. CHAMBERS: Well, I truly
4 apologize for that.

5 MR. POOL: Please don't make him
6 repeat the question.

7 MR. CHAMBERS: Well, if he wants
8 the exact question repeated.

9 MR. POOL: I'll try to give the
10 very shortest answer, maybe. I don't know
11 what USDA is going to do at this point to try
12 to determine equivalence with other audit
13 programs.

14 Certainly, as a retailer and as
15 somebody who's involved in the produce
16 business, the more we can do to decrease
17 redundant audits, the better off, I think, we
18 are.

19 MR. CHAMBERS: So, if I might ask
20 it another way. Would you think it would be
21 a good idea if the agreement provided, if it
22 doesn't already provide, for USDA to be able

1 to enter into an equivalence agreement?

2 MR. POOL: I think that would be, I
3 think it would be good thing.

4 MR. CHAMBERS: And the second
5 question I have in that respect, there's been
6 a lot of discussion about the potential for
7 regional variation.

8 If you're looking at, say,
9 suppliers in Canada or suppliers in Mexico,
10 and you're looking at regional variation,
11 which some of the witnesses here today have
12 already talked about the need for a northeast
13 region kind of.

14 Would you see the application,
15 what would you expect that regional variations
16 would be taking into account based on the
17 sources of imports, as well?

18 MR. POOL: That could be a
19 reasonable expectation.

20 MR. CHAMBERS: Thank you very much,
21 and I apologize for the very long initial
22 question.

1 JUDGE HILLSON: Thank you. Any
2 other questions, before I turn it back over to
3 Mr. Resnick for any redirect? Yes.

4 MS. MEANS: Kathy Means, Produce
5 Marketing Association. Thank you, Mr. Pool,
6 for your testimony. You mentioned that you
7 deal with 10 big national suppliers and 60 to
8 100 local suppliers for leafy greens alone.

9 Do you know, do any of those
10 companies have food safety experts hired
11 within that company?

12 MR. POOL: The national companies?

13 MS. MEANS: Yes.

14 MR. POOL: Oh, yes. National
15 companies have got well developed food safety
16 staffs to include PhD's and masters and
17 Agronomists and people, and food scientists
18 and all kinds of expertise on their staffs and
19 they're doing research all the time.

20 MS. MEANS: So might it be
21 reasonable to expect that a handler or a
22 producer named to the committee, might be a

1 food safety expert in addition to those from
2 the land grant universities?

3 MR. POOL: I think that's highly
4 likely.

5 MS. MEANS: Highly likely, okay,
6 thank you. You also mentioned that some of
7 your local growers grow multiple crops. And
8 we've heard a little bit about audits for
9 multiple crops. Do you, would you be
10 expecting growers to have lots and lots and
11 lots of audits for all of these various crops
12 that they grow for you or is there some sort
13 of synergy? How do you deal with that?

14 MR. POOL: We actively encourage
15 growers to schedule, if they doing a USDA GAPs
16 audit, to schedule that audit when they have
17 as much production going on as possible, so
18 they can get as many crops covered as
19 possible.

20 Brian Reeves is a great example.
21 I think Brian has seven or eight crops that
22 he's covered on his USDA audits. Cabbage is

1 one of the things that's covered, but he's got
2 tomatoes, which is also a high risk item.

3 He's got peppers, squash, the more
4 you can, the more the grower can get done and
5 more head they can have in production on that
6 given day, the more they get covered by the
7 audit. And that just reduces the expense.

8 MS. MEANS: Okay. And, finally,
9 you mentioned that you know of at least two
10 retailers in the northeast that have financial
11 compensated growers who've successfully passed
12 audits. Why do they do that, do you know?

13 MR. POOL: One of them was, one of
14 the reasons, we're one of the retailers. Our
15 reason to do it, for doing it, was to
16 encourage growers to take that final step of
17 getting a plan developed and getting audited.

18 Again, we have, our relationship
19 with our local growers is a very clear
20 partnership. We are interested in making sure
21 our growers are successful, that they are in
22 business.

1 And we understand that there can
2 be a cost involved. And so if we can help
3 offset the cost of the audit, we wrote a
4 \$400.00 check to each grower that was audited
5 this year.

6 Again, it was a way of saying we
7 appreciate what you're doing. We understand
8 that this is taking time out of your business.
9 It takes time to come to a training session,
10 and we want to help ease the burden and make
11 it a little bit easier for you.

12 MS. MEANS: Thank you.

13 JUDGE HILLSON: Anything else
14 before redirect? Mr. Giclas.

15 MR. GICLAS: Thank you, Your Honor,
16 Hank Giclas, Western Growers. Mr. Pool, thank
17 you for your testimony. You've been involved
18 in the development of food safety guidance
19 from an industry standpoint for a long time,
20 is that correct?

21 MR. POOL: Yes.

22 MR. GICLAS: In your experience

1 with those initiatives, the industry
2 development of guidelines, has FDA typically
3 been involved?

4 MR. POOL: FDA has been, yes. I
5 think if you took a look at all the guidance
6 documents that were developed post the 2004
7 meeting in Dallas, there was FDA involvement
8 in the development of the metrics for the
9 California leafy greens marketing agreement.

10 There was FDA involvement, the
11 people in FDA worked that review, made
12 comments, made suggestions. So, yeah, there's
13 been a very active role by FDA in development
14 of anything that the industry has done to
15 date.

16 MR. GICLAS: Okay, thank you. I
17 was going to ask you, I mean it sounds like
18 you're description answered the question.
19 But, do you think that industry listens to FDA
20 comments and recommendations when they make
21 them in that setting?

22 MR. POOL: Yes.

1 MR. GICLAS: In the proposed
2 agreement, can I refer you to a couple of
3 sections, do you have a copy up there?

4 MR. POOL: Sure.

5 MR. GICLAS: In the definitions
6 section, 970.9, good guide and handling
7 practices. You see, and I'll just read the
8 statement if you're there.

9 GAP and GHP refer to general
10 practices to reduce microbial food safety
11 hazards as outlined in the current U.S. Food
12 and Drug Administration guide. I want read
13 the rest, but guide?

14 MR. POOL: Yes.

15 MR. GICLAS: And then 970.10,
16 manufacturing practices. GMPS means any FDA
17 regulations at 21 CFR Part 110?

18 MR. POOL: Yes.

19 MR. GICLAS: And then if I can skip
20 over to 970.45, the technical review board.
21 Do you see that there are representatives from
22 FDA as part of that technical review board?

1 MR. POOL: Yes, there's two.

2 MR. GICLAS: And then I want to
3 refer you to 970.83, which is compliance. And
4 if you could look down to the second column,
5 6-B, any lot or portion thereof of leafy green
6 vegetables deemed immediate threat to public
7 health by inspection service staff, that's
8 USDA inspection service staff, during the
9 course of a verification audit, is reported by
10 USDA to FDA?

11 MR. POOL: Yes.

12 MR. GICLAS: Would you say that FDA
13 is fundamentally engaged in this marketing,
14 the proposed marketing agreement?

15 MR. POOL: Yes, clearly there's FDA
16 involvement in this agreement.

17 MR. GICLAS: And do you think if
18 your customers were aware of the collaboration
19 between FDA and USDA, they would have
20 confidence in a program like this?

21 MR. POOL: Yes.

22 MR. GICLAS: I also wanted to ask

1 you, you talked about, I don't know whether to
2 call it a coalition or what, but a bunch of
3 retailers and food service buyers that got
4 together back in 2006, and basically engaged
5 in a call to action, if you will, and
6 requesting that California leafy green
7 industry to take proactive steps after the
8 spinach outbreak?

9 MR. POOL: Yes, I do.

10 MR. GICLAS: And your response to
11 that was reestablishment of the California
12 leafy green marketing agreement?

13 MR. POOL: I think ultimately,
14 yeah.

15 MR. GICLAS: And Wegman's for their
16 California suppliers, only require good
17 standing, if you will, with the LGMA?

18 MR. POOL: Yes, we require a
19 signatory handler to be a member in good
20 standing in order for us to obtain product
21 from them.

22 MR. GICLAS: Are you aware of any

1 other buyers who are part of the 2006
2 coalition that, you know, only require a
3 status in good standing with the LGMA?

4 MR. POOL: I believe I know of one,
5 Markon Foods, who's a large food service
6 cooperative based in San Diego or based in
7 Salinas.

8 MR. GICLAS: How do you spell that,
9 please?

10 MR. POOL: pa-r-k-o-n.

11 MR. GICLAS: It is, do you have an
12 opinion about whether or not a similar model
13 forward on the national level with good
14 subscription, you know, across the U.S., would
15 encourage additional buyers to take a similar
16 approach?

17 MR. POOL: I would hope so. I
18 think that's all part of the relationship that
19 we have. Again, we're trying to find ways to
20 make sure the products we offer our customers
21 are safe and wholesome.

22 We're trying to find ways to

1 reduce audits and minimize heavy expense on
2 suppliers and growers. So I would hope that
3 other retailers or other food service
4 operators would say that, you know, that's a
5 process that we can abide by.

6 If you're a member in good
7 standing, then you're a member in good
8 standing and that's all that we'll require.

9 MR. GICLAS: Thank you, I have no
10 other questions.

11 JUDGE HILLSON: Anything else?

12 MR. RESNICK: No, Your Honor.

13 JUDGE HILLSON: Ms. Schmaedick.

14 MS. SCHMAEDICK: Melissa
15 Schmaedick, USDA. Mr. Pool, could I have you
16 look at Section 970.45, and again?

17 MR. POOL: Yes.

18 MS. SCHMAEDICK: And my question,
19 I'll try to be brief here. You answered
20 previous questions that identified five food
21 safety experts from land grant universities,
22 is that correct?

1 MR. POOL: Yes.

2 MS. SCHMAEDICK: And then further
3 down in that section, there are two
4 representatives from FDA. Would you expect
5 them to also be food safety experts?

6 MR. POOL: I would hope so.

7 MS. SCHMAEDICK: So, five plus two
8 is actually seven, is that correct?

9 MR. POOL: I was going to say if
10 you added the two from FDA, then you're not a
11 minority.

12 MS. SCHMAEDICK: Right. And if the
13 correction of the total number to 14 is
14 acknowledged, they would represent roughly 50
15 percent?

16 MR. POOL: Correct.

17 MS. SCHMAEDICK: Other members on
18 this proposed technical review board include
19 representatives of the National Resources
20 Conservation Service, EPA. Can you explain
21 why having input from those two groups is
22 important?

1 MR. POOL: Well, I can take a stab
2 at it. I would like think that, but certainly
3 as you're trying to develop metrics that are
4 going to be used to affect production
5 practices, it would be beneficial to have
6 people that have got environmental background
7 and outlook as part of the group that would
8 develop those metrics.

9 So, that any negative
10 environmental impacts are minimized.

11 MS. SCHMAEDICK: Would it also
12 contribute to the coordination of existing
13 regulation with any new regulation that might
14 be developed?

15 MR. POOL: I would certainly hope
16 that would be an outcome.

17 MS. SCHMAEDICK: In the beginning
18 of this section it says that the committee
19 recommends and the secretary approves the
20 membership of the technical review board. Do
21 you see that?

22 MR. POOL: In 970.40, 45?

1 MS. SCHMAEDICK: Yes.

2 MR. POOL: I'm at that age where I
3 didn't bring my reading glasses.

4 MS. SCHMAEDICK: Well, let me just
5 rephrase the question. Do you believe that it
6 is important for USDA to have oversight in the
7 appointment of members to the administrative
8 committee or other committees?

9 MR. POOL: Yes.

10 MS. SCHMAEDICK: Thank you. And
11 the last question, if you could look at
12 970.14. This is the proposed definition of
13 inspection service.

14 It reads, inspection services,
15 fruit and vegetable programs, agricultural
16 marketing service, USDA, its designees or any
17 other entity approved by USDA to inspect/audit
18 on its behalf. In your opinion, would this
19 language allow for recognition of foreign
20 auditing bodies?

21 MR. POOL: Yes, I would.

22 MS. SCHMAEDICK: Thank you, no

1 further questions.

2 JUDGE HILLSON: Anything else?

3 Okay, thanks, Mr. Pool, you can step down.

4 I'm going to let people, I'm going to go out

5 of sequence now and let Mr. Bonanno testify.

6 So, if he's here?

7 Whereupon:

8 RICHARD BONANNO

9 was called for examination and, having first

10 been duly sworn, assumed the witness stand and

11 was examined and testified as follows.

12 JUDGE HILLSON: And I'm going to

13 mark the document you just gave me as Exhibit

14 113.

15 (Whereupon, the document referred

16 to was marked as Exhibit Number

17 113 for identification.)

18 JUDGE HILLSON: Please state your

19 name and spell it for the record?

20 MR. BONANNO: My name is Richard

21 Bonanno, last name spelling is B-o-n-a-n-n-o.

22 JUDGE HILLSON: Okay, and you have

1 a statement you want to read?

2 MR. BONANNO: I do.

3 JUDGE HILLSON: Please go ahead and
4 do so.

5 DIRECT EXAMINATION

6 MR. BONANNO: Thank you. My name
7 is Richard Bonanno, I'm the owner of Pleasant
8 Valley Gardens in Methuen, Massachusetts,
9 which is located 30 miles north of Boston.

10 I'm fourth generation on the farm
11 and we're finishing our 100th growing season.
12 We raise 50 acres of fresh market vegetables
13 which are almost exclusively shipped
14 wholesale.

15 Our customers include national
16 supermarket chains such as Whole Foods and
17 Trader Joe's, local chains, institutional food
18 distributors and other local farmers who buy
19 for their farm stands, farmer's markets and
20 CSAs.

21 We also have a CSA. CSA being
22 community sponsored agriculture of our own.

1 We raise 15 acres of lettuce, including
2 Boston, Red leaf, Green leaf, Romaine, Romaine
3 Hearts and baby lettuce.

4 In New England, most growers
5 produce some lettuce, however there are only
6 a handful of us that produce 15 or more acres
7 of lettuce on our farms.

8 I also work part-time for the
9 University of Massachusetts Extension Service,
10 I had a PhD in plant physiology. And, among
11 other duties, have trained growers throughout
12 New England on good agricultural practices,
13 being duly trained myself by Dr. Wesley Kline
14 at Rutgers.

15 Two chains that market in New
16 England have required that the growers become
17 GAP certified for the 2010 growing season. I
18 am opposed to the leafy greens marketing
19 agreement as posted in the Federal Register on
20 February 3rd, 2009, and being discussed here
21 today at the hearing. Reasons for my
22 opposition follow.

1 The first disagreement is nothing
2 more than a quick reaction to problems
3 experienced by growers in the west. I
4 certainly appreciate the need for these
5 growers to initiate a public relations effort.

6 They, after all, created the
7 national scare which had a negative economic
8 impact on themselves and on growers throughout
9 the United States.

10 Combined with the national
11 movement to buy local and to know your farmer,
12 I can see that larger growers in the west are
13 looking to paint themselves in a better light
14 to the public and to derail the buy local
15 movement.

16 But that does not mean the rest of
17 us need to pay for their mistakes or for the
18 downfalls of their huge scales of production
19 and processing.

20 The additional problem,
21 unfortunately, is that I have not seen a
22 conclusive analysis of what went wrong with

1 the most recent spinach scare.

2 There was no consensus within FDA,
3 as near as I can tell. If it was wildlife,
4 livestock, improper field handling or a
5 problem within the packing facility?

6 I still don't have an answer as to
7 why the e coli 0157-87 did not die during the
8 sanitation process. I personally find it hard
9 to fix a problem when I have no idea what went
10 wrong in the first place.

11 Another issue is the cost of
12 compliance. Many smaller growers simply do
13 not have the resources. In my own situation
14 I have created a GAP plan for my farm, taken
15 some water samples, to satisfy my curiosity,
16 and have been more vigilant about potential
17 contamination.

18 However, I don't have the
19 additional resources to become certified and
20 to keep up with all the paperwork. I had
21 actually planned on trying to have an audit
22 this summer, but the growing season was so

1 disastrous that I decided I just didn't have
2 the funds to go ahead and do it.

3 Another issue is that of being a
4 diversified grower. This proposed marketing
5 agreement is just for one set of crops. I'm
6 concerned that I might eventually be forced to
7 agree to comply with several marketing
8 agreements, each with its own set of
9 requirements, paperwork and audits.

10 On the upside, I guess, I have
11 some comfort in knowing that I live in
12 suburbia and have the option of selling my
13 land when government regulations take me to
14 the point where selling the farm for
15 development becomes a logical course of
16 actions.

17 We've been talking about GAP a lot
18 today. And one of the things that disturbs me
19 is GAP certainly precedes 2006, by several
20 years.

21 I, frankly, never understood, and
22 I can't give you an answer as to how many

1 growers in California were GAP certified prior
2 to spinach scare.

3 I don't know how many have been
4 certified after. But my first reaction was,
5 I wonder how many growers were certified in
6 GAP? And if they weren't certified in GAP, I
7 guess, you know, shame on those growers.

8 And, maybe, if they weren't
9 certified, becoming GAP certified might have
10 not seemed like a good public relations effort
11 because people would ask, well why weren't you
12 GAP certified already.

13 If they were GAP certified I would
14 then say, it certainly didn't help. And I
15 understand that this California leafy greens
16 marketing agreement has been in place for a
17 while now in California.

18 But just yet a month ago, there
19 was almost 2,000 cases of spinach that were
20 caught in transit with salmonella on them. So
21 I don't really see that it's working. The
22 issues of the large growers and the

1 commingling of produce seems to exist, even
2 with everything that's happened and taken
3 place since that time.

4 On a practical note, I certainly
5 do not think that farms in California or
6 Arizona are anymore or less likely to have, of
7 any of us, anymore less likely than any of us,
8 to have the potential for a food safety issue
9 on their farm or their packing facility.

10 After all, we all collectively
11 have wildlife, livestock, water issues and
12 workers who need to go to the bathroom. The
13 major differences is that we are smaller.

14 Rarely commingle product between
15 farms and as owners, have more direct involved
16 in production, harvesting and packaging than
17 do larger growers in the west.

18 If there was to a problem, this
19 fear of distribution, potential health issues,
20 are very small in comparison. I ask one way
21 of bringing that out is, I was kind of
22 chuckling to myself in the back with the

1 \$750,000.00.

2 And, for the record, I am smaller
3 than \$750,000.00, both in total sales and
4 production of leafy greens. But the thing
5 that's interesting and it's surprising that
6 USDA would come up with such a ridiculous
7 number, because they're on the agricultural
8 statistic service.

9 If you go, and I don't care
10 whether I do this in Massachusetts, I don't
11 care if I do this in New England, I don't care
12 if I do this nationally.

13 In Massachusetts, for example, and
14 the percentages are the same within
15 Massachusetts, within New England or
16 nationally, just the numbers obviously will
17 change.

18 In Massachusetts, we have 7,000
19 farms. The definition of a farm is \$1,000.00
20 gross income in this country. If you make
21 \$10,000.00, you will eliminate two-thirds of
22 the farms in this country.

1 I mean two-thirds of the farms in
2 Massachusetts. If you make it \$100,000.00,
3 you are eliminating a whole bunch more. If
4 you make it a half a million in Massachusetts,
5 there's a couple of hundred of us left.

6 If you make it \$750,000.00,
7 there's a few dozen. So, we're talking like
8 the top one percent of the farms in
9 Massachusetts make over \$750,000.00, a year.

10 And I thought it might be
11 important to give you those statistics.
12 Another way of saying what I was saying
13 earlier, is that a greater number of smaller
14 growers, result in fewer national scares and
15 health issues than a smaller number of larger
16 growers.

17 I'm not naive, however, and do
18 understand that a small number of growers
19 produce a significant percentage of our food.
20 I also do not think that this is something we
21 should aspire to or encourage by our actions.
22 The result of this marketing agreement, over

1 time, is to reduce the number of smaller
2 growers.

3 This leads to more foreign produce
4 and produce from larger U.S. operations.
5 Ultimately, our food supply and the public are
6 more at risk.

7 I applaud the efforts of Western
8 Growers to get their own house in order, or at
9 least attempting to get their own house in
10 order, by adopting their own set of standards.

11 I understand their need to improve
12 their public image. I even understand their
13 desire to derail the buy local movement.
14 However, dragging the rest of us along and
15 hurting our ability to stay in business is not
16 something I welcome.

17 I urge USDA to say no to the
18 creation of a leafy greens marketing
19 agreement. I appreciate your time.

20 JUDGE HILLSON: Thank you. I'll
21 receive your statement in evidence as Exhibit
22 113, and I'll ask the USDA panel if they have

1 any questions of Dr. Bonanno? Ms. Schmaedick.

2 CROSS EXAMINATION

3 MS. SCHMAEDICK: Melissa

4 Schmaedick, USDA. Thank you, Mr. Bonanno, for

5 your testimony. And in response to your

6 statement that USDA's usage of the ridiculous

7 number of \$750,000.00 gross, I'm wondering if

8 you're aware that that is actually an SBA

9 definition?

10 MR. BONANNO: What definition,

11 excuse me?

12 MS. SCHMAEDICK: Small Business

13 Administration.

14 MR. BONANNO: I would argue that

15 the cutoff, even for some small business is as

16 much as 40 million dollars. We're talking

17 about agriculture. I would think the USDA

18 would like to use its own figures.

19 So, yes, I will stand by my

20 assertion that I think it's a ridiculous

21 number.

22 MS. SCHMAEDICK: Are you aware that

1 we are required to use this definition?

2 MR. BONANNO: I still feel that
3 way. You can use whatever number you need to
4 use. I'm simply pointing out how ridiculous
5 it is.

6 MS. SCHMAEDICK: Do you have a
7 better definition for us to use?

8 MR. BONANNO: I would think that
9 you would have a conversation with your own
10 agricultural statistic service and come up
11 with a number that would be better.

12 They have all that data, within
13 your own agency. You don't even have to leave
14 the agency to find it out.

15 MS. SCHMAEDICK: So you have
16 nothing to offer?

17 MR. BONANNO: I'm not a
18 Statistician. I presented numbers that I know
19 to be true. It would seem to me that making
20 the cutoff for many states in the top one or
21 two or three percent, doesn't make sense.

22 So, I would suggest that you talk

1 to one of your own Statisticians to find out
2 what that number Should be. I'm not going to
3 give it to you.

4 MS. SCHMAEDICK: Thank you, no
5 further questions, sir.

6 JUDGE HILLSON: Anything else from
7 the USDA panel? Are there any questions from
8 other interested parties? Do we have any
9 questions from the proponent's panel? Mr.
10 Resnick.

11 MR. RESNICK: Jason Resnick,
12 Western Growers. Thank you for your
13 testimony, Mr. Bonanno. You mentioned that
14 there, well, before I get to that question, do
15 you believe, as somebody who claims to be an
16 expert in good agricultural practices, that it
17 is conceivable to eliminate 100 percent of the
18 incidents of food borne illness?

19 MR. BONANNO: I do not.

20 MR. RESNICK: And why is that?

21 MR. BONANNO: I do not believe
22 that. As evidenced by what just happened with

1 the spinach after your marketing agreement.

2 It's obviously possible that things slip

3 through the cracks.

4 MR. RESNICK: Are you aware that in
5 the instance that you're describing, that that
6 product did not get to market?

7 MR. BONANNO: I understand that.

8 MR. RESNICK: So, would you agree
9 that that's an example of the system working
10 or is that an example of the system breaking
11 down?

12 MR. BONANNO: It depends on your
13 point of view. The system was designed to
14 catch things along the way. That was the
15 final, that was the final step. I mean, I'm
16 glad that it was caught.

17 MR. RESNICK: It was caught before
18 any consumers ate any products, right?

19 MR. BONANNO: There's no question,
20 I'm glad it was caught at that point. I still
21 don't understand with all the safeguards in
22 place prior to that, how it got that far

1 along.

2 MR. RESNICK: In your testimony you
3 referred to the, quote, spinach scare, end
4 quote?

5 MR. BONANNO: Yes.

6 MR. RESNICK: And in your testimony
7 you actually put the word spinach scare in
8 quotes. And I'm just wondering why?

9 MR. BONANNO: It's my way of
10 highlighting it.

11 MR. RESNICK: Are you highlighting
12 it or are you attempting to diminish the
13 severity of that occurrence?

14 MR. BONANNO: I don't think any
15 grower that grew spinach in the United States
16 during that year felt that it was a small
17 issue at all.

18 That's why I highlighted it in my
19 testimony, the spinach scare.

20 MR. RESNICK: In fact, it was more
21 than a scare, wasn't it in fact, I mean, over
22 200 people became ill and a number of people

1 died?

2 MR. BONANNO: Right. But the
3 reason I chose those terms is because
4 following that outbreak, spinach sales in this
5 country went to virtually zero.

6 MR. RESNICK: Right.

7 MR. BONANNO: Hence, people were
8 scared to buy spinach. That's why I chose the
9 terms.

10 MR. RESNICK: Okay. Very well.
11 Your use of that word made it sound like we
12 had a Y2K scare, a scare that did not
13 materialize.

14 So you acknowledge it was a
15 serious and significant --

16 MR. BONANNO: It was very serious.

17 MR. RESNICK: -- threat to public
18 health and to the industry?

19 MR. BONANNO: Yes.

20 MR. RESNICK: Referring to the
21 second page of your testimony, it would be the
22 second complete paragraph. And the last

1 sentence in that paragraph.

2 You say, I also do not think that
3 this is something we should aspire to or
4 encourage by our actions. I'm unclear of the
5 meaning or intent of that sentence. Could you
6 clarify?

7 MR. BONANNO: The clarification is
8 that I see, my personal opinion is that these
9 marketing agreements will hurt small growers.

10 And the result, as I've already
11 stated, in my opinion, is that the more
12 difficult for smaller growers to stay in the
13 marketplace and the result is more, larger
14 operations.

15 And as we've gone around the room
16 and asked people how many problems they've had
17 on their farms over their years, everybody so
18 far has said no, but we seem to have this
19 continuing problem on the west coast.

20 So my statement is that, knowing
21 that that is the case, to me to have fewer,
22 smaller farms and more larger farms is

1 something that I don't think we should be
2 encouraging or aspiring to.

3 MR. RESNICK: Thank you for that.
4 Has any customer of your produce ever complain
5 that the were sickened by anything that you've
6 sold them?

7 MR. BONANNO: Not to me, no.

8 MR. RESNICK: When you say not to
9 you?

10 MR. BONANNO: I mean, none that I
11 know of.

12 MR. RESNICK: Would you agree that
13 pathogens can occur at the field level?

14 MR. BONANNO: Of course.

15 MR. RESNICK: And would you agree
16 that that could happen in our large field or
17 a small field?

18 MR. BONANNO: I've stated that
19 already, it's true.

20 MR. RESNICK: It could happen to a
21 larger grower as well as a small grower?

22 MR. BONANNO: Yes.

1 MR. RESNICK: It can happen to
2 conventional growers as well as an organic
3 grower?

4 MR. BONANNO: Yes.

5 MR. RESNICK: Do you agree that all
6 growers and handlers of leafy greens should
7 adopt good agricultural practices and good
8 handling practices?

9 MR. BONANNO: I am a proponent of
10 voluntary government involvement. I think the
11 consumer ultimately decides where it should
12 go. And to a certain extent, the retailer
13 decides where it should go.

14 I think people should definitely
15 be conscious of food safety. I think the
16 struggle here, my struggle, the struggle of a
17 lot of other smaller growers in this country,
18 is we're looking at, in many cases, decades
19 and decades of being in business and not
20 having problems.

21 Yet we know that there's birds out
22 there and we know there's woodchucks out

1 there. And we know that there's fish in our
2 irrigation ponds, but yet we haven't had a
3 problem.

4 And so where it's like somebody
5 asking me do you think it's a good idea to
6 wash your hands to prevent you getting the
7 flu?

8 And I would say to you, I can't
9 remember the last time I had a flu or a cold.
10 I still agree that it's a good idea to wash
11 your hands.

12 And I would probably say that I
13 probably never squirted a dab of Purex on my
14 hand up until maybe six months ago. So for
15 years and years and years, I probably never
16 washed my hands as often as I should, but I
17 never had the cold or flu.

18 So, I still think it's a good
19 idea, knowing what I know now. I'm not sure
20 it's going to help, in a lot of cases, but I
21 still think it's a good idea.

22 MR. RESNICK: You've never had the

1 flu?

2 MR. BONANNO: I can't remember the
3 last time. I think I was a kid.

4 MR. RESNICK: That's remarkable.
5 Okay. Thank you for that. In your testimony
6 you applaud the efforts of Western Growers,
7 thank you very much.

8 You understand that this proposal
9 is not really the proposal of Western Growers,
10 but many other representatives of growers and
11 handlers and producers of leafy greens, all
12 throughout the country, of all sizes are
13 represented in the Proponent Group?

14 MR. BONANNO: I don't know that I
15 know that. I said it because that's where the
16 template came from, the growers in the west.
17 And I'm not specifically referring to Western
18 Growers, with a capital W.

19 MR. RESNICK: Fair enough, thank
20 you. You mentioned that you agree that
21 government involvement in food safety should
22 be, it should be a voluntary issue?

1 MR. BONANNO: Yes.

2 MR. RESNICK: Do you understand
3 that the proposal is a voluntary marketing
4 agreement?

5 MR. BONANNO: I do, I just don't
6 see it continuing that way.

7 MR. RESNICK: Okay.

8 MR. BONANNO: I understand it
9 starts that way.

10 MR. RESNICK: Thank you, I
11 appreciate that.

12 JUDGE HILLSON: Anything else from
13 the proponents?

14 MR. RESNICK: That's all I have.

15 JUDGE HILLSON: Dr. Hinman.

16 DR. HINMAN: Don Hinman, USDA.

17 Just to follow up on a comment. You mentioned
18 the cost of compliance and, over a possible
19 future marketing agreement.

20 And it's the cost of compliance in
21 your view, that that is what will drive more
22 small growers out of business?

1 MR. BONANNO: I do. I think it's
2 going to take people out of the marketplace.
3 I look at my own situation and I say, well,
4 you know, I hate to say this on the record,
5 but my Schedule F last year was minus
6 \$2,000.00.

7 So that's how much money I made.
8 And I grossed \$550,000.00. But somehow I
9 managed to spend it all on boxes and labor and
10 fertilizer and everything else that I bought.

11 So, it's an expense. It's a time
12 constraint. One of the other growers
13 testifying earlier said he feel he probably
14 spent about five hours a week himself.

15 I think that, you know, the audit,
16 the cost for the USDA inspector is \$92.00 an
17 hour. I appreciate the fact that a couple of
18 the chains have offered to pay, to help with
19 that. Hannaford's in Maine, has offered to
20 pay a certain amount of money towards the very
21 first audit.

22 There won't be any additional

1 money for any additional audits. So, we're
2 going to pay several hundred dollars a year
3 for audits. There's probably going to be two
4 audits, if somebody has to come back, it's
5 another few hundred dollars.

6 I'm figuring myself, without
7 including the pack shed, it's going to cost me
8 around \$8,000.00 a year to comply with the
9 rental of the port-a-potties and everything
10 else extra that we have to do for some
11 outlying fields.

12 And it just bothers me, because I
13 don't know where it's going to end. The
14 thing, this whole thing is just disturbing to
15 me, is that here we are with USDA GAP.

16 Now we can all have a big argument
17 about USDA GAP and who should be in and who
18 should be out and who should be inquiring
19 whether the really small people can comply and
20 whether they should be exempted.

21 And we're having the same
22 conversations now about this marketing

1 agreement. And when I looked at it, I said
2 here's FDA and USDA, in effect, collectively
3 coming up with USDA GAP.

4 And it covers all crops. What are
5 we thinking coming up with another, in this
6 case we're calling it a marketing order, which
7 is really nothing more than, it's just another
8 version of GAP.

9 It may have a few more bells and
10 whistles to it, it may have the ability to
11 change more because of the committees and so
12 forth, but essentially that's what it is.

13 And I'm looking at it and saying
14 it's like I have these two different groups
15 here and they're both telling me I have to
16 wear safety glasses.

17 But the safety glasses are just a
18 little bit different. So I'm wearing two
19 pairs of safety glasses and, yeah, they're
20 kind of the same because they both have lenses
21 and something to put over my ears and a frame
22 to hold the lenses, but they're just a little

1 bit different.

2 And why are we just going down a
3 GAP road, that potentially covers all crops,
4 you know. Why are we going down this other
5 road and just the idea of the timing, the
6 audits and the expense just become something
7 that I just can't understand why we're doing
8 it.

9 DR. HINMAN: So all the things you
10 just named are costs that are currently, that
11 you currently incur and growers like you are
12 currently incurring, is that correct?

13 MR. BONANNO: For GAP.

14 DR. HINMAN: Explain the mechanism
15 by which the marketing agreement coming in to
16 place changes it from what you're doing now
17 and how does that contribute to your increased
18 burden?

19 MR. BONANNO: Well, because, well
20 first of all we don't even know everything
21 that's going to be in it. So, my assumption
22 is if GAPs not good enough and GAPs already

1 costing me money, somehow it's going to cost
2 me more.

3 And, if I have to have an audit,
4 someone has to pay for the audit. I already
5 know that the USDA GAP audits, the feds set
6 the rate.

7 I think it's \$92.00 an hour. It's
8 supposed to include travel time. I don't know
9 how many additional audits will be required
10 with this. I don't know how much additional
11 work on my part will be required.

12 I'm pretty sure it's not going to
13 be less. I already know that GAP is, you
14 know, is a problem. First, in terms of the
15 cost and my time.

16 And where are those people in the
17 summer time. You know, unfortunately the
18 Whole Foods and Trader Joe deliveries are at
19 4:00 a.m. in Boston.

20 None of my drivers get up that
21 early. I get up 2:30, in the truck at 3:00,
22 in Boston, I'm home. If I'm lucky, I get a

1 half an hour nap before my quarter of 6:00
2 meeting with my help.

3 7:00 cup of coffee with my wife,
4 and at 10:00, I'm standing in front of a
5 washer and dryer triaging the mail, hoping to
6 get all the bills out of the pile and not
7 throw any in the recycling bin that's at my
8 feet.

9 And my whole summer is like that.
10 I just, you know, I mean, I don't have the
11 staff. We talked about, yeah, these companies
12 have these food safety experts and people to
13 do this.

14 You know the average grower in
15 this country, the overwhelming number of
16 growers in this country, is not like that.
17 We're all standing there trying to not throw
18 away the bills at 10:00 at night as we fall
19 asleep.

20 You know, looking at three and a
21 half hours of sleep and I'm in that damn truck
22 again making the Whole Foods or Trader Joe's

1 delivery.

2 I'm not looking for anything

3 extra. I'm really not.

4 DR. HINMAN: And are you aware that
5 under the proposal here, it is handlers that
6 will be paying the cost of the audits, not the
7 grower.

8 MR. BONANNO: I doubt, and tell me
9 they're going to come to my farm and do
10 everything I need to do to prepare for the
11 audit. I don't think that's happening.

12 We're not going to be paying the
13 \$92.00, but somehow I don't think it's free.

14 DR. HINMAN: Thank you. No further
15 questions.

16 JUDGE HILLSON: Any other questions
17 for this witness? Thank you for testifying,
18 you may step down. It's 12:30, but I think,
19 I was told that there's one other witness that
20 has to get out before 1:00. Is that still a
21 fact?

22 MR. ETKA: Will it be possible to

1 take him now, before lunch?

2 JUDGE HILLSON: Yeah, it would,
3 that's why I'm asking.

4 MR. ETKA: Yes.

5 JUDGE HILLSON: Do you have a
6 witness statement?

7 MR. JOHNS: Yes.

8 JUDGE HILLSON: I'm marking Mr.
9 Johns' written statement as Exhibit 114. Why
10 don't you have a seat, Mr. Johns.

11 (Whereupon, the document referred
12 to was marked as Exhibit Number
13 114 for identification.)

14 Whereupon:

15 LOU JOHNS

16 was called for examination and, having first
17 been duly sworn, assumed the witness stand
18 and was examined and testified as follows.

19 JUDGE HILLSON: Why don't you state
20 your name and spell it for the record.

21 MR. JOHNS: My name is Lou Johns,
22 L-o-u, J-o-h-n-s.

1 JUDGE HILLSON: Okay, and you want
2 to read a statement?

3 MR. JOHNS: Yes.

4 JUDGE HILLSON: Go right ahead.

5 DIRECT EXAMINATION

6 MR. JOHNS: Good morning, my name
7 is Lou Johns, I've been a small acreage
8 certified organic vegetable farmer since
9 1981, although the certification programs
10 weren't in place until about 1987.

11 Along with my partner of as many
12 years, Robin Ostfeld. Having read many of
13 the transcripts of testimonies from previous
14 hearings held on this matter, I do not feel a
15 need to reiterate many of the well researched
16 and well thought out arguments to oppose the
17 proposed agreement.

18 My interest in testifying today is
19 to give you the opportunity to hear from a
20 grower in the northeast region of this
21 country, who shares little in the interests
22 or concerns of those growers and companies

1 that have approached the USDA AMS with their
2 proposed marketing agreement.

3 Their goal is simply to obtain
4 approval and backing of the U.S. Government
5 for a system of self-regulation for their
6 segment of the industry that supplies the
7 major retail and institutional marketplace
8 with fresh and processed produce in the
9 United States and abroad.

10 Along with this approval comes a
11 seal of the USDA on all of their products,
12 thus giving them a clear marketing advantage
13 over other suppliers.

14 Theirs is a segment of the U.S.
15 agriculture that is fraught with practices
16 that are harmful to not only its consumers,
17 but the environment as well.

18 The recent pathogen contaminant
19 events are just one example of industry-wide
20 issues that are simply inherent in an
21 agricultural system based around large scale,
22 mono-cropped farm operations that rely

1 heavily on petroleum, natural gas, waste
2 fertilizers and/or manure-based fertilizers
3 from large scale cattle, swine and poultry
4 operations, and synthetic pest management
5 chemicals.

6 Including pesticides, herbicides
7 and fungicides, and also antimicrobial agents
8 in larger facilities. The issues of pathogen
9 contamination mainly arises in their bagged
10 ready-to-eat products, but the issue has
11 occurred in fresh cut products also.

12 Three practices common to this
13 part of the fresh produce industry are major
14 contributing factors to this problem. First,
15 there's an issue of commingling of products
16 from more than one farm in washing and
17 processing facilities.

18 Second, bagging the resulting
19 products and sealed plastic bags or other
20 style containers, and third the reliance on
21 production fields that are often an extremely
22 long distance from the consumer's table.

1 Industry relies heavily on energy
2 consumptive refrigeration to not only control
3 product quality, but also to suppress
4 pathogen growth during long-term storage and
5 shipping times between farm and table.

6 These refrigerated settings may or
7 may not be perfectly adequate to control what
8 can be very rapid increases in pathogen
9 populations arising from a very small,
10 undetected, bit of organic contaminant that
11 may or may not have found its way into the
12 product stream at a farm.

13 The problem of commingling of
14 crops in the washing and packing facilities,
15 is not just an issue in the leafy greens
16 area. It was mentioned at an early hearing,
17 to these committees, tomatoes, marketed by
18 this same sector of fresh produce industry
19 suffered major losses when pathogens were
20 found responsible for serious health problems
21 in this crop.

22 We can also look to the meat

1 industry to see what happens when products
2 are commingle in processing facilities.

3 Excuse me.

4 These issues and more are exactly
5 why Robin and I got into small acreage, high
6 crop diversified organic fruit and vegetable
7 farming with a goal of marketing the majority
8 of our production to local consumers.

9 This was back in 1991, mind you,
10 when all these issues were well entrenched in
11 the agricultural industry by then. Twenty-
12 eight years later we continue what has been a
13 long, arduous and sometimes rewarding project
14 that has us owning 150 acres of gorgeous
15 mixed woods and open fields in the Finger
16 Lakes region of upstate New York, managing 18
17 to 20 acres of crop land, planting ten to 12
18 of that to 25 to 30 different annual
19 vegetable crops.

20 Along with strawberries and
21 asparagus as perennial crops and managing
22 four greenhouses for transplant productions

1 for the farm and retail sales.

2 We offer seasonal employment to
3 six to eight individuals and maintain a
4 committed consumer base of retail, wholesale
5 and restaurant customers, most of which are
6 within a 30 mile radius of our home.

7 We do ship a modest portion of our
8 products to two accounts in New York City,
9 who have also been customers of ours since
10 1987.

11 Our farming business is the sole
12 source of modest incomes for Robin and myself
13 and our hired help for the season. And last
14 year the operation had gross sales nearing
15 \$250,000.00.

16 This isn't to brag, but only to
17 give you an understanding for the economic
18 potential that exists in farms of our type.
19 We are not alone in our endeavors, by any
20 means, even in a region with such a short
21 growing season as we have in the northeast.

22 All across the country, farms of

1 our scale and type are flourishing and coming
2 to represent an agricultural sector that is
3 offering the public a safe and reliable
4 alternative to the standard commercial
5 settings of the supermarket and chain
6 restaurants for buying and consuming fresh
7 produce in our country.

8 Our farm's track record for
9 supplying clean, safe, beautiful produce to
10 our customers is, to date, flawless, noting
11 that we do not sell ready-to-eat products
12 from any of our vendors that we supply.

13 Try as we might to inform our
14 shoppers of the need to wash produce before
15 eating it, many customers will walk away from
16 our farmer's market stall munching on a
17 carrot or halfway eating a cherry tomato.

18 Do I protest? Not to loudly,
19 since I've been known to take carrots out of
20 the ground at the farm, wipe them off the
21 best I can with the tail of my work shirt and
22 munch away. No trips to the ER yet. I think

1 the problem that's trying to be addressed
2 with this marketing agreement, has its roots
3 in a flawed system of agricultural
4 production, processing and distribution.

5 And one that is tied to a flawed
6 economic system and cheap oil. But that's
7 for another hearing all together, I know
8 that's unfortunate, if you ask me.

9 Is there a fix to his problem for
10 the large scale produce industry? Robin and
11 I and hundreds of other farms like us, have
12 been working on it for quite a while now.
13 Thanks for your time.

14 I would like to comment, and
15 speaking of time, I would like to point out
16 that the scheduling of these hearings is very
17 troublesome.

18 Had you wanted to hold a hearing
19 to hear from farmers in this region at least,
20 you would have waited a couple of months.
21 It's late fall, temperatures at our farm last
22 week hovered in the 40s all day, with

1 flurries of snow.

2 It's a pressure time for
3 operations like ours, harvesting storage
4 crops, carrots, beets, potatoes, turnips,
5 rutabagas and cabbage, to name a few.

6 Planting next year's garlic or
7 planting green manure crops to replenish the
8 soil for next year's vegetables, or a host of
9 other field preparation work that has to all
10 happen in the next four to five weeks.

11 I'm lucky to have a great co-
12 manager for a wife, and a great crew of
13 season help that made it possible for me to
14 come here this morning.

15 But I'm hoping to be back on the
16 farm this afternoon to help with garlic
17 planting and digging carrots. Thanks.

18 JUDGE HILLSON: Thanks for your
19 testimony, Mr. Johns. I'm going to admit
20 your written testimony into evidence as
21 Exhibit 114, and I'll ask the USDA panel if
22 they have questions. Ms. Schmaedick.

1 (Whereupon, the document referred
2 to, previously marked as Exhibit
3 Number 114 for identification, was
4 received in evidence.)

5 CROSS EXAMINATION

6 MS. SCHMAEDICK: Melissa
7 Schmaedick, USDA. Just one question for you.
8 Can you tell us the name of your farm, who
9 you're representing today?

10 MR. JOHNS: Yes, sorry, it's Blue
11 Heron Farm.

12 MS. SCHMAEDICK: Blue Heron Farm.

13 MR. JOHNS: Like the bird, we're in
14 Lodi, New York.

15 MS. SCHMAEDICK: Okay, thank you.
16 No further questions.

17 JUDGE HILLSON: Anything else from
18 the USDA panel? Dr. Hinman.

19 DR. HINMAN: You stated 18 to 20
20 acres of crop land?

21 MR. JOHNS: Yes.

22 DR. HINMAN: How much of that is in

1 leafy greens?

2 MR. JOHNS: Over the course of a
3 growing season we probably plant two and a
4 half acres, but that's, you know, continuous
5 successions of all sorts of leafy greens,
6 planted over the course of the year.

7 DR. HINMAN: Thank you.

8 JUDGE HILLSON: Anything else from
9 the panel? Any questions from other
10 interested parties? Any questions from
11 proponents? Mr. Resnick.

12 MR. RESNICK: Jason Resnick,
13 Western Growers, thank you, Mr. Johns for
14 your testimony this afternoon. I just have a
15 couple of questions.

16 You mentioned that you grow a
17 variety of leafy greens. Would you just
18 identify the leafy greens that you grow on
19 your farm?

20 MR. JOHNS: You know, it's a
21 lengthy list. Five or six varieties of
22 lettuce, salad mix production in the spring,

1 you know, in heated and unheated greenhouses.
2 Chard, kale, collards, mustard greens, turnip
3 greens, spinach, dill, and, I'm running over
4 the fields in my head.

5 MR. RESNICK: Quite a few, I just
6 wanted to get an idea or the range, so I
7 appreciate that.

8 MR. JOHNS: Yeah, a lot.

9 MR. RESNICK: You mentioned that,
10 in your testimony, that there would be a seal
11 of the USDA on products giving a clear
12 marketing advantage over other products.

13 Is it your belief that there would
14 be a seal on consumer packaging of products
15 in this agreement were to become implemented?

16 MR. JOHNS: Yeah, it's alluded to
17 in, well, the California agreement has a
18 reference. It also, in the federal proposal
19 there's reference to the mark from the USDA
20 AMS being used as a promotional device
21 directly to consumers.

22 So I would assume that the

1 potential at least exists quite clearly that
2 in the retail marketplace, the possibility of
3 a seal being put on products is right there.

4 MR. RESNICK: Were you aware in the
5 case of the California LGMA that the seal is
6 only used on invoices and bills of lading and
7 not consumer packaging?

8 MR. JOHNS: No, but I would refer
9 you to, I had it marked, just one second.
10 So this, on the California agreement on Page
11 10, Article 7 on the --

12 MS. SCHMAEDICK: Excuse me, Your
13 Honor, that hasn't been entered as an
14 exhibit, we don't have that.

15 MR. JOHNS: Yeah, you know, it's
16 quite readily available and it's generally
17 referenced in lots of these discussions.

18 JUDGE HILLSON: Do you want to read
19 what you're talking about?

20 MR. JOHNS: Quality, Article 8,
21 Quality Improvement and Education Program.
22 Pursuant to Food and Agriculture Code Section

1 58893, the agreement may engage in a program
2 of educating the public and producers
3 concerning the best practices. So --

4 MR. RESNICK: Have you read the
5 national leafy greens marketing agreement
6 proposal?

7 MR. JOHNS: Yes, and --

8 MR. RESNICK: Do you have a copy in
9 front of you?

10 MR. JOHNS: Yes, I do.

11 MR. RESNICK: Let me refer you to
12 the Section 970.69.

13 MR. JOHNS: Seventy-nine?

14 MR. RESNICK: Sixty-nine.

15 MR. JOHNS: They reference --

16 MR. RESNICK: Could you read
17 subparagraph B?

18 MR. JOHNS: Committee may license
19 signatories to affix the official
20 certification mark to bills of lading and
21 manifests subject to verification --

22 Signatories in compliance with the

1 regulations under this agreement, is
2 condition --

3 MR. RESNICK: There's nothing there
4 that contemplates a certification mark
5 appearing on consumer packaging, is there?

6 MR. JOHNS: No, but I want to find
7 my other copy because, oh, I got the same
8 one. There's a reference to this similar,
9 just one second. Excuse me for not having --

10 MR. RESNICK: 970.69, is the
11 reference for the official certification
12 mark.

13 MR. JOHNS: No, but there's
14 reference to this educational and idea in
15 here. Research and promotion. So that's
16 970.75. Committee with the approval of the
17 secretary, may establish and provide for the
18 establishment and marketing research and
19 development of projects and/or promotional
20 activities including, advertising, design to
21 assist, improve or promote efficient adoption
22 implementation and marketplace acceptance of

1 the agreement of the leafy greens vegetable
2 or products handled by signatory members.

3 The expense of such projects shall
4 be budgeted and paid for by the funds from,
5 collected under this agreement. So, to me,
6 that talks about including advertising design
7 to assist getting to the marketplace.

8 So, sorry, but it says right
9 there, in the marketplace acceptance. The
10 marketplace, in my mind, isn't between the
11 grower and the handler.

12 The marketplace generally referred
13 in these documents is retail. Unless it's
14 clearly stated some other place, I think the
15 reference to marketplace would make some
16 people consider the idea that means at the
17 retail level.

18 MR. RESNICK: And that's your
19 assumption from reading the language that
20 marketplace means the retail level?

21 MR. JOHNS: Yeah, that's how I
22 would interpret that. I don't think that's

1 out of line there.

2 MR. RESNICK: I have nothing
3 further, thank you very much.

4 JUDGE HILLSON: Okay, thanks, Mr.
5 Johns, you may step down. Okay, I'm noting
6 the time, it's just about, it's like 12:47.
7 I note also that I have, the list I was given
8 at the last break, there are one, two, three,
9 11 more witnesses to testify.

10 We've heard six, 11 more to go.
11 So, my intention is that when we get back is
12 that I'll let the proponents call their last
13 witness, Ms. Means, then I'll turn it back
14 over to Mr. Etko.

15 I think you have, what, four or
16 five more witnesses?

17 MR. ETKA: Five --

18 JUDGE HILLSON: Okay, I'll let you
19 go through your witnesses and then anyone
20 else who's here, I'll just go through in the
21 order that they signed up.

22 And I don't know if there's any

1 other new witnesses. So, we're here for a
2 long day, but I'm also saying that at 1:50,
3 we should be ready to go again. Okay? Off
4 the record.

5 (Whereupon, the proceedings went
6 off the record at 12:49 p.m. and came back on
7 at 1:54 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:54 p.m.)

JUDGE HILLSON: We're back on the record. We're a few minutes late, it's 1:53, according to my watch. And we're going to start right in with the final proponent witness. So, Mr. Resnick, do you want to call your final witness?

MR. RESNICK: Thank you, Your Honor. The Proponent Group calls Kathy Means.

JUDGE HILLSON: Okay, and I've marked Ms. Means or I'm marking Ms. Means written statement as Exhibit 115, and let me swear you in.

(Whereupon, the document referred to was marked as Exhibit Number 115 for identification.)

Whereupon:

KATHY MEANS

was called for examination and, having first been duly sworn, assumed the witness stand

1 and was examined and testified as follows.

2 JUDGE HILLSON: Please state your
3 name and spell it for the record.

4 MS. MEANS: My name is Kathy Means,
5 Kathy, K-a-t-h-y, Means, M-e-a-n-s.

6 JUDGE HILLSON: Okay, and you have
7 a statement you want to read?

8 MS. MEANS: I do.

9 JUDGE HILLSON: Go right ahead.

10 DIRECT EXAMINATION

11 MS. MEANS: I am Kathy Means, Vice
12 President of Government Relations in Public
13 Affairs for the Produce Marketing Association
14 based in Newark, Delaware.

15 PMA is a member of the Proponent
16 Group and today I am pleased to present these
17 comments to USDA, encouraging the adoption of
18 the proposed national leafy greens marketing
19 agreement.

20 PMA is the largest, global, not
21 for profit, trade association representing
22 companies that market fresh fruits and

1 vegetables.

2 We represent 3,000 companies from
3 grower/shippers and supermarket retailers, to
4 hotel and restaurant chains and overseas
5 importers.

6 Within the United States, PMA
7 members handle more than 90 percent of fresh
8 produce sold to consumers. Prevention of
9 food borne illness is a top priority for the
10 fresh produce industry and our government
11 partners.

12 The proposed agreement is a key
13 component of a comprehensive effort, by
14 industry and government, to reduce the risk
15 of food borne illness.

16 We have seen the success of the
17 California and Arizona leafy green marketing
18 agreements, and support a similar national
19 effort that provides regional flexibility.

20 When it comes to food safety,
21 every company must commit to do its part, to
22 ensure public health. This commitment

1 crosses geographic boundaries, company size
2 and type of production method. A national
3 marketing agreement facilitates a level
4 playing field that accommodates appropriate
5 differences.

6 Companies that sign on to such an
7 agreement, demonstrate their commitment to
8 food safety and public health. PMA believe
9 that overall food safety requirements are
10 needed for the entire produce industry from
11 field to fork.

12 We also support development of
13 commodity-specific food safety requirements
14 for those produce items that have been
15 identified as the most likely to be
16 associated with food borne illness outbreaks.

17 Leafy greens is one of those
18 commodities and we support efforts like this
19 to create metrics that advance food safety by
20 addressing the unique needs of the commodity.

21 We recognize that FDA is the
22 ultimate authority over produce safety,

1 including leafy green safety, yet we believe
2 a USDA marketing agreement empowers the
3 industry to move forward with government
4 authority to further safeguard public health
5 through risk and science-based, good
6 agricultural and handling practices.

7 USDA and FDA cooperate and
8 collaborate on food safety. Marketing
9 agreements within USDA are not incompatible
10 with FDA regulation and our support of this
11 agreement is not an effort to forestall FDA
12 regulation.

13 FDA already has issued draft
14 guidance for leafy greens and we will comment
15 on those and work with FDA, as appropriate,
16 on future regulation.

17 But we see this marketing
18 agreement as an immediate effort to advance
19 important food safety protocols. It is
20 especially appropriate for this activity to
21 happen through the agricultural marketing
22 service because that agency is the home of

1 marketing orders which allow industry to work
2 together on collective solutions to industry
3 issues.

4 These are flexible tools that can
5 be tailored to the needs of location
6 conditions, while providing a national
7 uniformity that assures consumers and
8 industry of a reliable level of consistency.

9 Programs, such as this, within
10 AMS, address quality issues, and food safety
11 is one of those quality issues.

12 Several programs within the AMS
13 system include food safety components, such
14 as almonds and mushrooms and it is
15 appropriate for leafy greens agreement to do
16 so as well.

17 Though handler participation would
18 be voluntary, once a handler commits to the
19 agreement, the handler would be required to
20 comply with the requirements.

21 This is essential to the success
22 of the agreement and to consumer confidence.

1 In the wake of several food borne illness
2 outbreaks, lined to fresh produce, including
3 the 2006 outbreak linked to fresh spinach,
4 consumer confidence and the safety of fresh
5 produce has declined.

6 Among U.S. voters, about nine in
7 ten support the federal government adopting
8 additional food safety measures and 64
9 percent believe the imported foods are often
10 or sometimes unsafe, according to a new PEW
11 poll.

12 Overall, 58 percent of voters are
13 worried about bacterial contamination of the
14 food supply with about a third of those
15 saying they worry a great deal.

16 Seventy-four percent of consumer
17 polled recently by the Hartman Group for PMA,
18 said it is very important to them that fruit
19 and vegetable providers support or pursue
20 food safety.

21 For example, testing in public
22 education and pesticide production. A strong

1 marketing agreement, backed by the
2 government, would provide consumers with the
3 assurance that robust food safety practices
4 are in place for leafy greens.

5 It also provides assurances to
6 buyers, both retail and in food service.
7 Most buyers require food safety assurances
8 from their suppliers.

9 Many of our members on the
10 purchasing side of the business, accept the
11 existing California and Arizona audits as
12 sufficient which helps reduce the audit
13 burden on producers.

14 These food safety practices must
15 apply to all types of leafy green signatories
16 regardless of size and regardless of
17 production method, organic or conventional.

18 Certainly rules must outcome based
19 and solutions must be adaptable and scalable.
20 If we look outside the produce industry, the
21 logic becomes clear.

22 Looking at the automobile

1 industry, we wouldn't ask large producers to
2 comply with safety rules, but give smaller
3 manufactures a pass. Safety has to apply to
4 everyone.

5 As I mentioned, PMA represents the
6 entire produce supply chain and we believe
7 that every link in the distribution system,
8 from growers to consumers, must have food
9 safety programs.

10 Fresh produce, particularly leafy
11 greens, does not have a kill step, and
12 prevention of pathogen contamination is
13 essential at every link in the chain, because
14 contamination can happen at any length.

15 Having programs that address the
16 handlers, and through them, the growers, is
17 important because contamination at that
18 level, can have far-reaching effects
19 depending on distribution patterns.

20 We also urge other types of
21 businesses to have robust food safety
22 programs. Wholesalers, distributors,

1 retailers and food service operators.

2 But those businesses lie outside
3 the scope of this agreement. Although
4 testimony from previous hearings has
5 addressed metrics in a variety of ways, it is
6 important to note that there are no metrics
7 for a national leafy greens marketing
8 agreement.

9 It is not appropriate to assume
10 that metrics from the California or Arizona
11 programs will automatically be included in a
12 national program.

13 It will be important for the
14 technical committee to evaluate appropriate
15 risk and science-based metrics, for a
16 national program, that consider and
17 accommodate regional differences and
18 production practice differences.

19 Those metrics must also be
20 balanced against environmental needs.
21 Certainly, there are costs associated with
22 food safety, but any costs involved in

1 enhanced food safety programs pale in
2 comparison to the cost of another outbreak
3 that shuts down the entire leafy greens
4 industry and puts companies out of business.

5 Thank you for the opportunity to
6 present PMA's support for a national leafy
7 greens marketing agreement. I'm happy to
8 answer any questions.

9 JUDGE HILLSON: Okay, I'm going to
10 receive Ms. Means' written testimony into
11 evidence as Exhibit 115. Mr. Resnick, do you
12 have any further direct at this point?

13 (Whereupon, the document referred
14 to, previously marked as Exhibit
15 Number 115 for identification, was
16 received in evidence.)

17 MR. RESNICK: No, Your Honor.

18 JUDGE HILLSON: Okay, let me see if
19 the USDA panel has any questions. Ms.
20 Schmaedick.

21 CROSS EXAMINATION

22 MS. SCHMAEDICK: Melissa

1 Schmaedick, USDA, thank you, Ms. Means, for
2 your testimony. I wanted to start out by
3 asking you a little bit, if you could
4 describe a little bit more in detail the
5 Produce Marketing Association and its
6 membership.

7 You touched on it real briefly,
8 but could you give us a profile?

9 MS. MEANS: Certainly. We
10 represent everybody who markets fresh fruits
11 and vegetables. We're an international
12 association, we have members in 47 countries.

13 The bulk of our membership is in
14 the United States and we represent the entire
15 supply chain. So growers, shippers,
16 wholesalers, transporters, grocery stores,
17 restaurants, food service distributors.

18 Everybody who is within that link
19 in the supply chain. And when we look for
20 solutions for industry problems, we look at
21 them through that lens of what will work for
22 the entire supply chain.

1 And that's one of the reasons that
2 we expect our members all to have robust food
3 safety programs, that are appropriate for
4 their businesses.

5 MS. SCHMAEDICK: And among your
6 membership are there small and large business
7 entities?

8 MS. MEANS: Yes, there are. We
9 have members, might be as small as a broker
10 with one person and telephone and an office,
11 to large, multinational companies where there
12 on the retail side or the production side.

13 MS. SCHMAEDICK: And is the Produce
14 Marketing Association, I'll refer to it as
15 PMA, hereafter. Was PMA part of the
16 proponent group that drafted this proposal?

17 MS. MEANS: We are part of the
18 proponent group, yes.

19 MS. SCHMAEDICK: Okay. And so were
20 you actively involved in the drafting of this
21 language or were you aware of it?

22 MS. MEANS: I was aware of it. I

1 personally was not involved. We have a Chief
2 Science Officer, Bob Whitaker, who has been a
3 part of this both before he was employed at
4 PMA and since then.

5 And we also have a person who
6 works with us who is an expert on marketing
7 agreements, who also helped work on the
8 language.

9 MS. SCHMAEDICK: In your statement
10 on Page 2, you mention a study that was done
11 by the Hartman Group?

12 MS. MEANS: Yes.

13 MS. SCHMAEDICK: Do you know if
14 that study has already been presented as part
15 of this hearing record?

16 MS. MEANS: I don't believe that it
17 has.

18 MS. SCHMAEDICK: Would it be
19 possible to have a copy of that submitted?

20 MS. MEANS: Yes.

21 MS. SCHMAEDICK: Thank you. Going
22 back to the first page of your statement,

1 there's two things I want to touch upon. One
2 is that on the very, in the very last
3 paragraph you state that a USDA marketing
4 agreement empowers the industry to move
5 forward with government authority to further
6 safeguard public health. And above that, in
7 the fourth paragraph, you also state that
8 every company must commit to do its part to
9 ensure public health.

10 Which crosses geographic
11 boundaries, size, type of production. So, in
12 linking those two thoughts together, my
13 question is this.

14 When you speak about empowering an
15 industry, are you speaking about one specific
16 part of the industry or are you speaking
17 about the entire industry from small, organic
18 producers, all the way through the large,
19 conventional, national producer/handlers?

20 MS. MEANS: Yes. A marketing
21 agreement such as this could apply to anyone
22 who signs on, because it is voluntary. But

1 it could apply to anyone, from the smallest
2 of growers to multinational companies, if
3 they chose to sign on.

4 I mean empowering the industry is
5 because these things come from industry
6 before USDA, to become a marketing agreement.
7 And then they have the power with the
8 government behind them.

9 MS. SCHMAEDICK: So what steps were
10 taken in the drafting of the proposal that
11 would allow for the empowerment of both small
12 and large business entities, growers and
13 handlers, and of other interest groups that
14 might be impacted by this proposal?

15 MS. MEANS: I drafting the
16 marketing agreement, in looking at it across
17 the broad spectrum, it is something that can
18 apply to every company.

19 Every company can look at it and
20 choose whether to participate or not. The
21 agreement envisions good agricultural
22 practices, although we don't have metrics

1 yet, we do have hints from within the
2 proposal about water quality, soil
3 amendments, personal hygiene, equipment
4 sanitation.

5 All of those things. And within
6 the proposal it is broad and would apply to
7 anyone doing anything in the marketing of
8 fresh leafy greens.

9 MS. SCHMAEDICK: In your
10 interaction with the proponent group and the
11 drafting of this proposal, was it at any time
12 contemplated that this agreement would
13 disenfranchise any part of the industry?

14 MS. MEANS: Never.

15 MS. SCHMAEDICK: Was it envisioned
16 that this would be an attempt to have
17 different representatives from different
18 interest groups collaborate in the interest
19 of food safety?

20 MS. MEANS: Yes, different interest
21 groups could collaborate in the interest of
22 food safety. And, in fact, within this, it

1 may be more beneficial to smaller entities.

2 Large companies may employ
3 scientists and be able to develop their own
4 food safety programs. One of the things we
5 find as an association, is often when you
6 collaborate to do things as an industry,
7 you're helping the smaller companies out,
8 perhaps even more than the larger ones.

9 Because the smaller companies may
10 not have the resources to do this. So having
11 a marketing agreement, it develops these
12 metrics, means they're developed for anybody
13 who wants to use them.

14 They don't need to go out and do
15 it themselves.

16 MS. SCHMAEDICK: And is it the
17 intent that in the drafting process of any
18 proposed metrics, that input would be sought
19 from different geographically, or different
20 production and handling environments?

21 MS. MEANS: Yes, absolutely. The
22 whole regional proposal of being able to have

1 things be different based on regions is
2 essential, because there are differences in
3 topography, in climate, and then we also need
4 to have the ability to be different for
5 different types of production methods.

6 Whether it's conventional organic,
7 size of company, there are definitely things
8 that are scalable within food safety programs
9 that allow smaller companies to do it in one
10 way, where larger companies may do it a
11 different that might cost more.

12 So, yes, always envisioned that it
13 would flexible.

14 MS. SCHMAEDICK: Among your
15 membership do you have producers or
16 handler/shipper members that are certified
17 organic?

18 MS. MEANS: Yes, we do.

19 MS. SCHMAEDICK: And was this
20 proposed agreement discussed among your
21 membership?

22 MS. MEANS: It has been discussed

1 among my membership, particularly among those
2 who are in the leafy greens arena. I won't
3 purport that the apple folks or the mushroom
4 folks are discussing the leafy greens
5 marketing agreement.

6 Although it is of interest because
7 it is a tool, a marketing agreement is a tool
8 that any commodity can use, if they see the
9 need, as mushrooms has, as almonds has, as
10 pistachios have.

11 So, yes, it has been discussed
12 amongst or members.

13 MS. SCHMAEDICK: And were there any
14 concerns raised by your membership of the
15 incompatibility of the proposed program with
16 the national organic program?

17 MS. MEANS: No, the national
18 organic program is a program that specifies
19 production methods. Organic is a production
20 method.

21 Whereas, this is a food safety
22 program. They're apples and oranges, if

1 you'll forgive the produce pun.

2 (Laughter.)

3 MS. SCHMAEDICK: So --

4 MS. MEANS: And they're not
5 incompatible with each other.

6 MS. SCHMAEDICK: Okay, that was my
7 next question. So turning to Page 2 of your
8 testimony, in the first full paragraph you
9 state several programs within the AMS system
10 include food safety components.

11 And then you mention almonds and
12 mushrooms. Can you expand on that statement?

13 MS. MEANS: Yes. The various
14 commodity groups and I'll just talk about
15 mushrooms for brevity, have used the
16 facilities of USDA marketing agreements,
17 research and promotion agreements, to advance
18 food safety protocols for their industry.

19 And they've done this because food
20 safety is a part of quality and these
21 marketing orders, agreements and research and
22 promotion agreements deal with providing

1 quality products.

2 And food safety is one component
3 of those. And so they have looked to find,
4 just as leafy greens is looking to do, a
5 consistent nationwide level playing field
6 that they can offer to their industry to
7 further enhance food safety, in reality, and
8 consumer confidence, which goes along with
9 that.

10 MS. SCHMAEDICK: Are you aware of
11 any, any existing relationships between FDA
12 and USDA, that allow for the collaboration of
13 those two organizations?

14 MS. MEANS: Absolutely. There are
15 quite a few, but one of the most recent ones,
16 USDA has just Leanne Skelton, who is an
17 expert in fruits and vegetables, to a six
18 month stint at FDA to help with development
19 of regulations.

20 And we've been very encouraged to
21 see increased efforts of collaboration. We
22 were meeting with FDA just a few weeks ago,

1 at a time when they talked about using USDA
2 expertise to help them with something they
3 were working on.

4 So, we're very encouraged to see
5 this increasing cooperation and
6 collaboration. And Leanne Skelton is just
7 one very concrete example of that.

8 MS. SCHMAEDICK: Would you say that
9 there's a history of the two government
10 entities working together?

11 MS. MEANS: Well, yes. In 1998,
12 when the GAPS document, that's been referred
13 to several times, came out. It came out
14 under the, jointly between FDA and USDA.

15 So, even as long ago as that, the
16 two agencies were working together on produce
17 food safety.

18 MS. SCHMAEDICK: And you've stated
19 that was through a GAP program?

20 MS. MEANS: The Guide to Minimizing
21 Microbial, that, whatever and is often
22 referred to as an FDA document and that is

1 the shorthand for it now.

2 When it was released it was a
3 joint USDA and FDA document.

4 MS. SCHMAEDICK: And are you aware
5 of the, of USDA AMSs good agricultural
6 practices and good handling practices audit
7 verification program?

8 MS. MEANS: Yes, absolutely.

9 MS. SCHMAEDICK: And can you
10 describe the relationship between USDA and
11 FDA in that scenario?

12 MS. MEANS: Yes, USDA, in that
13 program of auditing, USDA is out audited
14 against good agricultural practices that
15 fulfill needs FDA has for getting those.
16 There are other types of audits that can go
17 on, as well.

18 But the industry, the folks I have
19 talked to are very pleased to have USDA as an
20 option for doing those audits, to fulfill
21 needs they have to be audited against FDA
22 requirements.

1 MS. SCHMAEDICK: On the last page
2 of your testimony you state that it is not
3 appropriate to assume that the metrics from
4 the California or Arizona programs will
5 automatically be included in a national
6 program. Can you expand on that statement?

7 MS. MEANS: Certainly. The
8 technical review board, should this move
9 forward, will have to develop the metrics for
10 the national program. And because we need to
11 have, because it will be national and not
12 just California or just Arizona, we can't
13 assume that we'll just wholesale import those
14 requirements.

15 There may be other things they
16 need. It will be a different group of
17 experts developing it. Science and
18 technology have advanced since then, perhaps,
19 and they will be looking at the latest
20 information to develop the best information.

21 And to make it regionally and
22 production method flexible to meet different

1 regional and production method issues.

2 That's not to say there won't be
3 similar requirements. After all, when you
4 consider Arizona and California, you're
5 looking at 90 percent of the leafy greens
6 grown in the United States.

7 So there is a preponderance of
8 volume there. So, it's possible that some of
9 those will, of course, be and they may be the
10 best science available now.

11 But I think my point is that the
12 technical review board is going to have to do
13 its own work to develop what will be the
14 metrics used in the national program.

15 MS. SCHMAEDICK: And when the
16 proponent group was drafting this agreement,
17 was it anticipated that the metrics would
18 need to be revised or updated, if you will,
19 as science or technology evolved?

20 MS. MEANS: Yes, that's essential.

21 MS. SCHMAEDICK: And do you happen
22 to know or could you describe the process

1 through which the improvements would be made?

2 MS. MEANS: Well, the proposal
3 requires a review, I believe, every three
4 years. I think that's what I read and I
5 could have my numbers wrong.

6 And so the technical review board
7 will have to be looking at that. But it's
8 not limited to every three years. If
9 something comes about, and that's one of the
10 beauties of a marketing agreement. Is when
11 things happen, some great advance in, perhaps
12 they find a kill step and then the marketing
13 agreement can be amended, can be changed to
14 that that can be allowed or required,
15 depending on what it is.

16 MS. SCHMAEDICK: And if there were
17 a reason to change the metrics, is it your
18 understanding that that process would involve
19 a public comment period?

20 MS. MEANS: I believe so. I
21 believe so, yes.

22 MS. SCHMAEDICK: Okay. That

1 concludes my questions for the moment, thank
2 you.

3 JUDGE HILLSON: Other questions
4 from the USDA panel? Ms. Carter.

5 MS. CARTER: Antoinette Carter with
6 USDA. I just have a couple of follow up
7 questions for you, Ms. Means.

8 On Page 1 of your statement, the
9 last paragraph on that page, you state
10 marketing agreements within USDA are not
11 incompatible with FDA regulation and our
12 support of this agreement is not an effort to
13 forestall FDA regulation.

14 Could you elaborate on those two
15 thoughts for us, please?

16 MS. MEANS: Certainly. Taking the
17 second part, first, FDA has already issued
18 draft guidance to leafy greens, as well as
19 melons and tomatoes.

20 And our understanding is the
21 intent to produce final guidance and
22 ultimately regulation. The produce safety

1 program at FDA has indicated that they do
2 want to regulate fresh fruits and vegetables
3 on a macro level with GAPs and at a micro
4 level for those commodities that have been
5 most often associated with food borne
6 illness, such as leafy greens.

7 So we fully expect to see
8 regulation from FDA on this. But there's no
9 idea when that will be coming. And to take
10 this step, where the industry can come
11 together and propose this and get things
12 moving, perhaps more quickly than we'll see
13 regulation from FDA, allows us to get going
14 that much sooner.

15 And because of the collaboration
16 between FDA and USDA, that's why I say
17 they're not incompatible. You can certainly
18 have rules from FDA that require companies to
19 have good agricultural practices.

20 And, within that, a leafy greens
21 marketing agreement would provide the metrics
22 for such a thing. That would a case when

1 they would be perfectly compatible.

2 MS. CARTER: And then just one
3 final question. I believe you indicated in
4 your statement and in response to a question
5 by Ms. Schmaedick, that food quality is a
6 component of food safety.

7 Could you explain why you believe
8 that is so?

9 MS. MEANS: Actually food safety is
10 a component of food quality. When you go to
11 eat food, any kind of food, but leafy greens
12 as an example, you expect to have a quality
13 product.

14 And a quality product could have
15 all sorts of components. It might be how it
16 looks, how it tastes, the size of it, the
17 fact that it's not rotting.

18 And food safety is a part of that.
19 When I go to buy it, I expect, as part of
20 quality, to have a safe product. I expect
21 that from anything I buy.

22 And so food safety is one of those

1 components within quality. And we have other
2 marketing agreements and marketing orders,
3 for example, that regulate size of product or
4 perhaps the bricks, the sugar level of it, as
5 part of the quality experience a consumer
6 will have when they buy a certain product.

7 And food safety can be one of
8 those components, as we've seen with almonds,
9 pistachios, mushrooms, and now with leafy
10 greens.

11 MS. CARTER: Thank you, that's all
12 I have.

13 JUDGE HILLSON: Any other questions
14 from the panel? Dr. Hinman.

15 DR. HINMAN: Don Hinman, FDA. You
16 used the phrase at the bottom of Page 2,
17 outcome based?

18 MS. MEANS: Yes.

19 DR. HINMAN: Could you explain
20 that?

21 MS. MEANS: Outcome based would be
22 where you would state what you want an

1 outcome to be. We need to have water that is
2 a certain quality. Whatever that might be.

3 There may be multiple ways to get
4 to that. Or an outcome might be workers,
5 well-trained in personal hygiene. But there
6 may be multiple ways to get there.

7 A large company might bring all
8 their employees into a room like that and
9 have a PowerPoint presentation with handouts
10 and a demonstration station or something.

11 A smaller company might drive the
12 pickup out to the workers, or if it's family
13 farm, might have the conversation over
14 dinner.

15 So the outcome is to be sure
16 employees are trained on personal hygiene,
17 but there may be multiple ways to get that
18 training done, so that it is flexible based
19 on the size of the company or of any of its
20 unique circumstances.

21 DR. HINMAN: Is it your
22 understanding that in the proposed program,

1 handlers would pay the cost of audits and not
2 growers?

3 MS. MEANS: Yes.

4 DR. HINMAN: Is there any scenario
5 that you can think of is the growers is not
6 bearing the cost, unless the grower is also
7 the handler?

8 MS. MEANS: Well, yes, if the
9 grower were also a handler, they would bear
10 the cost. But my understanding is that the
11 handlers pay for the audits.

12 Now, it has been said earlier that
13 growers may have expenses to come up to be
14 able to meet the audit needs. But the audit,
15 itself, is a handler responsibility.

16 DR. HINMAN: So is it correct to
17 say that growers are being relieved of the
18 past cost, of paying a third party auditor,
19 but would still bear the time involved in
20 preparing for it?

21 MS. MEANS: Certainly.

22 DR. HINMAN: You know, when the

1 audit is going on there it's spending time.

2 MS. MEANS: Yes, yes, they would
3 be. Although, many of them are already being
4 audited, just not through a leafy greens
5 marketing agreement, as we heard this
6 morning.

7 Many of them are facing multiple
8 audits. They're already going through this.
9 So for those who are already doing this,
10 there would be really no increase in cost or
11 time, because they're already doing it.

12 And some of them doing it multiple
13 times.

14 DR. HINMAN: What are the costs of
15 compliance? Did you hear testimony that view
16 is that cost of compliance may put small
17 growers out of business, and that's not
18 correct?

19 MS. MEANS: Well, again, we believe
20 that everybody company has to be responsible
21 for food safety. I'm very concerned to hear
22 of growers that don't have food safety

1 programs in place.

2 If food safety is difficult to do,
3 that's, that's awful. I don't want that
4 product in the marketplace. Because it's
5 when we have outbreaks, when people are not
6 paying attention to food safety and we have
7 outbreaks, it puts not only the grower, that
8 has the problem at risk.

9 It puts the entire industry at
10 risk. We have seen entire industries shut
11 down. People who had nothing to do with the
12 problem, were shut down by this.

13 So, when I hear that growers are
14 not having food safety programs or that a
15 food safety program is incompatible with them
16 staying in business, then maybe they
17 shouldn't be in business.

18 DR. HINMAN: Thank you, no further
19 questions.

20 JUDGE HILLSON: Anything else from
21 the USDA panel? Mr. Souza.

22 MR. SOUZA: Anthony Souza, USDA.

1 One quick question. You mention in your
2 testimony on Page 1, that FDA already has
3 issued a draft guidance document for leafy
4 greens?

5 MS. MEANS: Yes.

6 MR. SOUZA: In your opinion what is
7 the purpose of that document?

8 MS. MEANS: That document is much
9 broader than what we're looking at here and
10 having metrics that are applicable to leafy
11 greens. It's a much broader document that
12 talks more generically about the need for
13 companies to have food safety programs that
14 cover certain things, like worker hygiene,
15 soil amendments, water quality, things like
16 that.

17 But it does not get down to the
18 level that we're talking about in terms of
19 having the metrics developed. That are very
20 specific about what needs to be done.

21 MR. SOUZA: So the proposed metrics
22 will be more defined than what the guidance

1 document is?

2 MS. MEANS: Yes.

3 MR. SOUZA: Thank you.

4 JUDGE HILLSON: Dr. Hinman.

5 DR. HINMAN: Don Hinman, USDA. You
6 used on Page 2, the phrase that the rules
7 should be adaptable and scalable. What do
8 you see as the role of PMA, if there was a
9 future market agreement, making those
10 adaptable and scalable?

11 MS. MEANS: Yeah, I think the,
12 adaptable and scalable refers to the rules
13 being able to be used by anyone. So that
14 regardless of what kind of an operation I
15 have, I can look at the rules and use them.

16 They maybe smaller, as I was
17 mentioning on worker hygiene training, from
18 an auditorium with power point to a
19 conversation at the back of a pickup truck.

20 Adaptable would be some of those
21 regional differences we've seen. I may not
22 need to test water as often if I'm working

1 off a deep well.

2 Someone who's working off surface
3 water, may need to test water more often.
4 Just because there's a greater chance of
5 contamination of that.

6 So they have to be adaptable to
7 different things. The role PMA would play
8 would be a role of education. To ensure that
9 our members understand and many of our
10 members buy from a lot of these growers.

11 There's a, I think there's a
12 feeling that when you're talking about a
13 Fresh Express or a Dole or something, that
14 they're growing all of this lettuce and it's
15 a huge corporation with acres and acres and
16 acres and thousands of acres of farms.

17 And it's not the case. They're
18 buying from small growers. So one of our
19 rules would be to be sure our members are
20 educated.

21 The handlers, we're more likely to
22 be dealing with some of the handlers. So

1 that they can then educate their growers.

2 Or, we might be educating growers,
3 as well. So outreach and education would be
4 a role that we would play.

5 In addition to provided scientific
6 expertise where needs. I mentioned that we
7 have a Chief Science Officer and one of his
8 key areas of expertise is leafy green safety.

9 So we would offer his services to
10 help with these efforts.

11 DR. HINMAN: Thank you, no further
12 questions.

13 JUDGE HILLSON: Ms. Schmaedick.

14 MS. SCHMAEDICK: Just quickly, you
15 mentioned also a PEW Poll on Page 2 of your
16 testimony?

17 MS. MEANS: Yes, you'd like that as
18 well?

19 MS. SCHMAEDICK: Yes, please.

20 MS. MEANS: Okay.

21 MS. SCHMAEDICK: No further
22 questions.

1 JUDGE HILLSON: Do we have
2 questions?

3 MR. ETKA: Steve Etko, National
4 Organic Coalition. You may have answered
5 this question, but I just want to make sure I
6 understood it correctly.

7 You, in your testimony, talked
8 about and in subsequent questioning, talked
9 about the fact that FDA is moving forward
10 with guidance, soon to be regulation, on
11 leafy greens, correct?

12 MS. MEANS: Yes.

13 MR. ETKA: And the question has
14 come up a number of times. If that is the
15 case, and if FDA is going to be doing
16 guidance, or regulation on leafy greens, what
17 is the value added of this simultaneous
18 process through USDA?

19 MS. MEANS: It's probably not
20 simultaneous. Because this can move much
21 more quickly than FDA will move. I'm not an
22 FDA Regulator, so I can't speak with

1 authority on that, but the guidance is out
2 now for comment.

3 Those comments will have to be
4 reviewed. Final guidance will be issued.
5 Ultimately, then, draft regulation would be
6 issued with comment periods, and then
7 ultimately final regulation.

8 So we're years away from final
9 regulation from FDA. In addition, what I
10 don't know is if their guidance and
11 regulation continue take the form that they
12 have now, which is very similar to the
13 industry's commodity specific guidance that
14 was developed and has then been revised, it's
15 very similar to that.

16 And so there's a different in
17 granularity there. The guidance is at a much
18 higher level, whereas the metrics envisioned
19 for the leafy greens marketing agreement are
20 very specific.

21 And so they would be, they must be
22 compatible because there's not a time we

1 would ever want to see growers or handlers
2 having to deal with two different sets of
3 rules or conflicting rules.

4 And, so, one of the other roles we
5 would play would be to continue to work with
6 both USDA and FDA to be sure that any rules,
7 guidance, regulations are compatible.

8 And we don't set up a conflict for
9 the growers or the handlers.

10 MR. ETKA: So, in other words, even
11 if FDA were to move forward and institute the
12 guidance and a regulation for leafy greens,
13 in your view it would still make sense for
14 the leafy green marketing agreement to move
15 forward, as well?

16 MS. MEANS: Yes.

17 MR. ETKA: Because of the
18 specificity --

19 MS. MEANS: Yes. Unless FDA starts
20 to come out with something that looks more
21 like this. But that become problematic
22 because a regulation is harder to change than

1 a marketing agreement.

2 And so, where you have the, where
3 you have the specifics of the metrics, I
4 mentioned if something changes you can change
5 it quickly, relatively quickly.

6 And that is, the faster you can
7 change to bring new technologies and better
8 science to the fore, for growers and
9 handlers, the better off everyone is.

10 So there are, I see a role for
11 both.

12 MR. ETKA: Would you agree that it
13 may be more cost effective for the industry
14 as a whole, all subsets of that industry, as
15 well as USDA to work with FDA through that
16 one track versus having simultaneous tracks?

17 MS. MEANS: Again, I don't think
18 they're simultaneous. I believe this
19 marketing agreement, should it move forward,
20 will move forward much more quickly than FDA
21 regulation.

22 MR. ETKA: And would you agree that

1 this marketing agreement itself still needs
2 to be, if it's to move forward, to be put out
3 for public comment, and go through that
4 lengthy process as well?

5 MS. MEANS: Well, I believe that
6 the, because it applies to the industry
7 itself and the industry will be bringing its
8 experts together to develop these metrics,
9 and there are consumer, consumer
10 representatives for the committee.

11 That there is already built into
12 the process this breadth of expertise. So
13 I'm not sure, I don't know that it meets the
14 same kind, it's a very different program from
15 an FDA regulation.

16 It is a marketing agreement
17 developed by the industry for the industry.
18 Whereas an FDA regulation is a regulation
19 that originates with them to protect public
20 health.

21 MR. ETKA: And, one last question.
22 You mentioned that organic standards and food

1 safety regulations are apples and oranges.

2 Are you aware that under USDA
3 organic standards, organic farmers are
4 required to include farming practices that
5 maximize buyer diversity on their farms?

6 MS. MEANS: Yes.

7 MR. ETKA: Are you also aware of
8 the concerns in California with regard to the
9 California leafy greens marketing agreement,
10 that the metrics established under that
11 agreement have been interpreted by auditors
12 to result in pressure being placed on
13 organic, farmers in general, to take out
14 wildlife habitat or the minimized wildlife
15 habitat?

16 MS. MEANS: I'm aware of the
17 concerns. I'm aware that some of this is
18 auditor interpretation. And we don't believe
19 a scorched earth policy is needed to make
20 these programs work.

21 That they can work in harmony.
22 So, the fences were mentioned before. That's

1 not a requirement. Scorched earth policies
2 are not a requirement.

3 So what we need to do is avoid
4 knee jerk reactions and interpretations by
5 auditors or whoever may be interpreting it.

6 And make sure that the programs,
7 the food safety programs, are really food
8 safety programs. And not going any further
9 than they need to go to for that.

10 We're not in favor of the, well,
11 if having cows 500 feet from our field is
12 good, then a thousand feet would be better.
13 How about a half a mile? Okay, if half a
14 mile is good, then a mile is better.

15 There has to be a time when you
16 look at science and risk and balance those
17 two. And so we're not in favor of
18 eliminating wildlife habitat.

19 MR. ETKA: But you are aware that
20 the California LGMA metrics have been
21 interpreted in some cases to that result?

22 MS. MEANS: Yes, I am and I'm sorry

1 that that has happened.

2 MR. ETKA: Okay, thank you.

3 JUDGE HILLSON: Are they any other
4 questions from interested parties? Any
5 redirect?

6 REDIRECT EXAMINATION

7 MR. RESNICK: Jason Resnick,
8 Western Growers, thank you for your
9 testimony. When you hear about these
10 scorched earth requirements and removal of
11 habitat, are those related to the
12 requirements of the California LGMA, or are
13 those the requirements of buyers?

14 MS. MEANS: I know they're not the
15 requirements of the LGMA. I don't know if
16 they're requirements of buyers or if they are
17 overzealous auditor requirements.

18 MR. RESNICK: Thank you.

19 JUDGE HILLSON: Okay, you may step
20 down, thank you for testifying. And now, Mr.
21 Etkka, I guess we hand it off to you. The
22 next six witnesses, according to my

1 calculations are being called by you or your
2 associates. So, let's start off right away.

3 MR. ETKA: I'd like to call Amanda
4 Gormley.

5 Whereupon:

6 AMANDA GORMLEY

7 was called for examination and, having first
8 been duly sworn, assumed the witness stand
9 and was examined and testified as follows.

10 JUDGE HILLSON: I'm marking Ms.
11 Gormley's written statement as Exhibit 116,
12 and you're going to submit this with the
13 attachment? I'll mark that as Exhibit 117,
14 and you can identify it as you go along.

15 (Whereupon, the documents referred
16 to were marked as Exhibit Number
17 116 and 117 for identification.)

18 JUDGE HILLSON: Please state your
19 name and spell it for the record.

20 MS. GORMLEY: My name is Amanda
21 Gormley, that's A-m-a-n-d-a, G-o-r-m-l-e-y.

22 JUDGE HILLSON: Okay, and you have

1 a statement you want to read, correct?

2 MS. GORMLEY: Yes, I do.

3 JUDGE HILLSON: Please go ahead.

4 DIRECT EXAMINATION

5 MS. GORMLEY: I would like to thank
6 you for the opportunity represent the
7 Syracuse Real Food Cooperative Market in our
8 formal opposition to the agricultural
9 marketing service proposed marketing
10 agreement Number 970, heretofore referred to
11 as the agreement.

12 In summary, we do not support the
13 agreement for the following reasons. There's
14 no need for a marketing agreement for leafy
15 green vegetables.

16 As stated in the proposed
17 marketing agreement Number 970, these public
18 hearings are held for the purposes of
19 determining if there's a need for a marketing
20 agreement for leafy green vegetables.

21 We propose that there is not.

22 While food safety is an important issue, the

1 AMS marketing agreement is an ineffective
2 solution.

3 Under Section 970.49, the leafy
4 green vegetable administrative committee has
5 the power to administer the agreement, make
6 rules and regulations to effectuate the terms
7 and provisions of the agreement and, among
8 other powers, adopt audit metrics to
9 administer the terms of the agreement.

10 The USDA agricultural marketing
11 service is a marketing agency, not an agent
12 or an advocate for food safety. A marketing
13 service is not the appropriate authority to
14 prescribe, administer or regulate
15 agricultural safety regulation.

16 Nor is a marketing agreement the
17 appropriate means for national regulation of
18 leafy green vegetable food safety. Food
19 safety regulation should be created by food
20 safety experts, adapted to specific
21 operations and regulated by organizations who
22 are clear advocates for the consumer.

1 The agreement was funded by
2 assessments to the signatory handlers, as
3 stated in Section 970.56. Section 970.40,
4 the agreement allocates members of the
5 national leafy green vegetable administrative
6 committee of 23 committee members.

7 Thirteen are food handlers, six
8 are producers, one is a retail representative
9 from the production area, one is a food
10 service representative from the production
11 area, one is a public member from the
12 production area, and one is an importer from
13 the production area.

14 Notably, there are no allocated
15 memberships held by food safety experts.
16 This agreement creates a system in which the
17 very corporations being regulated are given
18 power to fund, create, administer, audit and
19 regulate their own safety standards.

20 The agreement takes accountability
21 away from agricultural producers and places
22 power into the hands of handlers. Section

1 970.35 of the agreement states that a purpose
2 of the proposed agreement is to implement a
3 uniform, audit-able, science-based food
4 quality verification program.

5 As previously stated, the
6 committee is not represented by any food
7 safety experts. Therefore it is impossible
8 to assume that any quality verification
9 program would be science-based.

10 Our consumers trust their farmers
11 and expect them to utilize their knowledge,
12 skills and applied expertise to their farming
13 practices.

14 Under Section 970.49 of this
15 agreement, however, the leafy green vegetable
16 administrative committee has the power to
17 administer the agreement, make rules and
18 regulations and effectuate the terms and
19 provisions of the agreement and, among other
20 powers, adopt audit metrics to administer the
21 terms of the agreement. The committee which
22 would be granted these powers, is

1 overwhelmingly comprised of food handlers,
2 56.5 percent.

3 Only 26 percent of allocated
4 committee positions are held by producers.
5 We take issue against this application of the
6 uniform standards because of its propensity
7 to limit the farmers, growers and producers
8 in their ability to explore and develop safe
9 and beneficial farming practices.

10 Such as identified by Franz, et.
11 al. in 2005, when he studied effects of
12 cattle feeding regimen and soil management
13 type on the fate of, excuse me, escherichia
14 Coli 0157-H7 and salmonella enterica Sero var
15 Typhimurium in Manure, Manure-Amended Soil
16 and lettuce, published in applied and
17 environmental microbiology, Volume 71, Pages
18 6165 to 6174.

19 For this study, researchers in the
20 Netherlands tested the survival of E. coli
21 0157-H7 added to manure from grass-fed cows
22 and those fed a mixture of grass and corn

1 silage.

2 This manure was added to organic
3 and conventional soils. E. coli levels
4 declined faster in the manure from grass-fed
5 cows that had been mixed with organic soil.

6 The slowest rate of decline was in
7 manure from cows fed the grass/corn silage
8 mixture that had been mixed with conventional
9 soil.

10 The researchers found that the
11 cattle diet and soil management are important
12 factors affecting the survival of human
13 pathogens in the environment.

14 We find no economic data to
15 support a need to improve consumer confidence
16 in leafy green vegetables and their products
17 in the marketplace.

18 While Syracuse Real Food
19 Cooperative Market did see a drop in
20 percentage of leafy green vegetable sales in
21 2007, sales have since returned to and
22 exceeded the level of sales sustained prior

1 to the E. coli spinach outbreak in September
2 of 2006.

3 Produce sales grew 2.4 percent in
4 2006, 10.71 percent in 2007, and 9.93 percent
5 in 2008. Syracuse Real Food Co-op's produce
6 department is projected to exceed these sales
7 growth numbers in 2009.

8 Leafy green vegetables, as
9 currently defined in the agreement,
10 consistently perform in the top 5th
11 percentile of overall sales.

12 Food safety regulations developed
13 by food safety experts, rather than industry
14 and marketing experts, would do far more to
15 address the safety issues and would also be
16 far more effective in addressing consumer
17 concerns about food safety.

18 Creating a marketing brand that
19 certifies safety standards will have a
20 negative effect on non-certified products,
21 without a scientific assurance of a safer
22 product for the certified products.

1 Section 970.69 states that the use
2 of a U.S. registered certification mark will
3 be granted to the AMS leafy green vegetable
4 administrative committee.

5 Businesses that choose not to
6 engage with signatories to the agreement,
7 would not be eligible to use the
8 certification mark.

9 Potential issues with this system
10 include the inadvertent creation of a
11 competitive label based on safety standards
12 created by the committee.

13 The growers, producers, handlers,
14 retailers and other food based businesses who
15 choose not to work with signatory handlers to
16 the agreement would be negatively affected by
17 this competitive edge.

18 Signatories to the agreement are
19 limited to food handlers, as defined by
20 Section 970.12. Under this definition of
21 handlers, small farmers who sell their own
22 produce are excluded from being signatories

1 and therefore ineligible for leafy green
2 certification.

3 We perceive the potential for an
4 alarmingly negative trend in bio-diversity
5 under this agreement. The committee shall
6 certify only leafy green vegetables as
7 defined in Section 970.15.

8 This causes a potentially serious
9 threat to the leafy green vegetables that do
10 not fall under the committee's definition and
11 consideration. Items like mustard greens,
12 collard greens, basil and other leafy herbs
13 which do not qualify for the leafy green
14 certification mark, may become less desirable
15 to the consumer and therefore to the
16 producer, resulting in the low production
17 rates and possible eradication of the
18 product.

19 Thank you for considering our
20 position to this agreement.

21 JUDGE HILLSON: Okay, thank you,
22 Ms. Gormley. I'll receive your written

1 statement into evidence as Exhibit 116. I'll
2 receive the article that you've attached as
3 Exhibit 117. Mr. Etko, do you have any
4 questions that you wanted to ask this witness
5 before I pass her over to the USDA panel?

6 (Whereupon, the documents referred
7 to, previously marked as Exhibit
8 Number 116 and 117 for
9 identification, were received in
10 evidence.)

11 MR. ETKO: No.

12 JUDGE HILLSON: Any questions from
13 the USDA panel? Ms. Schmaedick.

14 CROSS EXAMINATION

15 MS. SCHMAEDICK: Yes, my first
16 question is, you stated, her testimony is
17 Exhibit 117?

18 JUDGE HILLSON: It's 116 and the
19 attachment is 117.

20 MS. SCHMAEDICK: Okay, thank you, I
21 was confused.

22 JUDGE HILLSON: Isn't that what I

1 said? Did I say something different?

2 MS. SCHMAEDICK: Do we have
3 additional copies of the attachment, that
4 might have been why we were confused?

5 JUDGE HILLSON: Do you perhaps have
6 one for the proponents as well?

7 MS. SCHMAEDICK: That was my first
8 question, I was going to ask you for a copy
9 of this. My first question is what, on the
10 last page of your testimony you indicate that
11 farmers who sell their own product are
12 excluded from being signatories and therefore
13 ineligible for leafy green certification.

14 Can you explain how you came to
15 that conclusion?

16 MS. GORMLEY: I came to that
17 conclusion from the summary of the proposed
18 agreement, and reading that the proposal
19 would be voluntary and that only handlers who
20 sign the marketing agreement would be subject
21 to the marketing agreement.

22 Which I read that only handlers

1 could be signatories and therefore producers
2 would be excluded from that.

3 MS. SCHMAEDICK: So, if a producer
4 is harvesting and selling their product to
5 consumers, wouldn't they be engaged in the
6 act of handling?

7 MS. GORMLEY: I suppose they would
8 be, yes.

9 MS. SCHMAEDICK: So it's possible
10 then that they could become signatories,
11 because they would be considered
12 producer/handlers?

13 MS. GORMLEY: Under Section 970.12,
14 a handler is described as any person who
15 handles, provided that this definition does
16 not include a retailer, a food service
17 distributor or broker, except to the extent
18 that such person is otherwise engaged in
19 handling.

20 So, I don't think that
21 specifically explains the difference between
22 a producer and a handler, and that there is

1 room for interpretation.

2 MS. SCHMAEDICK: So, if you look at
3 the definition in 970.11, handling is to
4 receive, acquire, sell, process, ship,
5 distribute. And if you look at the
6 definition in 970.24, retailer.

7 It says retailer means an
8 individual activity that sells the vegetables
9 direct to the consumer, provided that the
10 retailer does not include direct sales from a
11 producer to a consumer.

12 So, given the interpretation of
13 those two proposed definitions, would in fact
14 a grower that is selling directly to
15 consumers, qualify to be a signatory?

16 MS. GORMLEY: I don't know. That's
17 something that concerns me about this
18 proposed agreement, is that that definition
19 to me seems to be unclear.

20 MS. SCHMAEDICK: Okay, I have no
21 further questions.

22 JUDGE HILLSON: Anything else from

1 the USDA panel? Ms. Carter?

2 MS. CARTER: Antoinette Carter with
3 the USDA. Just a little, could you explain a
4 little bit about the Syracuse Real Food
5 Cooperative Market? Could you give us a
6 little more information about it?

7 MS. GORMLEY: What would you like
8 to know?

9 MS. CARTER: Could you just tell
10 us, you know, what's your, the function or
11 the makeup of your organization?

12 MS. GORMLEY: Sure. We're a
13 community owned grocery store in this area.
14 We do about 1.5 million dollars annually in
15 sales. A large amount of that comes from
16 fresh produce, which we sell.

17 And we have pretty tight
18 relationships with our small farmers and
19 producers.

20 MS. CARTER: Thank you, that's all.

21 JUDGE HILLSON: Anything else from
22 the panel? Mr. Souza.

1 MR. SOUZA: Thank you, Anthony
2 Souza, USDA. Just one question. You make
3 mention in your statement on the first page,
4 a marketing service is not the appropriate
5 authority to prescribe, administer or
6 regulate agricultural safety regulations.
7 Are you in support of regulations, in lieu of
8 a marketing agreement?

9 MS. GORMLEY: Absolutely.

10 MR. SOUZA: You feel like there
11 should be national regulations across the
12 board?

13 MS. GORMLEY: As I stated, I think
14 that food safety regulations should be
15 created by food safety experts.

16 MR. SOUZA: Correct.

17 MS. GORMLEY: And not marketing
18 agencies.

19 MR. SOUZA: Correct, and you're in
20 favor of that?

21 MS. GORMLEY: Yes, I am.

22 MR. SOUZA: Okay, thank you very

1 much.

2 DR. HINMAN: Don Hinman, USDA. In
3 your last statement there, quoting yourself
4 in the bottom of that paragraph, could you
5 please tell me how you think this would come
6 about? What entity would you have in mind or
7 what do you have in mind that would actually
8 create this?

9 MS. GORMLEY: I don't have any
10 specific ideas in mind.

11 DR. HINMAN: Okay. At the top of
12 your second page there, you have the phrase,
13 our consumers trust their farmers and expect
14 them to utilize their knowledge, skills and
15 applied experience to their farming
16 practices.

17 Then you go on to say that you
18 think this will be, is it correct to say that
19 the marketing agreement would negate this in
20 some way?

21 MS. GORMLEY: I did not explicitly
22 say that I think that would negate that, but

1 I fear that that could be a potential
2 possibility.

3 DR. HINMAN: You explain nothing by
4 which that would come about.

5 MS. GORMLEY: I think that uniform
6 applied standards, national uniform standards
7 could hinder the ability of farmers to
8 explore their own best farming practices.

9 DR. HINMAN: Okay. On the last
10 page you say you see the potential for
11 alarming negative trend in bio-diversity, is
12 that correct?

13 MS. GORMLEY: Yes, that is.

14 DR. HINMAN: Do you believe that
15 there could be metrics developed in a
16 marketing agreement that would avoid that
17 outcome?

18 MS. GORMLEY: I don't believe so.

19 DR. HINMAN: Okay, thank you. No
20 further questions.

21 JUDGE HILLSON: Is that a nod, Ms.
22 Schmaedick?

1 MS. SCHMAEDICK: I have no further
2 questions.

3 JUDGE HILLSON: Okay. What about
4 the proponents?

5 MR. RESNICK: Jason Resnick,
6 Western Growers. Thank you, Ms. Gormley for
7 your testimony today.

8 MS. GORMLEY: You're welcome.

9 MR. RESNICK: Is it your contention
10 that the proposed marketing agreement does
11 not contain a body of food safety experts?

12 MS. GORMLEY: No, that's not my
13 contention. My contention is that there is
14 not a significant representation of food
15 safety experts.

16 MR. RESNICK: And what's your
17 understanding, let me ask you initially.
18 You've got the agreement?

19 MS. GORMLEY: Yes, sir.

20 MR. RESNICK: What's the percentage
21 or ratio of food safety experts on the
22 technical review board?

1 MS. GORMLEY: On the technical
2 review board, my understanding is that there
3 are five food safety experts from, it says,
4 let me read it. I have to find it.

5 MR. RESNICK: It's Section 970.45.

6 MS. GORMLEY: So the technical
7 review board would be represented by produce
8 food safety expert from the land grant
9 university with each zone. So that would be
10 five safety experts, but they are to be from
11 land grant universities.

12 MR. RESNICK: And is there anything
13 wrong with experts from land grant
14 universities?

15 MS. GORMLEY: I don't think that
16 there's anything specifically wrong with
17 experts from land grant universities, but I
18 think that closes the door to other possible
19 experts being involved.

20 MR. RESNICK: And if you read on,
21 could you continue from there?

22 MS. GORMLEY: Of course. Produce

1 food safety expert from a land grant
2 university with each zone, elected by the
3 producer and handler members from the
4 corresponding zone.

5 One representative from the USDA
6 national resources conservation service
7 appointed by the secretary. One
8 representative of the U.S. environmental
9 protection agency designated by the
10 administrator, and two representatives from
11 the FDA designated by the commissioner.

12 MR. RESNICK: Let me stop you
13 there. Does that help you to see that there
14 are two FDA representatives? Do they count
15 as experts in your mind?

16 MS. GORMLEY: It doesn't
17 specifically say that they would be food
18 safety experts from FDA.

19 MR. RESNICK: Is it your assumption
20 they would not be, have expertise in food
21 safety?

22 MS. GORMLEY: I'm not sure whether

1 they would or not.

2 MR. RESNICK: The fact that they're
3 from FDA doesn't give you comfort?

4 MS. GORMLEY: The fact that they're
5 from the FDA gives me comfort that they're
6 from the FDA. But not specifically that they
7 are food safety experts.

8 MR. RESNICK: Okay. I have nothing
9 further.

10 JUDGE HILLSON: And other
11 questions? Thank you for your testimony,
12 please step down. Mr. Etko, you may call
13 your next witness.

14 MR. ETKO: I'm going to call
15 Charlotte Vallaeys.

16 JUDGE HILLSON: And I'm going to
17 mark Ms. Vallaeys' exhibit as Exhibit 118.

18 (Whereupon, the document referred
19 to was marked as Exhibit Number
20 118 for identification.)

21 Whereupon:

22 CHARLOTTE VALLAEYS

1 was called for examination and, having first
2 been duly sworn, assumed the witness stand
3 and was examined and testified as follows.

4 JUDGE HILLSON: Please state your
5 name and then spell it for the record?

6 MS. VALLAEYS: Charlotte Vallaeys,
7 C-h-a-r-l-o-t-t-e, V-a-l-l-a-e-y-s.

8 JUDGE HILLSON: Okay, and do you
9 have a statement you'd like to read?

10 MS. VALLAEYS: I do.

11 JUDGE HILLSON: Go right ahead.

12 DIRECT EXAMINATION

13 MS. VALLAEYS: My name is Charlotte
14 Vallaeys, I am a farm and food policy analyst
15 with the Cornucopia Institute. Cornucopia is
16 a non-profit organization based in Wisconsin,
17 with a mission of promoting economic justice
18 for the family-scale farming community.

19 We represent approximately 3,000
20 members, the majority of whom are farmers.
21 The Cornucopia Institute opposes the proposed
22 national leafy greens marketing agreement for

1 the following reasons.

2 The leafy greens marketing
3 agreement will give industry representatives
4 authority to self-regulate for food safety,
5 doing a disservice to our citizen's need for
6 safer food.

7 A fundamental question here is
8 whether the subject of food safety is simply
9 a quality issue and a marketing issue. Food
10 safety, in our view, is more than a, quote,
11 quality issue.

12 A contaminated bag of lettuce is,
13 of course, of bad quality. But since the
14 attribute that makes it unacceptable, has the
15 potential to kill you, or worse, kill your
16 child, it is more than just a bad quality
17 product.

18 It is a dangerous product that has
19 no place on market shelves. If quality were
20 to be measured on a spectrum, many a product
21 that is supposed to be healthy, but instead
22 turns out to be life-threatening, doesn't

1 just fall on the low end of the quality
2 spectrum, it falls off the quality spectrum,
3 all together.

4 And into a whole new arena. This
5 new arena, food safety, is one that should
6 not be left to industry self-regulation, as
7 proposed by this marketing agreement.

8 And, although you've heard it many
9 times, it bears repeating. The current
10 administrator of the USDA's agricultural
11 marketing service, Rayne Pegg, said in her
12 testimony to Congress, this past summer, that
13 AMS is not a food safety agency.

14 I quote from her testimony. The
15 mission of AMS is to facilitate the strategic
16 marketing of agricultural products in the
17 domestic and international marketplace.

18 AMS is not a food safety agency.
19 The agency, through programs such as
20 marketing orders and agreements, assist
21 handlers and producers in verifying various
22 product quality control efforts, end quote.

1 In this statement, she appears to
2 suggest that food safety and quality control
3 efforts are separate issues. Improvements in
4 food safety should be driven by one, sole
5 concern, to protect citizens from illness and
6 possible death.

7 If we agree that food safety
8 standards should be a public service, it
9 currently falls under the purview of
10 government agencies.

11 Proposing to merge voluntary
12 marketing agreements and food safety shows
13 that these industry proponents have their own
14 interests in mind, not the safety of the
15 citizenry. Such self-regulation leaves
16 important stakeholders out of the important
17 process of developing food safety standards.

18 Instead of suing the traditional,
19 regulatory process to make rules and
20 regulations, the proposal in Section 49,
21 states that the 23 member committee, quote,
22 shall have the following powers.

1 B, to make such rules and
2 regulations as may be necessary to effectuate
3 the terms and provisions of the agreement,
4 unquote.

5 While the proposal specifies that
6 any proposed standards will be subject to
7 notice and comment by the public, in Section
8 49C, it is likely that the public's only
9 chance to comment will be after the first
10 draft of the rules has been written, by
11 industry representatives.

12 This is very different from
13 standard regulatory procedures, in which
14 Government agencies solicit comments from all
15 stakeholders, including concerned citizens,
16 farmers, consumers and environmentalists,
17 before drafting the regulations.

18 While this system is not perfect,
19 the opportunity for public engagement is
20 preferable to the industry-driven and
21 dominating model proposed in the LGMA.

22 In which the only opportunity for

1 public comment, will come after the standards
2 have been developed by industry
3 representatives in a technical review board,
4 on which only four out of 13, and I correct
5 that, 14 members, will not be chosen by the
6 committee.

7 Furthermore, although the LGMA
8 plan is voluntary for handlers, this does not
9 mean that growers will be free to choose
10 whether they will be affected by the national
11 metrics.

12 A grower who may not want to sign
13 on, will have no choice but to follow the
14 national metrics, if his or her primary
15 wholesale customer becomes a signatory.
16 Growers who do not want to follow the
17 metrics, may have a difficult time selling
18 their crops.

19 In this sense, the proposed
20 marketing agreement is not entirely voluntary
21 for growers and will likely allow industry
22 representatives to establish a national set

1 of standards that will become defacto
2 mandatory.

3 In addition, our food safety
4 system is fractured and fragmented as it is
5 and involving yet another government agency
6 in food safety will be counterproductive and
7 further contribute to its fragmentation.

8 The national leafy greens
9 marketing agreement with the USDA-backed
10 certification mark, will create a second
11 class citizen status for non-signatories like
12 organic, small scale and direct marketers.

13 Section 970.69(b) of the proposal,
14 states that, quote, the committee may license
15 signatories to affix the official
16 certification mark to bills of lading or
17 manifests.

18 Subject to the verification,
19 suspension, revocation requirements or any
20 other such uses recommended by the committee
21 and approved by the secretary, to carry out
22 the purpose of this agreement.

1 Since this is a marketing
2 agreement, the, quote, purpose of this
3 agreement, refers to marketing as stated
4 explicitly in Section 970.75.

5 Quote, the committee with the
6 approval of the secretary, may establish or
7 provide for the establishment of marketing
8 research and development products and/or
9 promotional activities including paid
10 advertising, design to assist, improve or
11 promote the efficient adoption,
12 implementation and marketplace acceptance of
13 the agreement and of leafy green vegetables
14 or products handled by signatory members,
15 unquote. So although the proposal currently
16 does not explicitly state that the
17 certification mark will be used on packaging
18 visible to consumers, nor does it state that
19 this will be prohibited.

20 And given the marketing focus of
21 this proposal, it is not unreasonable to
22 suggest that the marketing agreement may lead

1 to paid advertising to promote the products
2 of signatories.

3 Implying that non-signatories are
4 offering food of inferior quality. In this
5 case, meaning inferior food safety quality.

6 Even if paid advertisement are not
7 used to promote the program and the
8 certification mark, its use among handlers
9 may very well create the impression, among
10 many consumers and retailers, that leafy
11 greens from non-signatories are less safe.

12 This will create an unfair
13 marketing disadvantage for wholesalers who
14 choose not to become signatories and for
15 producers selling direct to consumers.
16 Possibly inhibiting the growth of the local
17 food system, that the USDA and others have
18 been promoting, and which is part of the
19 solution to our nation's food safety woes.

20 A national leafy greens marketing
21 agreement may undo many of the conservation
22 and habitat improvements made over the past

1 several decades, that have softened
2 agriculture's footprints on the environment.

3 Experiences in California have
4 shown that food safety measures are not
5 always written with adequate consideration
6 for environmental laws and bio-diversity
7 concerns.

8 The California LGMA has resulted
9 in loss of wildlife habitat and destruction
10 of natural vegetation. Even though it has
11 not been conclusively proven, that these are
12 material factors in food contamination.

13 The metrics and FDA guidance
14 documents currently list deer as animals of
15 significant risk and encourage fencing and
16 other measures that interfere with
17 environmental protection and bio-diversity.

18 Scientific studies show that deer
19 are not to be considered animals of
20 significant risk.

21 Since the metrics will not be
22 developed using the standard governmental

1 regulatory process, which involves all
2 stakeholders, we cannot be assured that
3 environmental concerns will be adequately
4 considered in the standards.

5 Furthermore, food safety standards
6 should recognize the benefits of certain
7 farming practices that are common on organic
8 farms, such as building rich microbial life
9 in soil, which has been shown to minimize
10 food safety risks.

11 Studies have shown that
12 organically managed soil, and competition in
13 the soil with other micro-organisms,
14 significantly reduces the survival success of
15 pathogenic E. Coli. Again, if the proposed
16 food safety standards are developed by a, if
17 I'm correct, 14-member technical review
18 board, inadequate consideration may be given
19 to these scientific findings and others, that
20 point to food safety benefits of organic and
21 sustainable farming practices.

22 A national leafy greens marketing

1 agreement will not create safer food, at
2 least not in the near future. The current
3 state of science does not allow for
4 developing metrics that can competently
5 eliminate food safety risks from leafy greens
6 to consumers.

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

11 Second, not enough scientific
12 evidence exists to develop standards that can
13 competently prevent contamination and further
14 outbreaks.

15 Third, bacterial contamination is
16 only one of many food safety concerns. The
17 proposed marketing agreement suggests that
18 metrics will be silent on reducing pesticide
19 use and use of other agro-chemical residues
20 and additional practices that will make food
21 safer.

22 Fourth, in the summer of 2009, two

1 signatories to the California leafy greens
2 marketing agreement were involved in recalls
3 due to salmonella contamination of their
4 leafy greens.

5 This shows that metrics have not
6 been able to prevent contamination. And
7 last, but not least, while the proposal
8 states that rules will be science-based,
9 scalable and regionally applicable, it is
10 unclear how one set of rules can accommodate
11 both large scale monoculture growers in
12 California, and small scale, diversified
13 farms in the northeast.

14 Rules that may be appropriate for
15 one type of operation, may put unnecessary
16 burdens on another.

17 And with the large scale growers
18 represented on the committee, chances are the
19 smaller scale and diversified farms' needs
20 and concerns, will be the first to go.

21 For these reasons, Cornucopia
22 believes that this proposal for a marketing

1 agreement is inappropriate and does not
2 deserve the backing of the USDA. Thank you.

3 JUDGE HILLSON: Thank you. I'm
4 going to receive your written testimony into
5 evidence as Exhibit 118. Mr. Etko, do you
6 have any further direct questions for this
7 witness at this time?

8 (Whereupon, the document referred
9 to, previously marked as Exhibit
10 Number 118 for identification, was
11 received in evidence.)

12 MR. ETKO: No.

13 JUDGE HILLSON: Let me pass it on
14 to the USDA panel. Ms. Schmaedick.

15 CROSS EXAMINATION

16 MS. SCHMAEDICK: Melissa
17 Schmaedick, USDA. And good afternoon and
18 thank you, is it Ms. Vallaeys?

19 MS. VALLAEYS: Vallaeys.

20 MS. SCHMAEDICK: Okay. On Page 2
21 of your statement, and then again on Page 3
22 of your statement, you refer to the standard,

1 well, on Page 2 it's the traditional
2 regulatory process.

3 And then on Page 3, it's the
4 standard governmental regulatory process.
5 Can you explain to me what exactly you're
6 referring to?

7 MS. VALLAEYS: I'm referring to a
8 Rule Making where government agencies solicit
9 input from all stakeholders through, for
10 example, an advanced notice of proposed Rule
11 Making, or a notice of proposed Rule Making
12 and solicits and then reviews and analyzes
13 all of that input before a final regulation
14 is proposed and passed.

15 MS. SCHMAEDICK: And where is your
16 experience with Rule Making?

17 MS. VALLAEYS: It can be very
18 lengthy, precisely because democracy is not
19 always quick and easy. So, it can be
20 lengthy, if that's what you're getting at.

21 MS. SCHMAEDICK: No, I'm asking
22 what your personal experience is with the

1 Rule Making process?

2 MS. VALLAEYS: You mean, me,
3 personally?

4 MS. SCHMAEDICK: Yes.

5 MS. VALLAEYS: How many comments I
6 have submitted, that kind of --

7 MS. SCHMAEDICK: Have you ever been
8 involved in a Rule Making process, prior to
9 this public hearing?

10 MS. VALLAEYS: Yes, I have.

11 MS. SCHMAEDICK: So how familiar
12 are you with the set of regulations that
13 govern rule making for marketing orders and
14 agreements?

15 MS. VALLAEYS: I'm sorry, how
16 familiar am I with rule making for marketing
17 agreements specifically, or for general rule
18 makings?

19 MS. SCHMAEDICK: Are you aware that
20 there are a body of rules that apply
21 specifically to marketing orders and
22 agreements?

1 MS. VALLAEYS: Yes.

2 MS. SCHMAEDICK: And, so, is it
3 your opinion that we're not following those
4 prescribed procedures?

5 MS. VALLAEYS: No, in fact, what
6 I'm, well, let me answer your first question.
7 I am aware, for example, that on October,
8 2007, there was a notice of proposed rule
9 making for this marketing agreement and we
10 did submit, we submitted comments in December
11 of 2007.

12 We also, at Cornucopia, sent out
13 an action alert to its members, in which we
14 laid out some of our concerns which were
15 submitted, I believe there were 3,500
16 comments.

17 A lot of those were Cornucopia
18 members. So, I don't know if that answers
19 your question.

20 MS. SCHMAEDICK: It does, in a way.

21 MS. VALLAEYS: Oh, but, can I add
22 something? I forgot, I mean I remember the

1 second part. What I'm referring to is that
2 our concern is once this part of the rule
3 making process is over, it will end with
4 either the approval or rejection of the
5 marketing agreement for leafy greens.

6 Now once it becomes accepted and
7 the secretary allows it, the metrics have not
8 been developed. So that authority, which is
9 in the proposal.

10 That authority to develop specific
11 metrics, is handed over, outside government
12 control to industry representatives, the 23-
13 member committee, suddenly has that
14 authority.

15 And we cannot be confident that
16 they will solicit the same kind of public
17 comments and input from all stakeholders that
18 the government is required to do.

19 They, according to our
20 understanding of marketing agreements, they
21 are not required to do that. They are, they
22 do have to hand over their draft metrics for

1 approval by the secretary which will lead to
2 a public comment period.

3 But that will happen after they
4 have drafted the metrics, and that's what
5 concerns us.

6 MS. SCHMAEDICK: Are you aware that
7 committee meetings are public, in general?

8 MS. VALLAEYS: No.

9 MS. SCHMAEDICK: Are you aware of
10 the next step in this particular rule making
11 process?

12 MS. VALLAEYS: Yes.

13 MS. SCHMAEDICK: Can you tell me
14 what that is?

15 MS. VALLAEYS: It is my
16 understanding that the AMS and USDA will
17 analyze the comments and input from these
18 hearings and actually have another
19 opportunity for public comments.

20 MS. SCHMAEDICK: Okay. And after
21 that?

22 MS. VALLAEYS: After that? Come up

1 with your recommendation which goes to the
2 secretary.

3 MS. SCHMAEDICK: I have no further
4 questions. Thank you.

5 JUDGE HILLSON: Anything else from
6 our USDA panel? Any questions from the
7 proponents? Mr. Giclas.

8 MR. GICLAS: Thank you, Your Honor.
9 Thank you, Ms. Vallaeys, for your testimony
10 this afternoon. I just had a couple of
11 questions. I'll try not to cover any of the
12 previous questions.

13 But, one of the things that was
14 just being asked about was the October, 2007,
15 notice and the comments provided by
16 Cornucopia and the action alert that you
17 facilitated.

18 Did that actual alert carry
19 recommended language or recommended comments
20 that people can send in to USDA?

21 MS. VALLAEYS: I'm sorry, did it
22 include language?

1 MR. GICLAS: Yes.

2 MS. VALLAEYS: Yes.

3 MR. GICLAS: Okay. I'm curious.

4 Have you, has Cornucopia provided comment on
5 the FDA proposed guidance for leafy greens
6 that was published at the end of July?

7 MS. VALLAEYS: Not yet.

8 MR. GICLAS: But you plan to?

9 MS. VALLAEYS: Yes.

10 MR. GICLAS: Are you going to
11 facilitate comments on those, as well?

12 MS. VALLAEYS: We have not decided.

13 MR. GICLAS: Okay. On Page 3 of
14 your testimony, I was curious about this
15 first paragraph. You underlined and
16 boldfaced part of the language, I think,
17 970.69, where it says or any other such uses,
18 recommended by the committee and approved by
19 the secretary, to carry out the purpose of
20 this agreement.

21 What is the purpose of the
22 agreement? Is that, is that what you're

1 referencing in the following paragraph there,
2 this 970.75?

3 MS. VALLAEYS: It's certainly clear
4 that, you know, as a marketing agreement,
5 that we shouldn't forget that marketing is
6 part of that purpose and the purpose is
7 stated in -- I can't find it.

8 MR. GICLAS: I'll refer you to it,
9 it's in 970.35, purpose.

10 MS. VALLAEYS: Oh, okay. Okay,
11 this is missing a page it looks like.

12 MR. GICLAS: I'll just ask you to
13 skim through that for a second and you'll
14 see, you know, if you would agree that the
15 fundamental purposes there, in that section,
16 are kind of more in line with best practices,
17 audit programs, food safety.

18 I mean, do you see marketing in
19 there?

20 MS. VALLAEYS: Yes. Not, not
21 written out but implied. The last to improve
22 consumer confidence in leafy greens

1 vegetables, that would be one marketing, the
2 goal of marketing is to --

3 MR. GICLAS: You think consumers
4 should have confidence in leafy green
5 vegetables?

6 MS. VALLAEYS: Certainly.

7 MR. GICLAS: Okay, I wanted to ask
8 you also about the, still on Page 3. There's
9 been a lot of testimony about, you know, the
10 potential intersection between conservation
11 goals and food safety requirements.

12 You have a line in here that says
13 scientific studies show that deer are not to
14 be considered animals of significant risk.
15 Are you aware of other studies that say they
16 are at risk?

17 MS. VALLAEYS: Am I aware that --
18 no.

19 MR. GICLAS: Okay, are you
20 referring to any specific, in the study
21 here, that says some, the industry should not
22 be concerned with beer?

1 MS. VALLAEYS: I'm saying that the
2 studies I'm familiar with have shown that
3 they should not be considered animals of
4 significant risk. And if there are studies
5 showing that they are, it's pretty clear that
6 the science is not ready to back the certain
7 metric to say that they are or aren't.

8 And it's very troubling when the
9 science isn't really there yet, to show what
10 is the cause? We know what the cause is, but
11 how these pathogens get onto leafy greens,
12 how they survive and how they make people
13 sick.

14 When we don't have answers to
15 those questions, it's troubling when animals,
16 like deer, get blamed for it. And I'm not
17 saying that I know the answer, I don't.

18 But there are studies that have
19 shown that, but they probably did not cause
20 these problems and anyone that leads to
21 metrics, that encouraged farmers to put up
22 fences and other practices that, that kind of

1 turn back the clock on all of these bio-
2 diversity advancements that we've had in
3 agriculture, that's very troublesome.

4 MR. GICLAS: Yeah, I would agree
5 with that. Do you, what's your advice to
6 industry when the science isn't mature?

7 MS. VALLAEYS: Well, you know, I'm
8 not a food safety expert and I'm not sure
9 that I'm ready at this point to give advice
10 regarding specific metrics or standards.

11 MR. GICLAS: Fair enough. Are you
12 aware of any outbreak investigations where
13 the leading theory is that deer may be a
14 contributing factor or cause?

15 MS. VALLAEYS: I am aware, yes.
16 But I'm also aware that after, after those
17 investigations that it turned out that they
18 probably were not the cause.

19 I have seen studies and I have
20 seen that they were very, I have seen reports
21 that it was very unlikely that deer were the
22 cause.

1 MR. GICLAS: Are you aware of
2 California's history in relation to
3 outbreaks?

4 MS. VALLAEYS: Am I aware of
5 California's --

6 MR. GICLAS: Well, I mean --

7 MS. VALLAEYS: Yes.

8 MR. GICLAS: In 2005, prior to the
9 establishment of guidance documents, do you
10 know how many outbreaks were associated with,
11 you know, the California industry? Any feel
12 for that number?

13 MS. VALLAEYS: No.

14 MR. GICLAS: Well, I'm sorry. More
15 than ten, less than 20?

16 MS. VALLAEYS: I don't know.

17 MR. GICLAS: Well, let me ask you,
18 do you know how many outbreaks have been
19 associated with California since the
20 establishment of the California leafy greens
21 marketing agreement?

22 MS. VALLAEYS: For leafy greens?

1 MR. GICLAS: Yes.

2 MS. VALLAEYS: Yeah, I believe it's
3 four or five.

4 MR. GICLAS: Four outbreaks since
5 2002?

6 MS. VALLAEYS: Oh, outbreaks, no,
7 recalls.

8 MR. GICLAS: Have you been tracking
9 previous testimony from some of the hearings,
10 at all?

11 MS. VALLAEYS: Yes.

12 MR. GICLAS: Are you aware of
13 testimony from California producers, well,
14 from a diversity of California producers that
15 say that they haven't had any problems
16 complying with the California metrics?

17 MS. VALLAEYS: I'm sorry, what was
18 your question? Am I aware --

19 MR. GICLAS: Are you aware that
20 there have been a diversity of --

21 MS. VALLAEYS: Oh, yes.

22 MR. GICLAS: -- sizes and types of

1 operations. Okay, thank you, I have no other
2 questions.

3 JUDGE HILLSON: Any other questions
4 from interested parties? Ms. Schmaedick, go
5 right ahead.

6 MS. SCHMAEDICK: Melissa
7 Schmaedick, USDA. Ms. Vallaeys, if you
8 could turn your attention to 970.49, powers.
9 On Page 2 of your statement you make
10 reference to this section and you, in the
11 second sentence you say, instead of using the
12 traditional regulatory process to make rules
13 and regulations, the proposal in Section 49,
14 states that the 23-member committee shall,
15 quote, have the following powers, b, to make
16 such rules and regulations as may be
17 necessary to affect the terms and provisions
18 of the agreement, end quote.

19 Could you read actually how it's
20 written in the Federal Register, could you
21 read that 970.49(b), please?

22 MS. VALLAEYS: To make such rules

1 and regulations with the approval of the
2 secretary, as may be necessary to effectuate
3 the terms and provisions of the agreement.

4 MS. SCHMAEDICK: So it appears to
5 me that there might have been some words left
6 out?

7 MS. VALLAEYS: With the approval of
8 the secretary?

9 MS. SCHMAEDICK: Right. Your
10 understanding of that language is what?

11 MS. VALLAEYS: With the approval of
12 the secretary? That the secretary will
13 approve it or not.

14 MS. SCHMAEDICK: And does that
15 typically also include a public comment
16 period?

17 MS. VALLAEYS: Yes.

18 MS. SCHMAEDICK: And are committee
19 meetings leading up to any committee
20 recommendation to the secretary, are those
21 typically public?

22 MS. VALLAEYS: Yes.

1 MS. SCHMAEDICK: So, I'm confused
2 by your statement that the committee has the
3 power to do, to create rules and regulations
4 with a balance of checks and authority from
5 USDA?

6 MR. ETKA: Your Honor, I think the
7 witness has acknowledged that point at least
8 three times.

9 JUDGE HILLSON: I didn't really
10 hear a question. I heard a statement by Ms.
11 Schmaedick that she was confused.

12 MS. SCHMAEDICK: I'm asking for
13 clarification because she's implied that the
14 committee can act at will. Yet, it's fairly
15 clear that --

16 JUDGE HILLSON: The language is out
17 there, I mean it's part of the record, it's
18 part of the proposal, so I think you've
19 already covered that several times. Unless
20 you want to say something else about it?

21 MS. SCHMAEDICK: No. Those are all
22 the questions I have.

1 JUDGE HILLSON: Okay. Anyone else?

2 Oh, Mr. Resnick.

3 MR. RESNICK: Thank you, Jason

4 Resnick, Western Growers. Just a few

5 questions. Is it Cornucopia's position that

6 there should be increased food safety

7 regulation by FDA, in the regulation of fresh

8 fruits and vegetables, including leafy greens

9 or do you have a different position?

10 MS. VALLAEYS: We certainly believe

11 that if, if it is clear that certain

12 regulations could improve food safety, that

13 it should be the FDA that goes ahead with

14 those, yes.

15 MR. RESNICK: Thank you, that

16 wasn't really my question, though. I'm just

17 wondering if you are saying that Cornucopia

18 is saying there should be more regulation in

19 the field of food safety of fresh fruits and

20 vegetables?

21 MS. VALLAEYS: Do we think there

22 should be more regulation? Again, I cannot

1 answer that as a yes or no, at this specific
2 moment in time.

3 It's dependent on --

4 JUDGE HILLSON: Sometimes, you
5 know, you can just stop after you've answered
6 the question.

7 MS. VALLAEYS: Okay, so, yes, no, I
8 don't know.

9 JUDGE HILLSON: If you can't give
10 it a yes or no, you can't give it a yes or
11 no.

12 MS. VALLAEYS: Yeah.

13 MR. RESNICK: Can you explain your
14 reticence? Are you saying that there's
15 enough regulation already? Or --

16 MS. VALLAEYS: We think that
17 there's so many factors to food safety
18 regulation and, including, it should be, you
19 know, a lot of regional and if FDA does, you
20 know, which it has, it comes up with proposed
21 regulation, we would have to analyze that and
22 give our input.

1 And it depends on what kind of
2 regulation, for example, you know, if it's
3 not, it's a very broad question. It's much
4 more complicated.

5 MR. RESNICK: Okay, do you agree
6 that farms should practice good agricultural
7 practices as defined by the FDA and its
8 guidance on leafy greens?

9 MS. VALLAEYS: Yes.

10 MR. RESNICK: And do you agree that
11 those practices should audit-able?

12 MS. VALLAEYS: Yes.

13 MR. RESNICK: And verifiable?

14 MS. VALLAEYS: Yes.

15 MR. RESNICK: And science-based?

16 MS. VALLAEYS: Yes.

17 MR. RESNICK: And do you believe
18 that is currently required at this time, to
19 have such verifiable, audit-able, sustainable
20 and science-based metrics? Are those good
21 agricultural practices currently required?

22 MS. VALLAEYS: Currently required?

1 MR. RESNICK: Yes.

2 MS. VALLAEYS: Of all farmers?

3 MR. RESNICK: We'll narrow it to
4 leafy greens?

5 MS. VALLAEYS: No.

6 MR. RESNICK: Should there be, in
7 your view?

8 MS. VALLAEYS: Again, that depends
9 on, but yes, on standards.

10 MR. RESNICK: It depends on the
11 metrics?

12 MS. VALLAEYS: Yes.

13 MR. RESNICK: Okay, thank you, I
14 have nothing further.

15 JUDGE HILLSON: And seeing no one
16 else with a question, and you can step down
17 right now. Thank you for your testimony.
18 And, maybe we should call like a five minute
19 break, every three or four witnesses, this is
20 going to be a long day.

21 Why don't we take a five minute
22 break and you have your next witness ready.

1 Let's go off the record for five minutes.

2 (Whereupon, the proceedings went
3 off the record at 3:30 p.m. and
4 came back on at 3:36 p.m.)

5 JUDGE HILLSON: Okay, let's go back
6 on the record. Mr. Etko, your next witness?

7 MR. ETKO: We call Kate Mendenhall.

8 JUDGE HILLSON: And, Ms.
9 Mendenhall, I've marked your written
10 statement as Exhibit 119.

11 (Whereupon, the document referred
12 to was marked as Exhibit Number
13 119 for identification.)

14 JUDGE HILLSON: Please raise your
15 right hand.

16 Whereupon:

17 KATE MENDENHALL

18 was called for examination and, having first
19 been duly sworn, assumed the witness stand
20 and was examined and testified as follows.

21 JUDGE HILLSON: Please state your
22 name and spell it for the record.

1 MS. MENDENHALL: Kate Mendenhall,
2 K-a-t-e, M-e-n-d-e-n-h-a-l-l.

3 JUDGE HILLSON: Okay, and you've
4 got a statement that you'd like to read?

5 MS. MENDENHALL: Yes.

6 JUDGE HILLSON: Please proceed.

7 DIRECT EXAMINATION

8 MS. MENDENHALL: My name is Kate
9 Mendenhall and I'm the Executive Director of
10 the Northeast Organic Farming Association of
11 New York, a non-profit organization that
12 provides education about organic and
13 sustainable agriculture, as well as promotes
14 the growth of sustainable agriculture in New
15 York State.

16 NOFA, New York, also operates
17 NOFA, New York, Certified Organic, LLC, a
18 USDA accredited organic certification agency.
19 Thank you for the opportunity to testify
20 before you today in opposition of the
21 proposed national leafy greens marketing
22 agreement.

1 NOFA, New York, represents over
2 2,300 member farmers, gardeners, food
3 businesses and consumers.

4 We represent over 1,100 farmers
5 and certify over 600 certified organic farms.
6 Of those 1,100 farms, 390 grow and market
7 leafy greens, as defined in the proposed
8 marketing agreement.

9 The majority of our members' farms
10 are small to mid-size family farms that
11 follow a diverse system of agriculture.
12 Often growing over 100 varieties of produce
13 for multiple markets.

14 Our member growers market through
15 farmer's markets, CSAs, restaurants,
16 institutional markets, independent grocers
17 and retail grocery chains.

18 The majority of our farms would be
19 classified as growers and handlers, because
20 they process on, ship from and/or distribute
21 from the farm.

22 With the growth of the bi-local

1 movement and growing consumer interest in the
2 organic marketing label, the number of our
3 certified organic farms has doubled in the
4 last five years, and the markets they access
5 has also grown.

6 While many are classified as
7 direct market growers, the opportunities for
8 selling into institutional and other
9 wholesale markets are growing. In the near
10 future, we hope that our growers will have
11 increased access to all kinds of local and
12 regional markets.

13 NOFA, New York opposes the
14 regulation of food safety through the
15 structure of the Federal Marketing Act, for
16 the following reasons.

17 Number 1, food safety should not
18 be a marketing attribute. All foods sold to
19 the public, should be safe.

20 All growers and handlers should
21 follow processes that minimize the risk of
22 pathogenic contamination. However, the

1 agricultural marketing service is not the
2 right place to establish a food safety
3 program.

4 Number 2, a single food safety
5 metric cannot apply for the whole country.
6 Growing conditions, length of growing season
7 and farm size, differ greatly across the
8 nation, even within New York State.

9 Food safety education standards
10 and/or regulations, would be best defined and
11 managed at the state level. A NOFA, New York
12 member farmer from central New York, who is
13 certified in both bio-dynamic and organic
14 standards, could not testify today because he
15 needed to be on the farm and take advantage
16 of the warmer weather predicted for this
17 week.

18 His farming business is a good
19 example of how national metrics would not
20 work for small to mid-size growers.

21 He operates a diversified farm,
22 raising 15 to 20 acres of vegetable crops

1 each year, more than half of which would be
2 classified as leafy greens.

3 He markets through two primary
4 outlets, local direct sales through a large
5 CSA and a natural foods distributor that
6 operates throughout the state.

7 He is fundamentally opposed to any
8 program, including this proposed marketing
9 agreement, which seeks to establish a
10 uniform, national, protocol or metric for
11 food safety on the farm.

12 He feels that the issues and
13 potential hazards are too site-specific to be
14 lumped together in a national program and
15 force unnecessary and prohibitive costs on
16 small scale growers.

17 This farmer has experienced a
18 growing demand for his greens over the last
19 few years, largely because consumers want
20 fresh and local products, and there simply
21 are no other options in the region.

22 He used to sell to a local

1 Wegman's supermarket, but two years ago the
2 company began requiring GAP certification for
3 all leafy greens growers and his facilities
4 would not meet the standards without a great
5 deal of investment and changes he feels are
6 not only unnecessary but counterproductive.

7 Consequently, his market is now
8 limited to independent retailers or direct to
9 consumer sales. He fears that if any
10 national program is implemented, even these
11 independent retailers will feel pressured to
12 only buy from producers able to meet the
13 metrics.

14 The economic impact for farms,
15 like his, would be quite dramatic. Marketing
16 Act programs give control to a small group of
17 people, usually made up of the largest
18 processors or growers. This particular
19 proposal does just that, as the committee
20 structure has more handlers than growers
21 represented in Zones 1 and 2, regions where
22 the largest processors and growers exist,

1 have more seats than Zones 3, 4 and 5.

2 The inequity in representation of
3 small to medium size growers would negatively
4 affect New York State sustainable farms.

5 Number 4, the level of food safety
6 risk differs between fresh cut packaged leafy
7 greens, fresh cut and whole produce.
8 Additionally, the risk level is inherently
9 different based on the size of the handler,
10 the number of farms from it sources product,
11 and the number of places where that product
12 is sold.

13 The proposed marketing agreement,
14 however, does not distinguish between riskier
15 products or practices, lumping them all under
16 the same regulations.

17 Number 5, NOFA, New York supports
18 the whole farm holistic approach to food
19 safety. Focusing on one set of metrics for
20 leafy greens, another for root crops, another
21 fruit, etcetera, I onerous and expensive for
22 diverse growers.

1 Diversity is a key agricultural
2 value, both ecologically and economically. A
3 set of food safety marketing agreements for
4 individual products, would be cost-
5 prohibitive for the diverse small to mid-size
6 family farms in New York and other northeast
7 states.

8 In the Hudson Valley of New York,
9 a NOFA, New York member farm's experience
10 with GAP certification is a perfect example
11 how, crop-by-crop, individual food safety
12 standards will not work for diverse farms.

13 This farm grows over 65 different
14 crops and attended a GAP training last year,
15 hosted by USDA officials.

16 The USDA auditors could not find a
17 good solution for certifying the farm. They
18 usually certify individual crops with
19 separate GAPs and they do not know how to
20 handled such a diverse enterprise.

21 They did offer to certify each
22 vegetable individually but charged \$92.00 an

1 hour. The national LGMA could be the first
2 of many commodity-specific food safety
3 programs to follow.

4 This process does not work for
5 small to mid-size, diverse, sustainable
6 growers. But instead, encourages mono-
7 culture and large operations that can absorb
8 the costs of compliance.

9 Number 6, the California leafy
10 green marketing agreement has already pitted
11 good environmental practices against food
12 safety regulations, and we fear that a
13 national leafy green marketing agreement
14 would follow suit.

15 Creating a sterile, agricultural
16 environment, is not something the USDA should
17 be promoting in its policies. Diverse
18 agricultural systems are important to local
19 wildlife, organic management systems, and in
20 maintaining integrity in local ecosystems.

21 Multiple studies have demonstrated
22 that the inclusion of diverse on-farm

1 ecosystems, such as buffer strips, actually
2 retard, retain and metabolize pollutants,
3 thus reducing on-farm food safety risks.

4 The Northeast Organic Farming
5 Association of New York, is dedicated to
6 building a sustainable, regional food system.
7 The proposed Federal Marketing Order is a
8 band aid to a broken industrial agricultural
9 system.

10 Instead of creating one size fits
11 all regulations that actually help just the
12 largest industrial farms reduce the potential
13 for food contamination, the USDA should be
14 supporting the viability of small to mid-size
15 family farms in helping to rebuild local and
16 regional food systems that are safe and
17 equitable to growers of all sizes.

18 While we agree that food safety
19 measures are needed, this marketing agreement
20 is not the way to go.

21 In January, 2009, our membership
22 voted in the following resolution regarding

1 food safety.

2 Whereas organic farmers are
3 committed to supplying consumers with safe
4 food and to taking appropriate measures to
5 ensure sanitary conditions and crop handling.

6 Whereas repeated instance of
7 illness and even death from food contaminated
8 with pathogens, has resulted in proposals for
9 regulations that will drive small scale farms
10 out of business, which failing to address the
11 root causes of these food borne illness.

12 Therefore, NOFA, New York,
13 resolves that we support the mandatory use of
14 potable water for washing produce. We
15 further oppose mandatory chemical treatment
16 of wash water, particularly with chlorine,
17 for fruits and vegetables for the purpose of
18 disinfecting crops. And, we oppose livestock
19 setbacks and requirements for farmers to
20 destroy natural areas on their farms in order
21 to protect the public from food pathogens.

22 Such regulations do not serve

1 public health, but instead, eliminate
2 integrated farms and reduce bio-diversity.

3 Food safety is of utmost
4 importance to NOFA, New York farmers and
5 consumers. In fact, most of our farms sell
6 to their local communities and interact
7 directly with their customers.

8 Whether it be at a farmers market
9 a CSA or during a drop off to a grocery
10 store. We are supportive of improved
11 national food safety, but disagree with a
12 federal marketing agreement that will under-
13 represent the small to mid-size family
14 farmer, use food safety as a marketing tool
15 and create a cost-prohibitive system of
16 metrics for small to mid-size growers and
17 handlers.

18 Thank you again for the
19 opportunity to speak on this issue.

20 JUDGE HILLSON: Okay, Ms.
21 Mendenhall, I've received your written
22 statement into evidence as Exhibit 1119, and

1 I will ask if, do you have any questions, Mr.
2 Etkka?

3 MR. ETKA: Just one question. In
4 Point Number 6, on Page 3 of your testimony,
5 you referenced a couple of studies and then
6 put them in a footnote. Would you like to
7 include those in the record for USDA?

8 MS. MENDENHALL: Yes.

9 MR. ETKA: Could I give you a copy
10 of those two reference documents?

11 JUDGE HILLSON: If you want them in
12 the record, yes. Okay, I'm marking as
13 Exhibit 120, a document entitled, where the
14 first line is studies showing benefits of
15 vegetative buffers.

16 (Whereupon, the document referred
17 to was marked as Exhibit Number
18 120 for identification.)

19 JUDGE HILLSON: And I'm marking as
20 Exhibit 121, an article in the Journal of the
21 American Water Resources Association,
22 integrated management of infield, edge of

1 field and after field buffers.

2 (Whereupon, the document referred
3 to was marked as Exhibit Number
4 121 for identification.)

5 JUDGE HILLSON: And I will receive
6 Exhibits 120 and 121, into evidence.

7 (Whereupon, the documents referred
8 to, previously marked as Exhibit
9 Number 120 and 121 for
10 identification, were received in
11 evidence.)

12 MR. ETKA: That's all I have, thank
13 you.

14 JUDGE HILLSON: Okay, let me turn
15 the questioning over then to the USDA panel.
16 Any questions from the USDA panel?

17 MS. SCHMAEDICK: Yes.

18 JUDGE HILLSON: Okay, Ms.
19 Schmaedick, go for it.

20 CROSS EXAMINATION

21 MS. SCHMAEDICK: Melissa
22 Schmaedick, USDA and thank you, Ms.

1 Mendenhall, is that correct? Thank you for
2 your testimony.

3 On Page 3 of your statement you,
4 at the very end of your statement there you
5 talk about the, the resolution that was voted
6 in by NOFA, New York.

7 And you state that you support the
8 use of potable water for washing produce.
9 You oppose mandatory chemical treatment of
10 wash water.

11 And you oppose livestock set backs
12 and requirements for farmers. So these three
13 statements, does that constitute the
14 resolution in its entirety?

15 MS. MENDENHALL: Yes.

16 MS. SCHMAEDICK: And you oppose
17 livestock setbacks in any type of situation?

18 MS. MENDENHALL: This is a
19 resolution passed based on the whereas
20 clauses above defining it as a, in regards to
21 food safety.

22 MS. SCHMAEDICK: Okay. So, I'm

1 just curious, in your opinion, is there a
2 difference between a field that is on a mixed
3 use farm, that may have a draft animal
4 present, versus a farm that might be located
5 to a feed lot?

6 Is there a difference in the risk
7 of contamination there?

8 MS. MENDENHALL: We feel that food
9 safety evaluations should be a farm-by-farm
10 basis. Without getting the full farm whole
11 picture, I would not want to answer that
12 question.

13 MS. SCHMAEDICK: Okay. I have no
14 other questions.

15 JUDGE HILLSON: Ms. Carter.

16 MS. CARTER: Good afternoon,
17 Antoinette Carter with USDA. I just had a
18 question with regards to Page 3 of your
19 prepared statement. I guess it would be like
20 the first bullet, which states that whereas
21 organic farmers are committed to supplying
22 consumers with safe food and to taking

1 appropriate measures to ensure sanitary
2 conditions in crop handling.

3 And I believe on Page 1 of your
4 statement you reference that your membership
5 is made up of 390 growers that market leafy
6 green.

7 Can you comment or describe to us
8 if those growers are currently engaging in
9 best practices, and if so, could you explain
10 what they're doing currently?

11 MS. MENDENHALL: Well, under
12 organic certification, farmers have to do an
13 annual water testing. They also have to
14 follow strict compost regulations.

15 But our other growers have food
16 safety plans that they create on their farm.
17 So it really depends, grower-to-grower,
18 outside of those organic regulations.

19 MS. CARTER: So are there any
20 specific areas where there may be, that some,
21 I guess generally, some of your members are
22 doing, for instance with regards to sanitary

1 requirements or worker -- I mean are there
2 any specific things that they're doing where
3 there is some overlap? I'm just trying to
4 understand what you're members are engaged in
5 currently.

6 MS. MENDENHALL: Are you asking do
7 some of our farms engage other food safety
8 practices on their farm, such as hand washing
9 stations?

10 MS. CARTER: Yeah, I'm just trying
11 to get a general idea of what's currently.

12 MS. MENDENHALL: Yes, I can give
13 you a specific example. One of our farms in
14 the Hudson Valley that I talk about in Point
15 5. After they took the GAP course they now
16 steam clean their crates.

17 They have washable walls in their
18 packing room. They repoured their floor.
19 They wash their greens and roots in a
20 different room.

21 And they wrote a full farm food
22 safety plan.

1 MS. CARTER: Just to follow up and
2 maybe you could just, if you know in terms of
3 an estimate of those 390 growers, what
4 percentage of those are actually engaged in,
5 say, good handling or in good agricultural
6 practices?

7 MS. MENDENHALL: We don't ask that
8 statistic of our members specifically. We
9 have done food safety workshops as our annual
10 field day series, so we do promote food
11 safety.

12 But I don't know how many of our
13 growers are participating in GAP standards,
14 currently.

15 MS. CARTER: So, if I understand
16 you correctly, you are encouraging your
17 members to engage in good agricultural and
18 handling practices, is that correct?

19 MS. MENDENHALL: We encourage our
20 members and they encourage each other to
21 follow good food safety standards.

22 MS. CARTER: Okay, thank you.

1 JUDGE HILLSON: Dr. Hinman.

2 DR. HINMAN: Don Hinman, USDA. On
3 Page 3 you mentioned about the issue of the
4 USDA auditors and not finding a good solution
5 for certifying a farm. Was leafy greens one
6 of a number of different vegetables that was
7 involved in the situation?

8 MS. MENDENHALL: Yes, they have a
9 1,000 number CSA. They grow many different
10 kinds of leafy greens. Overall, they grow
11 over 65 different kinds of crops.

12 DR. HINMAN: And when you say they
13 weren't able to handle such a diverse
14 enterprise, what were the other crops that
15 were inquired about for certification in
16 addition to leafy greens?

17 MS. MENDENHALL: They were looking
18 at getting GAP certification for the entire
19 operation. So I don't have a list of the 65
20 different crops that are included on their
21 farm, but it's everything on the farm.

22 DR. HINMAN: And so to acknowledge

1 this, this has not yet been resolved?

2 MS. MENDENHALL: They decided not
3 to go through with the auditing process
4 because it was cost-prohibitive to their
5 farm. They did develop a food safety plan
6 and implemented many different food safety
7 practices on the farm.

8 DR. HINMAN: Okay, thank you. No
9 further questions.

10 JUDGE HILLSON: Mr. Souza.

11 MR. SOUZA: Good afternoon, Ms.
12 Mendenhall, Anthony Souza, USDA. I've got a
13 question in regards to, throughout your
14 testimony you use a definition of small to
15 medium growers.

16 Could you give your definition of
17 what that, what they would be?

18 MS. MENDENHALL: Well, I think the
19 standard from New York State to California
20 would vary quite widely. In New York State,
21 mid-size grower probably has anywhere from
22 100 to 1,000 acres. And below that is a

1 small grower.

2 I don't have financial figures for
3 you, we don't ask for growers to classify
4 themselves as small, and the \$750,000 limit
5 that we've been discussing today is much
6 higher than many of our growers.

7 MR. SOUZA: Also in your testimony
8 under Section 2, I believe, going to Page 2,
9 you discuss a farmer with his growing, with
10 his experiences in the growing demands.

11 He used to sell to Wegman's, I
12 believe, and he dropped out of that and now
13 his market is limited to independent
14 retailers or to direct customer sales.

15 In that, you talk about him
16 needing a great deal of investment in
17 changes. Could you elaborate what kind of
18 changes he would have needed to his program
19 in order to comply?

20 MS. MENDENHALL: Yes. He's a
21 small farm. He grosses about 200 to 250
22 thousand dollars a year. Changes on his farm

1 would have included chlorinating his water.

2 He does use potable water. He
3 also would have had to build a separate
4 washing area. He grows root crops for this
5 CSA, but he also has half of the operation
6 for leafy greens.

7 He's a small grower, he's a
8 relatively new farmer. He has a barn that's
9 very multi-functional. He was actually the
10 host of one of our food safety workshops, so
11 he does a really great job of keeping high
12 food safety standards on his farm.

13 But building a separate washing
14 facility for his greens, according to a GAP
15 certification, was cost prohibitive to him.

16 MR. SOUZA: On his wash water, you
17 mentioned that it was potable. Is he, is the
18 produce being washed in dunk tanks or in
19 tanks or is it single-use water washing the
20 product, do you know?

21 MS. MENDENHALL: I don't know.

22 MR. SOUZA: Thank you very much, no

1 further questions.

2 JUDGE HILLSON: Any other questions
3 from the USDA panel? How about you, Mr.
4 Resnick, any of your colleagues have
5 questions over there?

6 MR. RESNICK: Yes, Your Honor,
7 Jason Resnick, Western Growers. Thank you
8 very much for your testimony today, Ms.
9 Mendenhall, I've just got a couple of
10 questions for you.

11 In your testimony, on Page 2, you
12 refer to national metrics and suggest that
13 there's a one size fits all approach to the
14 marketing agreement. Is that your position?

15 MS. MENDENHALL: It has the
16 potential to be that way, yes.

17 MR. RESNICK: Have you read the
18 agreement?

19 MS. MENDENHALL: I have.

20 MR. RESNICK: And are you aware of
21 the, the zones, excuse me, the region
22 specific creation for metrics that take into

1 account different geography, topography,
2 climate and growing practices?

3 MS. MENDENHALL: Are you talking
4 about the zones?

5 MR. RESNICK: No, I'm actually
6 specifically referring to the metrics, the
7 creation of metrics?

8 MS. MENDENHALL: Are you referring
9 to 970674(d)?

10 MR. RESNICK: Exactly.

11 MS. MENDENHALL: My concern with
12 this statement is that it says audit metrics
13 may be developed and recommended to
14 accommodate differences by regions.

15 MR. RESNICK: If that said will,
16 would that assuage that concern?

17 MS. MENDENHALL: No, I don't think
18 that this leafy green marketing agreement is
19 the way to go. I think that AMS is the wrong
20 agency.

21 MR. RESNICK: What's the right
22 agency?

1 MS. MENDENHALL: Well, I'm not
2 interested in national metrics. As I state
3 in my testimony, I think that regional and
4 state agencies are the best ones to identify
5 food safety.

6 And, actually, a lot of our
7 farmers have food safety plans that they've
8 already developed.

9 MR. RESNICK: Do all of your
10 farmers have the best practices that you
11 describe in your testimony?

12 MS. MENDENHALL: I don't know.

13 MR. RESNICK: Do you know if that's
14 common or that's unusual?

15 MS. MENDENHALL: Every food safety
16 workshop which we've held, has been very well
17 attended.

18 MR. RESNICK: And do you know how
19 much of the information that's being taught
20 during those workshops is actually being
21 implemented and taken to the farm?

22 MS. MENDENHALL: We've haven't

1 gathered that data, but because almost all of
2 our farmers are, know their customers, they
3 see them on a regular basis.

4 Whether it's wholesale or direct
5 sales. They're eating that same product, and
6 food safety is a very high concern for all of
7 our growers.

8 MR. RESNICK: And it's also a high
9 concern for their buyers, as well, correct?

10 MS. MENDENHALL: I don't know. I
11 would assume so.

12 MR. RESNICK: I think you gave the
13 example of Wegman's having the concern about
14 their producers having best practices on the
15 farm and that one of your members was not
16 able to or decided not to comply with the
17 Wegman's standards, is that correct?

18 MS. MENDENHALL: He decided he
19 could not financially meet the standards.

20 MR. RESNICK: So Wegman's standards
21 are, they exist, regardless of the existence
22 of a national leafy green agreement, isn't

1 that right?

2 MS. MENDENHALL: Any retailer can
3 make their own standards.

4 MR. RESNICK: That's all right,
5 thank you. Nothing further.

6 JUDGE HILLSON: Any further
7 questions from MS. Mendenhall? You may step
8 down. Thank you for testifying. And, you
9 might as call your next witness.

10 MR. ETKA: Steve Gilman.

11 JUDGE HILLSON: And I'm going to
12 mark Mr. Gilman's written testimony as
13 Exhibit 122.

14 (Whereupon, the document referred
15 to was marked as Exhibit Number
16 122 for identification.)

17 Whereupon:

18 STEVE GILMAN
19 was called for examination and, having first
20 been duly sworn, assumed the witness stand
21 and was examined and testified as follows.

22 JUDGE HILLSON: Could you state

1 your name and spell it for the record?

2 MR. GILMAN: My name is Steve

3 Gilman, S-t-e-v-e, G-I-l-m-a-n.

4 JUDGE HILLSON: And you have a

5 statement you'd like to read?

6 MR. GILMAN: I do.

7 JUDGE HILLSON: Go right ahead and

8 read it.

9 MR. GILMAN: There's also going to
10 be a couple of enclosures as part of this.

11 Some of them are going to cited and I think
12 there's one other.

13 JUDGE HILLSON: Well, I just have
14 your one written statement right now. If
15 there's anything else that you're going to
16 want in evidence, it might be a nice time to
17 give it up.

18 MR. GILMAN: I'm bringing that up
19 right now.

20 JUDGE HILLSON: Okay, so it's this
21 one document? Okay, I'm going to mark, as
22 Exhibit 123, a document from the National

1 Sustainable Agriculture Coalition for Food
2 Safety on the Farm, Policy Brief and
3 Recommendations, October, 2009. That's
4 marked as Exhibit 123.

5 (Whereupon, the document referred
6 to was marked as Exhibit Number
7 123 for identification.).

8 MR. GILMAN: Thank you.

9 JUDGE HILLSON: Okay, go right
10 ahead now.

11 DIRECT EXAMINATION

12 MR. GILMAN: My name is Steve
13 Gilman, I'm here to testify against the MLGMA
14 today. I'm here as a former farmer with 30
15 plus years experience specializing in small
16 scale leafy greens production for farmer's
17 market stores, restaurants and CSA in the
18 Saratoga, New York area, 100 miles east of
19 here.

20 I'm currently working as a Policy
21 Coordinator for the Interstate Council for
22 the Northeast Organic Farming Association,

1 known as NOFA.

2 And I'm also here as an eater,
3 deeply concerned about the safety of our
4 nation's food supply, but more about that in
5 a minute.

6 NOFA is one of the oldest organic
7 farming groups in the country, with seven
8 independent chapter organizations in New
9 York, Vermont, New Hampshire, Connecticut,
10 Massachusetts, New Jersey and Rhode Island
11 with over 5,000 members where farmers,
12 gardeners and consumers, working together to
13 promote healthy food, organic farming
14 practices and a cleaner environment.

15 Kate Mendenhall is the Executive
16 Director of NOFA, New York, who just
17 testified before me. The NOFA Interstate
18 Council, is comprised of representatives from
19 each of the state NOFAs to coordinate
20 organizational initiatives and provide a
21 regional presence in the food system.

22 NOFA is also a founding grassroots

1 member of the National Organic Coalition,
2 known as NOC, and the National Sustainable
3 Agriculture Coalition, known as NSAC, and is
4 the NOFA Interstate Council Policy
5 Coordinator, I've been serving as a core
6 member of the nationwide joint NOC and NSAC
7 Food Safety Taskforce.

8 Ever since the hearing has been
9 released, ever since the hearing schedule has
10 been released, I've been in touch with
11 farmers all over the seven state NOFA area
12 about their deep concerns with the agreement
13 and then asked them to come to Syracuse to
14 testify at this hearing. And, although we
15 have some farmers who have come here today,
16 and who have generously sacrificed their busy
17 time to testify, there are many more who
18 finally ruled out making the trip.

19 Here's a fairly typical reply.
20 I've been following this issue with interest
21 and concern, in what time I have available
22 for it. But I'm still in full market and

1 production mode, and in fact I'm doing a
2 market on October 21st, which means that much
3 of the harvest and pack needs to be done on
4 the 20th.

5 Which means I can't show up in
6 Syracuse on that day. I do wonder about the
7 timing of these meetings. While they might
8 have thought tomato growers would be frosted
9 by then, not thinking small scale people grow
10 a lot of different crops, they can hardly
11 have thought that the leafy greens season in
12 the Syracuse area would be over by October.

13 So I wonder why their timing is
14 designed to prevent smaller growers from
15 showing up. The large guys have more people
16 involved, and I'm sure less difficulty
17 getting someone to meetings while the season
18 is still on.

19 It also needs to be underscored
20 this highly formalized hearing format,
21 precludes participation by a much larger
22 number of citizens.

1 If the AMS really wants to get a
2 valid understanding of the depth of
3 grassroots opposition to this agreement, then
4 I suggest you hold a set of open listening
5 sessions around the country.

6 And some of them personally
7 conducted by Secretary Vilsack, as were
8 recently held about USDA's attempts to extend
9 government animal health surveillance through
10 its proposed National Animal Identification
11 System program, for instance.

12 After studying the proposed rules,
13 attending the webinar, reviewing transcripts
14 and conferring with farmers and others about
15 the construction and implications of this
16 agreement, I have many concerns with this
17 proposal.

18 For my testimony today, however, I
19 am going to confine my comments to just five
20 aspects from a farmer's point of view.

21 One, region-ality. Here in the
22 northeast I think its fair to say that

1 agriculture has a different flavor than some
2 other parts of the country.

3 Thanks to the grinding of the
4 glaciers we have mineral-rich soils and our
5 temperate climate is accompanied by ample
6 rainfall.

7 Even our frigid winters provide a
8 great ecological service for farmers in
9 curtailing pest, disease and weed
10 populations.

11 That's why it's curious that here
12 in what the proposed marketing agreement
13 calls Zone 5, Vermont and Florida are somehow
14 included in the same category.

15 Zone 5 is not an eastern, not even
16 an eastern states designation. Georgia is
17 plucked out and placed in Zone 4, with
18 Wisconsin and Michigan.

19 And by some further logic, New
20 Mexico, Iowa and Minnesota are part of Zone
21 3. While these zones make little geographic
22 or agricultural sense, they do form the basis

1 for how the agreement's governing and
2 administrative committee is constituted.

3 And, as much previous testimony
4 has already pointed out, this puts the big
5 handlers who are promoting this agreement, in
6 the driver's seat in each and every zone.

7 Since the administrative
8 committee, after consultation with the
9 technical review board, has the power to
10 create the governing metrics that are
11 supposed to be, quote, science-based,
12 scalable and regionally applicable in order
13 to accommodate compliance of varying size and
14 types of operations, unquote, the skewed
15 zones and top heavy proponent representation
16 is a major conflict of interest.

17 So much for establishing the,
18 quote, equitable relationship between
19 membership and zones, as described as an AMS
20 goal in Section 970.40(c)(3).

21 Two, voluntary standards. While
22 this proposal is depicted as a voluntary

1 agreement, in all practical aspects it is
2 not. Once created, the national LGMA
3 standard becomes the 900 pound gorilla ruling
4 the marketplace.

5 After the big volume handlers
6 become signatories, it will be very difficult
7 for other handlers to decline to sign if they
8 want to be able to remain in business.

9 For farmers it is much worse.
10 They hold a distinct minority position on the
11 administrative and technical committees and
12 have little to say in developing and
13 approving of the metrics in a process that
14 takes place after the agreement is approved.

15 And, the fact is, in today's
16 consolidated marketplace, for growers there
17 is often little choice of buyers for their
18 products.

19 Further, there have been reports
20 from coalition farming groups that some
21 members have been afraid to testify against
22 the LGMA, even though they will be deeply

1 affected by this agreement, for fear of
2 losing their market access.

3 It would also be easy in this
4 regard to stack the farmer representation
5 categories on the committees with growers
6 captive to the industry interests.

7 For farmers, therefore, this is to
8 all intents and purposes, a nationwide
9 marketing order that they would be required
10 to follow.

11 Number 3, wider effects in the
12 marketplace. One reason the so-called
13 localvore movement has taken off so well in
14 the northeast, is that the craggy terrain
15 lends itself well to an interspersing of
16 farms with towns in urban areas.

17 In addition the nationwide
18 industrialized central production and multi-
19 state distribution system, increasing numbers
20 of communities are well served directly by
21 the farmers in their midst through Farmers
22 Markets, CSAs, roadside stands and buying

1 clubs, as well as local restaurants, stores,
2 schools and co-ops.

3 Thanks to appropriate technology,
4 hoop houses, root cellars and value added
5 production methods, these markets thrive on a
6 year-round basis.

7 However, in this new day of USDA
8 initiatives, such as know your farmer, know
9 your food, it's critical that AMS fully
10 understands the potentially destructive
11 effects of top-down market-based regulatory
12 schemes on small farm businesses.

13 Just when their local small
14 business marketing opportunities are soaring,
15 farmers are being confronted with a wide
16 range of inappropriate, one size fits all,
17 metrics and regulation that could severely
18 impact this entire agricultural sector.

19 In this regard, as footnotes to my
20 testimony today, I'd like to enter into the
21 record two excellent reports outlining the
22 potential negative effects of governmental

1 initiatives on the small farm paradigm and
2 how to address them.

3 One is called Bridging the GAPS,
4 strategy to improve produce safety, preserve
5 farm diversity and strengthen local food
6 systems. And I have this as a subnote under
7 Number 1.

8 And I understand that's already
9 been put into evidence in Columbus, Ohio.
10 Number 2 was just submitted and it's called
11 Food Safety on the Farm, policy briefs and
12 recommendations, October, 2009, by the
13 National Sustainable Agriculture Coalition
14 Food Safety Task Force.

15 Farmers, at least, well understand
16 the King Kong implications of an official
17 USDA food safety label in the marketplace.
18 While Section 970.69, states that the
19 certification mark will be licensed to
20 complying signatories for use on bills of
21 lading and manifests.

22 There are no restrictions for its

1 wider use as a marketing tool. AT this time,
2 California LGMA signatories routinely use
3 the, quote, service mark, on invoices,
4 letterhead and websites, for example.

5 Even if the mark never appears on
6 packaging at the retail level, and that's not
7 understood in this agreement, retailers,
8 restaurants and those in the trade, well
9 understand the liability and insurance
10 protections the agreement provides, thus
11 expanding the market for the signatories at
12 the expense of independent growers and the
13 businesses that deal with them.

14 As to the proponents' assertion
15 that the national LGMA would erase the
16 chaotic proliferation of overlapping GAPs and
17 other standards that growers are presently
18 subject to by creating a single set of
19 metrics for farmers to comply with, there is
20 nothing in the agreement that would prevent
21 different companies from requiring growers to
22 follow protocols that exceed or differ, in

1 some way, from the national metrics.

2 Such super-metrics could be
3 employed as a marketing strategy by buyers
4 and retailers to gain a competitive advantage
5 by saying your product is superior, because
6 it exceeds existing standards.

7 The USDA LGMA standard would only
8 add to the proliferation of food safety
9 metrics already required of growers.

10 Number 4, AMS Purview. With all
11 due respect for the Agricultural Marketing
12 Service's long time expertise providing
13 marketing research, news service, promotion
14 programs and economic data to assist in
15 orderly marketing and distribution of farm
16 commodities.

17 It lacks the expertise, experience
18 and purview to develop and regulate food
19 safety provisions. And even major tweaks to
20 various aspects of the agreement, cannot
21 rectify this basic deficiency.

22 Food safety is not some measurable

1 quality choice, like USDA Prime Cut or fat
2 content or cosmetic standards that can be
3 labeled with official governmental marking
4 designations to provide the basis for price
5 differentials and orderly competition among
6 producers.

7 Rather, food safety is an ongoing
8 process. It is based on standards that are
9 fully protective of public health. Food
10 safety is a fundamental, pre-competitive
11 condition.

12 It is the basis for all food in
13 the marketplace and as such has no place as a
14 specified, value-added governmental label,
15 designed for price-enhancement and promotion
16 in the marketplace.

17 Let alone, by a government-backed
18 marketing message that says this food is
19 safer than that food because the marketing
20 agreement, in the industry, defines it such.

21 And already on the record at
22 previous hearings is the documentation that

1 both the present and former administrators of
2 AMS have testified before various House
3 Subcommittees, saying succinctly that, quote,
4 AMS is not a food safety agency, unquote.

5 Where food safety regulations are
6 necessary, they should be scale and risk
7 appropriate and scientifically developed in
8 an open, public and transparent process with
9 the lead role going to a duly constituted
10 food safety agency, such as FDA, or in some
11 case the States.

12 This should be done in close
13 coordination with USDA and here there is a
14 role for AMS consistent with its expertise in
15 implement some food safety provisions,
16 monitoring pathogens and providing research
17 data with testing protocols developed by an
18 appropriate food safety agency.

19 Number 5. Food safety is a major,
20 national issue and a primary responsibility
21 at every link in the food system from farm to
22 plate.

1 Most governmental initiatives,
2 including this one, are defining this solely
3 in terms of microbial contamination. Whereas
4 there are proven major food safety impacts
5 from a wide range of food system related
6 contaminants.

7 Including pesticide poisoning,
8 leaching of chemicals from packaging,
9 handling and processing chemicals, soil,
10 water and air contamination and the
11 potentiation of synergistic toxic effects of
12 their combination which are endemic in
13 today's industrialized food supply. And
14 even in the microbial arena, we are having to
15 deal with virulent new strains of pathogens
16 that have been traced to industrialized
17 farming practices.

18 While we are losing important
19 antibiotic protections because of their
20 widespread therapeutic use in confined
21 livestock operations.

22 Yet these integral aspects of the

1 food safety affecting public health remain
2 largely unaddressed by today's food safety
3 initiatives.

4 Most disconcerting to organic
5 farmers especially, are the misguided
6 sterilization metrics that have been embraced
7 as gospel by the California leafy greens
8 marketing agreement and the retailer/buyer
9 super-metrics designed to one-up them.

10 As testimony at the Monterey
11 hearing by the Wild Farm Alliance and other
12 indicates, there is meager science to back up
13 those assertions. In this regard, I'd like
14 to introduce, as footnotes into the record,
15 three studies showing the benefits of
16 vegetated buffers.

17 And I think, these are on the
18 record, Dabney, Tate and one by Nokes, which
19 I'm not sure is on the record and I don't
20 know if we have a copy here today.

21 So, I guess I will call back
22 Number 3, that is on my testimony. Just a

1 final paragraph here.

2 Finally, as an eater, and aren't
3 we all, I think it's paramount that civil
4 society arrives at modern and effective
5 bonafide food safety parameters that truly
6 give us protections from contaminated food in
7 the marketplace.

8 Such constraints must be risk-
9 based and scale-appropriate, so as not to
10 give particular sectors of the agricultural
11 economy a marketing advantage or a place to
12 hide from warranted public oversight. Thank
13 you.

14 JUDGE HILLSON: Thank you. And I
15 will receive into evidence your written
16 statement, Exhibit 122, the article on food
17 safety and the farm, which is Exhibit 123.
18 And I'll note for the record that that other
19 reference, the bridging the GAP study, was in
20 fact already Exhibit 72.

21 So, with that, do you have
22 something to say, Ms. Hoodes?

1 MS. HOODES: Yes, I was going to --

2 JUDGE HILLSON: Why don't you come
3 up to the microphone and introduce yourself
4 that you're replacing Steve Etko.

5 MS. HOODES: Hi, my name is Liana
6 Hoodes with the National Organic Coalition.

7 JUDGE HILLSON: How about spelling
8 your name?

9 MS. HOODES: Liana, L-I-a-n-a,
10 Hoodes, H-o-o-d-e-s.

11 JUDGE HILLSON: Okay, and you have
12 a question or two?

13 MS. HOODES: Yes, and I'll note on
14 his exhibits that Dabney is currently Exhibit
15 121, and Tate is currently Exhibit 120, just
16 for your reference back.

17 (Whereupon, the documents referred
18 to, previously marked as Exhibit
19 Number 120 and 121 for
20 identification, were received in
21 evidence.)

22 MS. HOODES: Steve, I just want to,

1 thank you for your testimony, Steve. I
2 wanted to double check with you on, I believe
3 it's page, your pages aren't numbered here.
4 I believe it's Page 5, under Point Number 5.

5 And you said in your testimony,
6 while we are losing important antibiotic
7 protections because of their widespread
8 therapeutic use in confined livestock
9 operations. Did you mean to say sub-
10 therapeutic use, as noted in your written
11 testimony?

12 MR. GILMAN: What I was trying to
13 indicate there, and I'm not exactly sure that
14 term explains it right. It's medicated feed
15 to animals on a regular basis.

16 MS. HOODES: Yes, I'm just
17 correcting you. You left out sub and so I
18 just wanted to put that into the record.

19 MR. GILMAN: Thank you.

20 MS. HOODES: And my only other
21 question, Steve, is are you proposing that
22 certified organic producers be exempt from

1 food safety regulations?

2 MR. GILMAN: Thank you very much
3 for that question, and I think that was
4 brought up earlier today and the answer is
5 no. I think organic farmers hold as
6 responsible a place in the food safety system
7 as anyone else.

8 And, in fact, that the leaders in,
9 the movement towards adopting some of the
10 farms, I think one of the things we keep
11 running into here, is the word GAPs, good
12 agricultural practices.

13 Now I have to say in my review of
14 all the literature, I come across GAPs as
15 defined by Cornell University, which I think
16 are very valuable for small scale farmers.

17 I've attended some meetings with
18 them, informational. They have a lot of
19 really good material that's available on the
20 web, and for small scale farmers, booklets,
21 it's all free.

22 Cornell really pioneered a whole

1 lot of this. I think the State of Rhode
2 Island actually has included this as part of
3 their standards.

4 Then, somehow we get USDA GAPs,
5 which started maybe with the Cornell
6 standards and then put their own imprint on
7 it. And that comes out to be a different
8 thing than the FDA adopted standards, which
9 has it's own imprint on that.

10 There's then global GAPs. So,
11 across the board, we have this plethora of
12 GAPs, that a lot of time just gets you
13 through to, it's good agricultural practices.

14 I'd have to say, in this context,
15 that a question arises whether organic
16 farmers follow good agricultural practices
17 and, first of all, we don't know what people
18 mean by that.

19 Second of all, we really would
20 hope that as Executive Director of NOFA, New
21 York, Kate Mendenhall's testimony earlier
22 said that we have farmers who the cost of

1 compliance is, for these particular metrics
2 would put them easily out of business, that
3 they're really looking to come up with a
4 standard that is risk and scale appropriate.

5 That remains one of the troubles
6 all the way through and I don't see that this
7 recent leafy greens agreement will even
8 address that, even though it is supposedly
9 addressed in some of the proposed rules.

10 I just want to add one more thing
11 to this question, and that is that currently
12 this session is ongoing with action in the
13 Senate right now for regulation purposes.

14 We've already been through House
15 hearings and one of the things that's
16 emerging from Senators, is the importance of
17 education and training for this sector that
18 is under served that includes organic and
19 small scale growers.

20 And we would really like to see,
21 instead of monies going into hearings like
22 this around the country, to actually putting

1 things on the ground that would be valuable,
2 educational and training venues for a whole
3 section of the smaller scale farm production
4 area that is under addressed around the
5 country.

6 I think the big growers are
7 already pretty well centered in the west
8 coast. And they, already, between California
9 and Arizona, already have a metric
10 established for the kind of business they
11 want to be involved in.

12 At this point, I think we really
13 would like to address smaller scale education
14 and, at this point, I would have to say that
15 every single small scale, advocate and grower
16 organization is being sorely stressed on
17 their budgets to try and produce and train
18 employee groups.

19 As well as having to spend a huge
20 amount of time coming to hearings like this
21 one. So, thank you.

22 JUDGE HILLSON: USDA panel, any

1 questions for Mr. Gilman. Ms. Schmaedick,
2 you can go first.

3 CROSS EXAMINATION

4 MS. SCHMAEDICK: Good afternoon,
5 Melissa Schmaedick with USDA. I think we're
6 still afternoon, right? Okay. Thank you,
7 Mr. Gilman, for your testimony.

8 You mentioned the Cornell, the
9 work that Cornell University has done on
10 GAPs, particularly for small producers. Is
11 that correct?

12 MR. GILMAN: Yes.

13 MS. SCHMAEDICK: Do you happen to
14 know if Cornell is a land grant university?

15 MR. GILMAN: It certainly is, it's
16 our land grant university.

17 MS. SCHMAEDICK: And so would it be
18 appropriate, in your opinion, to have a land
19 grant university, such as Cornell, involved
20 in this program, if it were to come to
21 fruition?

22 MR. GILMAN: My problems with this

1 is that it doesn't really specify who those
2 people would be. And so my worries are that
3 since the constitution of the committees
4 really does get determined by the proponents.

5 And there are some very good
6 people who have knowledge of small scale
7 farms and the interest of small scale farms
8 at heart, might not be the final people who
9 appear on those committees.

10 And, therefore, even though, yes,
11 the land grant has a huge spectrum of
12 expertise, we know also that land grants are
13 increasingly, because of lack of public
14 funding, are increasingly beholden to monies
15 coming in from industry to finance research
16 and so on. And so it's conceivable that the
17 actual personnel who end up as being the
18 people representing for the land grant, are
19 ones that don't necessarily reflect and
20 understand the small scale growers.

21 MS. SCHMAEDICK: Thank you. My
22 question is if representatives from the group

1 at Cornell, that have been involved in these
2 in the development of GAPs for small
3 businesses. If they were to be included,
4 would you think that that is a good and
5 appropriate thing to do?

6 MR. GILMAN: Well, I would say
7 there's some great expertise at Cornell, but
8 when you put that if in there, that isn't
9 stated in your agreement, so I can't agree to
10 your statement.

11 MS. SCHMAEDICK: Okay. I have no
12 further questions.

13 JUDGE HILLSON: Any more from USDA
14 panel?

15 DR. HINMAN: Don Hinman, USDA. On
16 Page 4, when you talk about expanding the
17 market for signatories at the expense of
18 independent growers.

19 You talked about being an
20 independent grower?

21 MR. GILMAN: One of the problems,
22 what I'm trying to arrive at here is a real

1 differentiation between small scale farmers
2 who I do not see being adequately represented
3 in this agreement.

4 And the proponents which represent
5 our brethren in California, who have much
6 different conditions and much bigger scales
7 and much different considerations.

8 And I would not want to speak for
9 them. I know there's a whole hearing in
10 Monterey where they got to speak for
11 themselves.

12 However, we get here to the
13 northeast. I'm not seeing anything in this
14 proposed rules that really reflects any basis
15 for small scale growers in the northeast that
16 I know about. Thank you.

17 DR. HINMAN: You said you're a
18 retired, a former farmer, correct?

19 MR. GILMAN: Yes.

20 DR. HINMAN: Could you just give us
21 a brief conversation of when you were
22 farming, the number of acres of all your

1 crops and the number of acres of leafy
2 greens, or some other way to profile the
3 nature of your farm?

4 MR. GILMAN: Sure. Rukytucks Farm
5 is in the town of Stillwater, New York. It's
6 on Rukytucks Road. I won't get into what a
7 Rukytucks is.

8 Forty-five acres, 15 under
9 cultivation. It's hard to depict acreage
10 because, as Lou Johns testified earlier
11 today, my whole business was successive crops
12 of leafy greens.

13 So I literally had a whole new set
14 of fields coming in on a weekly basis. The
15 markets in the Saratoga area, there's a big
16 racetrack and performing arts center in
17 Saratoga Springs. A lot of eaters in town,
18 served by many restaurants.

19 One restaurant I dealt with made
20 it's 2.5 million in a six week season and
21 closed for the rest of the year.

22 Rukytucks Farm Morning Greens was

1 on their menu. So these were direct
2 relationships with those restaurants. One of
3 the reasons I got into lettuce production,
4 per se, was that early on, starting in 1976,
5 when I first started growing for restaurants
6 in the area, it was mostly iceberg lettuce at
7 that point and shuck would have to go over to
8 the slop bucket and took off the whole outer
9 layer of slimy leaves and throw it in the
10 bucket to get to a usable head for the sows.

11 And so I quickly discovered that
12 by doing successive crops of leafy greens,
13 that there was a ready market that, the price
14 was not being determined by an national
15 price. And this is known as a key point for
16 farmers.

17 At this point, even a farmer at a
18 farmer's market is beholden to a price set by
19 these guys. And the fact that we're actually
20 producing a value-added freshness and a
21 marketable, from out of the ground these I
22 knew could not be shipped.

1 They had to picked and put in the
2 cooler in the same day. And so I was out
3 actually offering a different whole set of
4 produce that was available to the chefs.

5 DR. HINMAN: Thank you, Mr. Gilman,
6 no further questions.

7 JUDGE HILLSON: Anything else from
8 the panel? How about the proponents, any
9 questions?

10 MR. RESNICK: Thank you, Your
11 Honor, Jason Resnick, Western Growers, thank
12 you for your testimony this afternoon, just a
13 couple of questions.

14 Referring to Page 2 of your
15 testimony, you say, at the bottom of the
16 page, last paragraph. Since the
17 administrative committee, after consultation
18 with the technical review board, has the
19 power to create the governing metrics.

20 Is it your understanding, from
21 reading the agreement, that the
22 administrative committee creates the metrics?

1 MR. GILMAN: No, I think it's very
2 clear the technical committee does. But I
3 would say, there's no number here. You know,
4 this proposed rule has a number of things
5 before you get down to the actual paragraphs.

6 But I send you to the second page
7 of the proposed marketing agreement, the
8 middle column, two-thirds of the way down.

9 If the proposed national marketing
10 agreement were implemented, the
11 administrative committee, after consultation
12 with the proposed technical review board,
13 would recommend a metrics for USDA approval.

14 And then it goes on to say these
15 metrics will be science-based, scalable and
16 applicable, in order to accommodate
17 compliance of various size and types of
18 operations. So, I'm understanding that to
19 mean that even though there is a technical
20 committee, the administrative committee has
21 to accept their report. Is that correct?

22 MR. RESNICK: I can't answer your

1 questions, but that, I think is partially
2 correct. Do you understand that the USDA,
3 specifically the Secretary of Agricultural,
4 has the final authority to accept or reject
5 the recommended audit metrics?

6 MR. GILMAN: I do understand that.
7 And I have to say that, I've been in business
8 over 30 years, I've seen a lot of secretaries
9 come and go.

10 And, while under the current
11 secretary, I think I have some confidence
12 that he actually might have a consideration
13 for small scale farmers.

14 And, indeed, I'm glad to see USDA
15 is responding, your Deputy Secretary in
16 particular. I can look back at a number of
17 other secretaries that that was not any
18 confidence at all. And so it would almost be
19 a rubber stamp to what the administrative
20 committee has come up with.

21 And since this is an ongoing
22 agreement and secretaries come and go, I'd

1 like to say, overall, I'd like to see one
2 placed as an assurance.

3 MR. RESNICK: Thank you for that.
4 One of your concerns you raise in your
5 testimony is your assertion that you believe
6 that the proposed agreement doesn't take
7 regional differences into account. Is that
8 correct?

9 MR. GILMAN: No, you know, I went
10 through that whole thing with the zones.
11 And, you know, I understand that there's an
12 attempt to try to compare the regions, but
13 when I see something as skewed as that,
14 prominently placed in this agreement.

15 And I also took a look at the
16 proponents which, I think, come from the
17 other side of the country. And I see a
18 skewing of this toward interests that already
19 are on a larger scale with a larger risk
20 base. Again, I don't see anything that
21 specifically says shall, in this agreement,
22 take into account various regional dynamics.

1 MR. RESNICK: If the agreement were
2 to say shall, would that alleviate that
3 concern for you?

4 MR. GILMAN: Well, you know, I
5 guess that's why I had to end up with purview
6 in my agreement, and that being a
7 hypothetical question, you know, if this, if
8 that.

9 The fact is it doesn't say that.
10 And so all we can have to go on is just
11 what's here now. And, you know, we're
12 already supposed to be taking as a leap of
13 faith that everything constituted here is
14 going to produce a set of metrics that
15 farmers are somehow going to magically agree
16 with further down the line.

17 One of the farmers who is very
18 upset about this, they called me. They said
19 talk about buying a pig in a poke. And, you
20 know, I've heard that expression and I really
21 had to look it up, because what it means is,
22 that somebody's trying to sell you what

1 they're calling is a piglet in a bag that's
2 tied.

3 And, back when that was common,
4 sometimes what was really in that bag was a
5 scrawny cat. And so the expression letting
6 the cat out of the bag, was actually in reply
7 to the pig in the poke.

8 And so I think letting the cat out
9 of the bag about this, the way it is
10 presented, you can present all the, if this
11 was changed, would you agree, the fact is
12 that isn't the deal.

13 And so I would also like to refer
14 to the last part of my testimony, which is
15 purview, which states that I don't believe to
16 begin with, and it says, a position to prove
17 this agreement to begin with.

18 MR. RESNICK: You understand that
19 the proposed agreement is merely a proposal
20 and that all of the testimony taken today is
21 meant in part to inform the proponent group,
22 among others, on how the agreement may be

1 improved.

2 And that the proponent group may
3 offer proposed changes to improve the
4 language in the agreement. Do you understand
5 this is an opportunity to improve the
6 language?

7 MR. GILMAN: Yes. But I think I
8 also highlighted in my testimony that even
9 major tweaks to this agreement, because of
10 the basic lack of purview, there really,
11 there's no real validity to further tweaks
12 down the lane.

13 MR. RESNICK: So you're not
14 interested in discussing how the language may
15 be improved?

16 MR. GILMAN: I'm really interested
17 in discussing how we get small, how we get
18 food safety implemented in this country.

19 And the reason I'm here today and
20 put all this effort into all these processes,
21 including the House and the Senate, needs to
22 get some semblance of reality into that

1 process.

2 And I would be glad to spend hours
3 with you over here on how we could really do
4 that. And I understand that, you know,
5 sooner or later they start to codify and
6 you're going to come up with something and
7 it's going to be viable, it can apply across
8 the board to this.

9 And, at this point, because the
10 fact that the AMS is not an agency, and so
11 the considerations that food safety is
12 actually being considered is something that
13 will follow you somehow and can't be fixed by
14 a marketing agreement.

15 I don't see this really, the
16 tweaks to this are going to make any
17 difference in the long run.

18 MR. RESNICK: Well, certainly
19 reasonable minds and reasonably lawyers can
20 agree to disagree on whether or not AMS has
21 the purview. Obviously, we believe they do
22 and I will, you know, provide the evidence to

1 that.

2 MR. GILMAN: I'd have to say
3 there's people on the other side of that
4 question that are just as reasonable.

5 MR. RESNICK: Understood. So, in
6 the event that the proposed agreement comes
7 to fruition and is implemented, would you be
8 willing to take part in helping to develop
9 the metrics, if asked?

10 MR. GILMAN: I think that's another
11 good question, but I'd like to see what it is
12 we're looking at down the road. I'd also
13 like to see this in the context it's emerging
14 and I understand your position that some
15 things happen quicker than others.

16 And regulation happens different
17 than marketing agreements, possibly. But, at
18 the same time, I think there's been testimony
19 today about the necessity of really
20 widespread public input.

21 And that's why I put in the whole
22 thing of listening sessions. And so, a very

1 loud and a very formal hearing.

2 And, you know, I don't mind being
3 a part of this process and being asked
4 questions and the whole thing.

5 I think a lot of other people, you
6 might want to put it in a less, in a more
7 friendly situation.

8 And so this has really stayed off
9 a lot of people. And, on top of that, this
10 being the farmer's busy season. I'd like
11 people to imagine, I don't know if this is
12 legitimate or not, but how are seats being
13 filled.

14 And, because there is deep concern
15 about this. And so, again, we come back to
16 this is a model. I guess, any question like
17 this, if it's tweaked enough, you're going to
18 want -- if you let me go over the whole thing
19 and I get to sit down with Secretary Vilsack
20 and how it really works and then possibly I'd
21 be interested in doing it.

22 MR. RESNICK: Thank you, nothing

1 further.

2 JUDGE HILLSON: Anything else for
3 this witness? Okay, you may step down, Mr.
4 Gilman, thank you for testifying. You may
5 call your next witness, Ms. Hoodes.

6 MS. HOODES: I call Tim Wersan.

7 JUDGE HILLSON: Mr. Wersan, while
8 you're stepping up to the stand, let me just
9 go over the list of other witnesses that I
10 have here and just make sure they're still
11 here.

12 Just doing a little roll call,
13 basically. I have you down, Michael Hansen.
14 And then I have Elizabeth Bihn, B-I-h-n, is
15 she still here? She's gone? Okay.

16 Al Murray? Okay. James Graiff?
17 And Maegan Crandall? I don't see anyone
18 here. No one is answering to the name of
19 Megan Crandall either. So, okay, so I'm
20 going to cross off Megan Crandall and I'm
21 going to cross out Elizabeth Bihn.

22 So after, let me just go over this

1 again. After Wersan testifies we'll have
2 Hansen, Murray and Graiff. I haven't missed
3 anybody, I hope, have I? Okay.

4 And the document that Mr. Wersan
5 just gave me, I will mark as Exhibit 124.

6 (Whereupon, the document referred
7 to was marked as Exhibit Number
8 124 for identification.)

9 JUDGE HILLSON: Please be seated.

10 Whereupon:

11 TIMOTHY WERSAN

12 was called for examination and, having first
13 been duly sworn, assumed the witness stand
14 and was examined and testified as follows.

15 JUDGE HILLSON: Please state your
16 name and spell it for the record.

17 MR. WERSAN: Timothy Wersan, T-I-m-
18 o-t-h-y, last name, W-e-r-s-a-n.

19 JUDGE HILLSON: Okay, Mr. Wersan,
20 you have a statement you'd like to read?

21 MR. WERSAN: I do.

22 JUDGE HILLSON: Please go right

1 ahead.

2 DIRECT EXAMINATION

3 MR. WERSAN: I work for and I'm
4 here to represent a small farm, Windfall
5 Farms, the propriety business of Morse Pitts
6 and federally defined small business.

7 We are located on approximately
8 140 acres in Montgomery, New York, and grow
9 on about ten to 15 acres including
10 greenhouses.

11 Windfall was founded as a small
12 organic farm in 1981, which is a background
13 in cultural safety practices. I don't think
14 they're apples and oranges, I think it's
15 maybe more like broccoli and broccoli raab.

16 We are no longer organic in name
17 but continue with our original agricultural
18 practices. We have large produce diversity.
19 We have over 100 varieties of vegetables,
20 apples and raspberries.

21 We cover crop, don't use any
22 chemical fertilizers, no pesticides, no

1 herbicides and no fungicides. We grow all of
2 our produce and sell 100 percent of our
3 commercial crop through the New York City
4 Greenmarket, a program through the Council on
5 the Environment for the City of New York.

6 We have done so since 1989. Prior
7 to that we sold --

8 JUDGE HILLSON: Stop a second,
9 please. Excuse me, in the back of the room,
10 excuse me. Could you take your conversation
11 outside? I'm sorry to interrupt, you can
12 continue.

13 MR. WERSAN: Thank you. Prior to
14 that we sold to restaurants and also to some
15 grocery stores. We specialize in a large
16 diversity of seasonal leafy green vegetables,
17 which account for approximately 90 percent of
18 our total revenue.

19 We are proud of the rich,
20 microbial content of our soil and compost.
21 Between the diversity of living organisms in
22 the field, and the practice of washing all of

1 our leafy green vegetables, three times in
2 deep sinks of our own potable, tested water,
3 we have never had a case of anyone falling
4 ill, in the almost 30 years we have been
5 growing produce.

6 I'm here in opposition to this
7 agreement. It would appear that this
8 agreement would not adversely affect us, a
9 small farm that exclusively markets directly
10 to our consumers, but this is false.

11 Our business has already been hurt
12 once by seemingly innocuous optional USDA
13 regulations. The regulating and implementing
14 of the USDA organic certification program,
15 led us to abandon certifying or even using
16 the word organic, to define what we grow.

17 The certification was overly time
18 consuming, expensive and the standards, over
19 time, so poor, as to permit industrial size
20 growers to continue mono-cropping and not
21 significantly altering their original,
22 unsustainable, unhealthy, chemical-dependent

1 practices.

2 We were asked at our Farm Stand,
3 on a regular basis, every Wednesday and
4 Saturday, I know, that's my job, I manage the
5 Farm Stand, is this farm organic? That's no
6 longer an easily answered question.

7 We have, you know, we have a
8 number of ways of answering it. But we have
9 undoubtedly lost business to our Union Square
10 neighbors. Now Whole Foods and Trader Joe's
11 who have capitalized on the marketing term,
12 certified organic.

13 As customers recognize the federal
14 food safety agreement, our farm will fall
15 into similar alienation as the public wonders
16 why the greens they get in stores are labeled
17 safe and the produce at our Farm Stand is
18 not.

19 If the public demands a national
20 requirement be implemented, as a result, we
21 may be farming dead food. And I call it dead
22 food because if you must chlorinate or

1 irradiate has very few health benefits.

2 And that's part of what we do.

3 And we eat the food that we grow. If we're
4 going to facing metrics that are financial
5 destructive and morally opposed to, we may
6 have to stop farming all together.

7 The idea of a certification of
8 safely grown is nothing short of Orwellian.
9 Our farm grows extremely healthy greens with
10 the utmost care.

11 It has neither been irradiated nor
12 bleached. If we have to do such things, as
13 is the law for salad mix growers in
14 California, many of our long-time consumers
15 would request a special illegal mix.

16 This is already occurring in
17 California markets. Please do not open the
18 door for large scale operation to regulate us
19 out of existence.

20 JUDGE HILLSON: Thank you, Mr.
21 Wersan. I'm going to receive your written
22 statement into evidence as Exhibit 124.

1 (Whereupon, the document referred
2 to, previously marked as Exhibit
3 Number 124 for identification, was
4 received in evidence.)

5 JUDGE HILLSON: Ms. Hoodes, do you
6 have any questions on direct?

7 MS. HOODES: No.

8 JUDGE HILLSON: Okay, let me ask
9 the USDA panel if they have questions for
10 this witness? Ms. Schmaedick?

11 CROSS EXAMINATION

12 MS. SCHMAEDICK: Melissa
13 Schmaedick, USDA. Thank you, Mr. Wersan, for
14 your testimony. I just have one question for
15 you.

16 It's a clarification. On the top
17 of Page 1, you have comments in opposition to
18 proposed rules and then you cite a document
19 called Document Number FAA-2009-0677/Airspace
20 Document? Is that leafy greens related?

21 MR. WERSAN: I assume so. The
22 comments, however, that's the Department of

1 Transportation. This is what comes in having
2 to do that this afternoon. So I apologize,
3 that's going to require some fixing.

4 MS. SCHMAEDICK: Okay, so that's,
5 you're not speaking to the Airspace Docket?

6 (Laughter.)

7 MR. WERSAN: No.

8 JUDGE HILLSON: I can safely cross
9 that line out, then? Do you want to just
10 cross that out.

11 MS. SCHMAEDICK: That was my only
12 question, thank you.

13 JUDGE HILLSON: Any other questions
14 for the panel? Dr. Hinman.

15 DR. HINMAN: Don Hinman, USDA.
16 Just one question. You said the diversity of
17 seasonal leafy green vegetables. Can you
18 name all or most of them?

19 MR. WERSAN: I can name a lot of
20 them.

21 DR. HINMAN: Okay.

22 MR. WERSAN: Mizuna, purple mizuna,

1 tot soy, broccoli raab, happy witch, golden
2 fill, red mustard, ruby streaks, scarlet red
3 turnips, I could do this forever,
4 raspberries, apples that we don't even know
5 the varieties because they were planted long
6 ago.

7 Adirondack red, Adirondack blue
8 potatoes, and a couple of other varieties of
9 potatoes that don't come to mind.

10 DR. HINMAN: That's a perfectly
11 good answer. Thank you very much.

12 JUDGE HILLSON: That's it for the
13 panel? Anything from proponents? Mr.
14 Resnick.

15 MR. RESNICK: Thank you, Your
16 Honor. Jason Resnick, Western Growers.
17 Thank you for your testimony this afternoon.
18 I have just a question regarding your second
19 page, second to the last paragraph.

20 You say this, as is the law for
21 salad mix growers in California. What's the
22 law in California that you're referring to?

1 MR. WERSAN: I'm not sure after
2 hearing everything I have today that that is
3 necessarily the law of the land. But I know
4 of one grower who goes to Greenmarket, and
5 because of, because of the current
6 regulations she has to sell her salad mix
7 under the table.

8 MR. RESNICK: Under the what?

9 MR. WERSAN: Under the table. Not
10 above board. Not legally.

11 MR. RESNICK: So it's your
12 understanding that there is a law in
13 California regulating how leafy greens are
14 sold in California, is that your
15 understanding?

16 MR. WERSAN: That's my
17 understanding.

18 MR. RESNICK: Are you referring to
19 the California leafy greens marketing
20 agreement?

21 MR. WERSAN: I'm not sure, or if
22 it's some byproduct of that, I'm not sure of

1 the specifics. This is only anecdotal.

2 MR. RESNICK: Okay, thank you, I
3 have nothing further.

4 JUDGE HILLSON: Any other questions
5 for the witness? Okay, thank you for
6 testifying. You may step down.

7 Well, since we have, we just did
8 three witnesses, this is our last five minute
9 break and we have three more witnesses to go.
10 I think we'll take a five minute break and
11 then we'll go on until we're done.

12 (Whereupon, the proceedings went
13 off the record at 4:58 p.m. and
14 came back on at 5:08 p.m.)

15 JUDGE HILLSON: Let's go back on
16 the record. Ms. Hoodes are you going to call
17 --

18 MS. HOODES: We'd like to call
19 Michael Hansen.

20 JUDGE HILLSON: Okay, come on up
21 and give me your statement, please? Thank
22 you very much. I'm going to mark Mr.

1 Hansen's statement as Exhibit 125.

2 (Whereupon, the document referred
3 to was marked as Exhibit Number
4 125 for identification.)

5 JUDGE HILLSON: I should say Dr.
6 Hansen, as it says here.

7 Whereupon:

8 MICHAEL HANSEN

9 was called for examination and, having first
10 been duly sworn, assumed the witness stand
11 and was examined and testified as follows.

12 JUDGE HILLSON: State your name and
13 spell it for the record.

14 MR. HANSEN: My name is Michael
15 Hansen, M-I-c-h-a-e-l, H-a-n-s-e-n.

16 JUDGE HILLSON: Okay, Mr. Hansen,
17 you have a statement you'd like to read?

18 MR. HANSEN: Yes, it's slightly
19 modified, but I will still read it.

20 JUDGE HILLSON: Okay, proceed.

21 DIRECT EXAMINATION

22 MR. HANSEN: Good afternoon, my

1 name is Michael Hansen. I am a Senior
2 Scientist with Consumers Union, the non-
3 profit publisher of Consumer Reports,
4 Consumer Reports on-line, Consumer Reports on
5 Health, Consumer Reports Money and Consumer
6 Reports Best Buy Drugs, with 8.3 million
7 subscribers.

8 Additionally, Consumers Union has
9 806,000 de-activists who follow the issues we
10 care about and 445,000 members. Those who
11 subscribe, those subscribers who choose to
12 vote in the 2009 election for a Board of
13 Directors.

14 I also work out of our
15 headquarters in Yonkers, New York. WE
16 appreciate today's opportunity to comment on
17 the proposal to create a national marketing
18 plan for leafy greens, under the agricultural
19 agreement marketing act of 1937, which will
20 require industry participants to adhere to
21 good agricultural, handling, and
22 manufacturing practices.

1 We applaud the industry's concern
2 with improving its safety practices which led
3 to this proposal for a national leafy green
4 vegetable marketing agreement.

5 The broad consumption of leafy
6 greens is essential to the health of
7 consumers, both to ensure proper nutrition
8 and to fight the current epidemic of obesity
9 in the United States.

10 However, we oppose this proposal,
11 as we opposed the establishment of the
12 California leafy greens marketing agreement
13 two years ago, as a wrong way to go about
14 solving food safety problems.

15 One stated purpose of this public
16 hearing is for, quote, determining whether
17 the proposed agreement or any appropriate
18 modification thereof, would effectuate the
19 declared policy of the agricultural agreement
20 market act of 1937, end quote.

21 Legally, the answer to this
22 question is no, for the reasons stated below.

1 First, the agricultural agreement marketing
2 act of 1937, is fundamentally about setting
3 quality standards, such as grading, fat
4 content, size, bricks level, etcetera, and
5 safety is not a quality standard.

6 It's something that is
7 fundamentally different. All foods on the
8 market should be safe. And so therefore we
9 think that the LGVMA is not an appropriate
10 way to solve food safety problems. Second,
11 the proposed USDA LGVMA is, in our opinion,
12 undemocratic and contrary to key legal
13 precedents in the regulatory field as it
14 would allow the leafy green industry to
15 virtually set and oversee its own safety
16 standards.

17 Typically, in the U.S., to solve a
18 safety problem, such as polluted water,
19 pesticide residues in food or pathogens in
20 meat, we pass a law and the EPA, FDA or USDA
21 establish regulations through a process which
22 gives the entire public an opportunity to

1 give meaningful input on the proposed
2 standard.

3 This has the beneficial effect of
4 getting input from a wide variety of sources
5 and experts. Some of whom may have been
6 previously unknown to the drafters of the
7 standard.

8 The proposed LGVMA basically will
9 allow the industry handlers and producers to
10 develop the rules and proposed standard
11 virtually all by themselves, with only a
12 minor tip of the hat to public input.

13 In terms of public, in terms of
14 product safety, consumers are rarely
15 benefitted when industry polices itself. The
16 proposed LGVMA will set up a leafy greens
17 vegetable administrative committee, a
18 technical review board and a marketing review
19 board.

20 All of which will be overwhelming
21 controlled by the leafy greens industry, to
22 propose food safety standards to the

1 Secretary of Agriculture.

2 The administrative committee will
3 have 23 members, 19 of which will be handlers
4 and producers, and one representative each of
5 the retail, food service, importer and
6 public.

7 While the Secretary of Agriculture
8 will select the producer and handler members,
9 by meetings of producer and handler
10 representatives, the other four members will
11 be nominated by the producer and handler
12 members, with final selection by the
13 Secretary.

14 In other words, there will only be
15 one member of the administrative committee
16 representing the public. By that we mean
17 consumers, out of 23, and that number is
18 chosen by the leafy green industry.

19 All the non-producer and handler
20 members of the administrative committee will
21 be chosen by the leafy green industry.

22 In other words, the administrative

1 committee will be run by the leafy green
2 industry, with the fig leaf of representation
3 of the public, to make it appear that this is
4 a balanced committee, when it clearly is not.

5 The technical review board, talked
6 with helping the administrative committee to
7 develop the audit metrics for good
8 agricultural practices, good harvesting
9 practices and good manufacturing practices
10 which are supposed to ensure safety of leafy
11 green vegetables, is only advisory in nature.

12 Thus, the ultimate power still
13 resides with the administrative committee.
14 The technical review board has 14 members,
15 five producer/handlers, five food safety
16 experts from land grant universities, the ad
17 schools, one from USDA, one from EPA and two
18 from FDA.

19 However, the five food safety
20 experts will be chosen by the leafy green
21 industry, EG, the producer/handlers, and so
22 will not be independent meaning that the

1 industry ultimately will choose ten of the
2 14 advisors.

3 The market review board, tasked
4 with advising the committee on how to, quote,
5 maximize consumer confidence through market
6 acceptance and recognition of the program,
7 end quote, is also advisory in nature and
8 will be totally controlled by the leafy green
9 vegetable industry.

10 Although there will be nine
11 numbers, two representing retail grocers, two
12 representing food service companies. Two
13 from land grant universities with expertise
14 in fresh vegetable marketing, economics or
15 consumer acceptance, and three consumers all
16 will be appointed by the advisory committee.

17 The three hand picked consumers
18 will only comment on acceptance of the
19 program and not on the standards, that is on
20 the audit metrics.

21 In other words, it can be totally
22 chosen by the leafy green industry who will

1 advise them on how to convince the public on
2 what a great program and LGVMA is.

3 This committee reminds us that
4 part of USDA's charge is the promotion of the
5 industry, and for that reason it is neither
6 wholly independent nor the most appropriate
7 overseer of leafy green safety.

8 From a consumer perspective, it is
9 obvious that there is no way to ensure the
10 safety, that safety standards are, quote,
11 science-based, scalable and reasonably
12 applicable, end quote, when they are being
13 developed by committees.

14 The advisory committee with advice
15 from the technical review board, made up of
16 and controlled by industry, which has an
17 inherent financial stake in reducing
18 production costs.

19 The proposed rule states that,
20 quote, the metrics would reflect good
21 agricultural practices, good handling
22 practices and good manufacturing practices.

1 EGFDA guidance such as, quote, the
2 guide to minimize microbial food safety
3 hazards for fresh fruits and vegetables, end
4 quote. That, quote, commodity specific food
5 safety guidelines for lettuce and leafy
6 greens supply chain, end quote.

7 And the proposed draft guidelines
8 for leafy greens and appropriate FDA
9 regulations. The operative word here is
10 reflect. That is an ambiguous term which
11 means that the advisory committee can deviate
12 from it, at will, making metrics weaker or
13 change it in ways that reflect only the
14 handlers needs and not the needs of
15 consumers, organic or sustainable producers
16 or environmental concerns.

17 We have only to look at the
18 metrics and standards developed by the
19 California leafy green marketing agreement,
20 or by some of the larger handlers in
21 California, to see what could go wrong when
22 there is not broader input into these metrics

1 from the sustainable agriculture and
2 ecological perspectives.

3 A story published on July 14, July
4 13th, in the San Francisco Chronicle, found a
5 range of environmental problems. Dick
6 Peixoto, an organic farmer in the Pajaro
7 Valley near Watsonville, told of a need to
8 create sterile buffers around his fields with
9 no vegetation, no water and no wildlife of
10 any kind permitted. Previously, he had
11 planted hedges of fennel and flowering
12 cilantro around his fields, to harbor
13 beneficial insects as an alternative to
14 pesticides.

15 Those plants had to be ripped out.
16 One field had evidence of deer tracks, but no
17 plants were eaten. It didn't matter and he
18 had to destroy all crops within 30 feet of
19 each side of the tracks.

20 Joe Wilson, an Environmental
21 Scientist at the Central Coast Regional Water
22 Quality Review Board in San Luis Obispo,

1 spoke of demands to create 450 foot dirt
2 buffer around fields, which removes the
3 agency's chief means of preventing pollution
4 from entering streams and rivers.

5 Other farmers bulldozed ponds
6 since they were told that using them to
7 recycle irrigation water was unsafe. Ken
8 Kimes, owner of New Natives Farms and Aptos,
9 Santa Cruz County, was told that no children
10 younger than five could be allowed on his
11 farm, for fear of diapers.

12 Such scorched earth tactics make
13 no sense when trying to farm in a
14 sustainable, organic or ecologically rational
15 way.

16 MR. RESNICK: Your Honor, may I
17 interrupt?

18 JUDGE HILLSON: What?

19 MR. RESNICK: I'm reading the
20 testimony of Ms. Odabashion, who testified in
21 Monterey, it's word-for-word, Your Honor.

22 MR. HANSEN: No, no --

1 JUDGE HILLSON: Well, all right.

2 MR. RESNICK: But we've heard it,
3 it's in the record.

4 JUDGE HILLSON: At this point, I'm
5 taking your word for it, but I'm going to let
6 him --

7 MR. RESNICK: Okay, I mean, it's --

8 JUDGE HILLSON: So we'll have it
9 twice.

10 MR. RESNICK: It's already in the
11 record.

12 JUDGE HILLSON: The entire
13 statement, every word from beginning to end?

14 MR. RESNICK: I'm sorry?

15 JUDGE HILLSON: His entire
16 statement?

17 MR. RESNICK: Well, you could tell,
18 I mean, it's, I'm literally, we're reading
19 word for word, it's in the record.

20 MR. HANSEN: No, not this, not to
21 be, I just read Dick Peixoto, it's not in her
22 --

1 JUDGE HILLSON: I'm going to let
2 him finish his statement. You continue
3 reading.

4 MR. RESNICK: Okay.

5 MR. HANSEN: Furthermore, despite
6 the existence of the leafy green marketing
7 agreement in California, they continued to
8 experience instance of tainted leafy greens.

9 The week of September 23rd, there
10 was a recall of loose spinach, 50,000 cases
11 due to salmonella contamination. The product
12 was grown in Salinas and distributed to
13 several states and Canada, before it was
14 recalled.

15 After the administrative committee
16 has developed them, the safety standards must
17 be submitted to the Secretary of Agriculture,
18 who put the metrics out for notice and
19 comment.

20 Although this certainly is a good
21 idea, we fear that it will be extremely
22 difficult to have real input to the standards

1 at this point.

2 The proposal doesn't lay out what
3 exactly will be reviewed or for how long.
4 Indeed, with metrics developed by the
5 industry, with virtually no input from
6 independent outsiders, those not chosen by
7 industry, it seems as though these metrics
8 were developed for comment will be a, quote,
9 done deal.

10 A third major concern for
11 Consumers Union is that since participation
12 is voluntary the marketing agreement does not
13 cover all leafy green growers and processors.

14 Consumers cannot therefore be
15 assured that all leafy greens that reach the
16 marketplace will be as safe as possible.

17 For example, the Arizona leafy
18 greens marketing agreement implemented in
19 2007, only covers 75 percent of the leafy
20 greens produced in the state.

21 Indeed, the proposed LGVMA was
22 requested by a group of handlers and

1 producers who, quote, claim to represent a
2 majority of the volume of leafy green
3 vegetables produced for the U.S. fresh
4 market, end quote.

5 Not, quote, all, only a, quote,
6 majority. Experts agree that Government
7 standards for enforcement of GAPs for all
8 farms, GHPs, GMPs and hazard programs for all
9 processors are essential to maintaining the
10 safety of leafy greens.

11 And, thereby, consumer confidence
12 and the financial help from the industry. If
13 not all leafy greens in the marketplace are
14 subject to best practices, the door remains
15 open for contaminated produce to reach
16 consumers with all the intent and negative
17 effects and negative publicity that incurs.
18 Third, we are concerned that the LGMA, may
19 propose that a use of certification mark to
20 convey to consumers that leafy green products
21 from those participating farms and
22 processors, are subject to best practices.

1 The standard will have the USDA
2 behind it, because it will choose the auditor
3 and grant the new certification mark. In
4 essence, this approach turns safety into
5 value-added in the marketplace.

6 Consumers have a right to expect
7 and government authorities must guarantee the
8 highest level of food safety for all foods
9 that enter the marketplace.

10 Safety Should not be something
11 that consumers must search out and possible
12 pay extra for. Furthermore, if romaine
13 lettuce, for example, is implicated in future
14 e. coli contamination incidents, consumers,
15 many consumers will not stop to ask whether
16 produce has a safety seal.

17 They will simply stop buying all
18 leafy greens for a period. In Section
19 970.69(b), the LGVMA proposes the use of a
20 certification mark, quote, on bills of lading
21 or manifests or any other such use as
22 recommended by the committee and approved by

1 the secretary, to carry out the purposes of
2 this agreement, end quote.

3 This language does not prohibit
4 the use of these seals on things that
5 consumers will see. Whether produce that's
6 sold to them or advertisements.

7 This language provides the wiggle
8 room that could lead to certification marks
9 on leafy green products sold to consumers or
10 on advertisements.

11 Finally, Consumers Union is
12 concerned that this proposal for a national
13 marketing agreement to set safety standards
14 for leafy greens, through a predominantly
15 closed industry-led process, is being
16 considered at a time when Congress is in the
17 midst of passing legislation that would
18 require FDA to develop safety standards for
19 leafy greens to an open, public and
20 democratic process. HR2749 overwhelming
21 passed the House, and Senate Bill 510 is
22 pending in the Senate.

1 This likely, this likely will lead
2 to two different and potentially conflicting
3 sets of standards. This will be confusing
4 and possible harmful for both industry and
5 consumers.

6 We thus conclude that the proposed
7 LGVMA will not meet the declared policy of
8 the agricultural marketing act of 1937, and
9 so Should not be pursued.

10 In conclusion, while this
11 marketing agreement may bring some
12 improvement in leafy green safety, because of
13 the insular, exclusive way in which the
14 standards are being created, and more
15 importantly, because this process does not
16 cover all leafy green growers and processors
17 in the U.S. We believe that this agreement
18 will not provide the industry with extremely
19 high standard of safety, that it must
20 achieve, to keep and expand its market.

21 We're also deeply concerned about
22 the beginning, the beginning of viewing

1 safety is something that can be used as a
2 marketing tool and impose the use of a
3 certification mark, that suggests an added
4 level of safety on some leafy green products
5 and not on others.

6 Whether that be on the products
7 themselves or on advertising that people see.
8 Consumers Union strongly supports legislation
9 in Congress that would require FDA to issue
10 regulations governing growing and processing
11 of leafy green vegetables, with full input
12 from the full range of the public, thus
13 essentially turning this guidance into
14 mandatory regulation. Thank you.

15 JUDGE HILLSON: Okay, thank you. I
16 have received Dr. Hansen's statement into
17 evidence as Exhibit 125. Do you have any,
18 Ms. Hoodes, do you have any further direct
19 for this witness at this time?

20 (Whereupon, the document referred
21 to, previously marked as Exhibit
22 Number 125 for identification, was

1 received in evidence.)

2 MS. HOODES: No.

3 JUDGE HILLSON: Ms. Schmaedick.

4 CROSS EXAMINATION

5 MS. SCHMAEDICK: Melissa

6 Schmaedick, USDA. Thank you, Mr. Hansen for
7 your testimony. So I just wanted to clarify
8 that in some, Consumers Union is advocating a
9 mandatory program under FDA?

10 MR. HANSEN: That's correct. We're
11 supporting, yes, Bill 510. And that would
12 create --

13 MS. SCHMAEDICK: Okay and, that's
14 all the questions I have, thank you.

15 JUDGE HILLSON: Anyone else? Any
16 questions from the proponents?

17 MR. RESNICK: Yes, Your Honor,
18 Jason Resnick, Western Growers. Dr. Hansen,
19 as you were reading your testimony, I was
20 reading along the testimony of your
21 colleague, Elisa Odabashion. Did I say that
22 incorrectly?

1 MR. HANSEN: Odabashion.

2 MR. RESNICK: Odabashion, thank
3 you. And it was, in most respects, almost
4 identical. Did you write Ms. Odabashion's
5 testimony?

6 MR. HANSEN: I was the original
7 drafter, yes. With input some others, but
8 yes I was the primary drafter.

9 JUDGE HILLSON: Into the mic,
10 please?

11 MR. HANSEN: Yes, I was the primary
12 drafter. I drafted an initial statement that
13 had comments from my boss and then Elisa
14 modified it to her, she streamlined some of
15 the details.

16 MR. RESNICK: So, would you
17 characterize Ms. Odabashion's testimony as a
18 streamlined version of the testimony you just
19 gave?

20 MR. HANSEN: I suppose, mine, I
21 think mine has a little bit more detail in
22 terms of going to the various technical

1 committees, she streamlined that down.

2 The discussion of the paper from,
3 the story was streamlined down. There was no
4 mention of the difference between argue of
5 quality versus safety standards, in her
6 testimony.

7 MR. RESNICK: So, just so I'm
8 clear, you represent the same company? Are
9 you representing a different faction of
10 Consumer Union?

11 MR. HANSEN: No, not at all.

12 MR. RESNICK: It's the same?

13 MR. HANSEN: Consumers Union is a
14 national organization, we're a non-profit.

15 MR. RESNICK: Okay, well I
16 understand Consumers Union has Consumer
17 Reports and a bunch of different subdivisions
18 or entities under Consumer Union?

19 MR. HANSEN: We publish a number of
20 different magazines. There's Consumer
21 Reports, Consumer Reports online, but it's
22 still one company.

1 MR. RESNICK: Okay, so you are
2 speaking on behalf of Consumer Union?

3 MR. HANSEN: That's correct.

4 MR. RESNICK: And Ms. Odabashion
5 was also speaking on behalf of Consumer
6 Union?

7 MR. HANSEN: That's correct.

8 MR. RESNICK: Okay. Okay, that's
9 all I have. Thank you.

10 JUDGE HILLSON: Anyone else? Mr.
11 Giclas.

12 MR. GICLAS: Thank you, Your Honor.
13 I'm Hank Giclas, Western Growers. Dr.
14 Hansen, thank you for your testimony. I just
15 had a couple of questions.

16 Let's see, it's the second page,
17 the bottom paragraph, and you've highlighted
18 this and this word reflect. I mean I think
19 it's, correct me if I'm wrong. It's your
20 contention that the metrics that are adopted
21 by the national marketing agreement or that
22 could be developed by the national marketing

1 unit, would only have to reflect good ad
2 practices as opposed to adhere to those types
3 of guidelines established by FDA, is that
4 correct?

5 MR. HANSEN: Yes, I've had
6 experience with a number of FDA regulations
7 and guidelines, and we've commented on them
8 over the years and the devil is in the
9 details and the exact wording is important.
10 And, yes, that word reflect is a concern
11 because it doesn't say that they have to be
12 followed, it does leave it up to the
13 administrative committee to decide to
14 deviate, as they see fit.

15 MR. GICLAS: Okay, can you, there
16 are copies of the document there. Can you
17 point to me where, I mean the proposed, the
18 draft were it says reflect in the draft?

19 MR. HANSEN: I'll have to find it.
20 I can't actually find it. Since there's
21 somebody else that's testifying, if you give
22 me a few minutes, I will find the exact page

1 and column here.

2 MR. GICLAS: Well, and let me refer
3 you to the 91st page, the summary. And I
4 think it's about the middle of the first
5 column.

6 MR. HANSEN: Yes, that's, and the
7 first column. Such metrics would reflect
8 good agricultural practices.

9 So, it's there, underneath summary
10 in the first column on the first page.

11 MR. GICLAS: Okay, is it your
12 understanding that the summary is actually
13 part of the proposed marketing agreement?

14 MR. HANSEN: No, it's a summary of
15 it, and that part was from him.

16 MR. GICLAS: Okay. Can I refer you
17 to 970.9, good ag and handling practices.

18 MR. HANSEN: Sure.

19 MR. GICLAS: You can take a moment
20 and read through that section.

21 MR. HANSEN: They do refer to the,
22 I noticed this when we were talking about

1 internally. The GAPs and the GHPs do refer
2 to those FDA documents as well as documents
3 that have come out of AFDO.

4 MR. GICLAS: And would you agree
5 that there's a climate there for GAPs to
6 adhere to those FDA documents? Or do you
7 think that they merely have to reflect those
8 documents?

9 MR. HANSEN: I doesn't say here.
10 Do you mean in 970.9?

11 MR. GICLAS: Yes.

12 MR. HANSEN: It just says that they
13 refer to general practices, as outlined. It
14 doesn't say that they must adhere to it. It
15 says right there, good agricultural practices
16 and good handling practices, refer to general
17 practices.

18 To reduce, food safety hazards as
19 outlined.

20 MR. GICLAS: So, you don't think
21 that, when it says GAPs refer to the FDA
22 documents, that that means that they're

1 synonymous.

2 MR. HANSEN: Not necessarily, given
3 that in other places, if that's clearly what
4 is meant, they say that. So, for example,
5 manufacturer, under 970.26, says manufacturer
6 is synonymous with.

7 If that's what was meant there,
8 than that could have read, 970.9 could have
9 read, good agricultural practices and good
10 handling practices are synonymous here.

11 But that's not what it is. If
12 that was the intent, I would image that
13 language would be there. Since that language
14 is right there, under 970.16, under
15 manufacture.

16 MR. GICLAS: All right, fair
17 enough. Let me refer you to 970.67, and
18 audit metrics. And while we were talking
19 about definitions before, now we're talking
20 about the actual metrics that you had
21 established.

22 The first line says GAP audit

1 metrics shall include, and then it goes on to
2 list a variety of factors that have to be
3 included, but it's not limited to those.

4 MR. HANSEN: Right. It doesn't
5 state what those exactly will be and, again,
6 the devil is in the details.

7 MR. GICLAS: But, I take it, would
8 you agree that those are principal tenets of
9 most GAP documents?

10 MR. HANSEN: Sure.

11 MR. GICLAS: Okay, and if you go
12 down to the very bottom of that paragraph
13 there, it does say or any other factors
14 defined under 970.90, do you think that will
15 give us any, you know, greater confidence on
16 your part that the audit metrics and the GAPs
17 are associated with the marketing agreement
18 will comport with FDA guidance?

19 MR. HANSEN: It doesn't, doesn't
20 produce a certainty that that will happen,
21 no.

22 MR. GICLAS: Have you followed the

1 testimony of the proponents in previous
2 hearings?

3 MR. HANSEN: Not completely because
4 I've been out of the country.

5 MR. GICLAS: Also on this, oh, I'm
6 sorry. I want to back up from this section
7 on reflect to the third, oh, excuse me, the
8 second full paragraph on the top of your
9 second page where it starts, the technical
10 review board.

11 MR. HANSEN: Yes.

12 MR. GICLAS: You know, I think you
13 called out some concerns with the technical
14 review on my board here. Do you have a
15 recommendation for how this technical review
16 board might be, you know, better structured
17 or, you know, to address concerns of the
18 Consumers Union?

19 MR. HANSEN: Well, the problem is
20 if I made those suggestions that presupposes
21 that we think that the LGVMA is an
22 appropriate way to go and we don't.

1 I mean if it were forced into law,
2 and again we oppose, yeah, there should be
3 independent folks on there, having the, all
4 the people on the review board outside of the
5 government people being nominated or being
6 chosen by the leafy greens industry, or by
7 the people on the administrative committee,
8 that, to our line, doesn't make anything be
9 independent.

10 Just like we would not ask if we
11 wanted the best signs on tobacco. We would
12 not, only true signs as recommended by the
13 tobacco industry.

14 If we're interested in safety of
15 PBA, we do not just talk to the manufacturers
16 of plastics. We get the full range of views.

17 And so when I see a technical
18 committee where all the outside people are
19 ones that are chosen by the industry that
20 wants to come up with this thing, that
21 suggests to us that that's not any kind of
22 real honest or open process.

1 Because there's no independence
2 there. I mean there are good people in the
3 land grant universities, but if the industry
4 gets to choose who they are, they'll choose
5 people that have their interests in mind.

6 That would be just like if this
7 process were controlled by Consumers Union or
8 the organic industry or the small growers,
9 and they got to choose everyone.

10 I would imagine that they would
11 like that process, but I would assume that
12 the large growers wouldn't.

13 So the basic problem is with the
14 structure of these committees and how people
15 are chosen. There is no independence.

16 MR. GICLAS: So, do you have a
17 recommendation for how they should be chosen?

18 MR. HANSEN: Again, that
19 presupposes, we think that should be done
20 through the Food and Drug Administration, and
21 open a process.

22 So, I guess the proper way to do

1 this is for the USDA to say, oh, we would
2 actually like the FDA to do this process, and
3 we would support this being done through
4 Senate Bill 510, and relinquish this
5 marketing agreement process.

6 Then, if there's a committee to
7 design the metrics, which is being chosen by
8 FDA through more open process and folks that
9 have understanding of food safety, that would
10 be appropriate.

11 But in a marketing agreement we
12 have a fundamental problem with marketing
13 agreements. They're about marketing.
14 They're not about food safety and they don't
15 necessarily have the expertise to do that.

16 We think the agencies That know
17 the most about that, should be in charge of
18 developing the regulations and agreements. I
19 mean, why does USDA, why are they doing this
20 when they're saying that the GAPs and that
21 should be coming from FDA.

22 Well, then let FDA do the whole

1 process. Because I'm well aware of the
2 history and the fights on a number of areas,
3 such GMOs between turf battles between FDA
4 and USVA.

5 And I think, when it comes to food
6 safety, that's FDA's bailiwick, they should
7 be developing it.

8 MR. GICLAS: Are you opposed to FDA
9 and USDA collaborating to reach a common
10 goal?

11 MR. HANSEN: Not necessarily. I
12 wonder the extent to which they can really do
13 that, given my knowledge of turf fights that
14 have happened and idiotic things.

15 I have personal knowledge, for
16 example, on mad cow disease where, when FDA,
17 who's supposed to be responsible animal feed,
18 when USDA would find out, for example, that a
19 supplier in Texas, that the feed was
20 contaminated.

21 How did the FDA find that out?
22 Did USDA, did FSIS call FDA? No. I was told

1 by the top people at FDA, they had to find
2 that out from the media.

3 That's what Steve Sundlof told me.

4 So I know that that I'm mad cow and other
5 things and GMOs that the agencies don't
6 necessarily work together.

7 There's often turf battles that go
8 on. In an ideal world, would I think it
9 would be fine if USDA and FDA would try to
10 collaborate on something? Sure.

11 I think that would be a good idea
12 in theory. I don't know to what extent it
13 can happen in practice.

14 MR. GICLAS: What was the last name
15 of that Steve?

16 MR. HANSEN: Sundlof.

17 MR. GICLAS: Can you spell that, if
18 you could?

19 MR. HANSEN: S-u-n-d-l-o-f.

20 MR. GICLAS: Thank you. And you've
21 been here all day, right? So, I mean, you've
22 heard testimony already about increased and

1 collaboration between CFSAN and AMS and, I
2 guess you're tracking some of the previous
3 testimony.

4 Are you aware of some of the
5 memorandums of understanding between AMS and
6 CFSAN and, I mean are you aware that there's
7 an effort to collaborate?

8 MR. HANSEN: Yes, I am aware that
9 in this present administration, there are
10 efforts to try to bring food safety concerns
11 more congruently between the two agencies.

12 But, as Steve Gilman pointed out,
13 if there's a change in administration and
14 different people are in place, things could
15 go back to the way they had been in the past.

16 I am actually, I think in this
17 present administration, with some of the
18 hires I've seen, both USDA and FDA, I
19 actually think that we're very encouraged
20 that things will be moving in the right
21 direction.

22 But, again, when you have

1 something like this, this is not just for the
2 present administration and administrations
3 come and go and things can change.

4 MR. GICLAS: Okay, I want to ask,
5 I'm going to finish up with a couple of
6 questions about the California agreement.
7 You've spent a considerable amount from, you
8 know, the space on your third page here. The
9 California leafy greens marketing agreement
10 and everything that's gone wrong, conjunction
11 with that.

12 These citations that you have here
13 in the second large paragraph on this page
14 about sterile buffers around fields, no
15 vegetation, no water, no wildlife of any
16 kind.

17 You know, removing plants,
18 destruction of crops, etcetera. Is it your
19 understanding that all of that is
20 attributable to the metrics associated with
21 the California marketing agreement?

22 MR. HANSEN: No, not at all. What

1 I said, if you look at the first sentence, is
2 it's developed by the leafy greens or by some
3 of the large handlers. So, it was unclear
4 that article both and it was unclear which
5 were the super-metrics that went beyond and
6 which were due to the California leafy
7 greens.

8 That's why I had the operative
9 words, or, leafy greens or.

10 MR. GICLAS: Okay, all right.

11 Thank you. I don't have any other questions.

12 JUDGE HILLSON: Anything else, any
13 other questions for Dr. Hansen, before I let
14 him step down? You may step down, thank you
15 for testifying.

16 And, you don't have anymore
17 witnesses, Ms. Hoodes, and so I'm going to
18 let Al Murray testify next?

19 (Someone talking off microphone.)

20 JUDGE HILLSON: Oh, I said does
21 anyone have --

22 (Someone talking off microphone.)

1 JUDGE HILLSON: I didn't think we'd
2 be done with early. Of course he can. And
3 you're Mr. Graiff, I take it.

4 MR. GRAIFF: Yes.

5 JUDGE HILLSON: That would explain
6 the shirt, I guess. And I'm going to mark
7 your statement, Mr. Graiff, as Exhibit 126.

8 (Whereupon, the document referred
9 to was marked as Exhibit Number
10 126 for identification.)

11 Whereupon:

12 JAMES GRAIFF
13 was called for examination having first been
14 duly sworn, assumed the witness stand and was
15 examined and testified as follows.

16 JUDGE HILLSON: Please state your
17 name and spell it for the record?

18 MR. GRAIFF: James Graiff, J-a-m-e-
19 s, G-r-a-I-f-f.

20 JUDGE HILLSON: Okay, Mr. Graiff,
21 do you have a statement you'd like to read?
22 I marked your statement, by the way, as

1 exhibit 126, feel free to read it.

2 DIRECT EXAMINATION

3 MR. GRAIFF: Thank you for your
4 opportunity to present testimony today, my
5 name is James Graiff, I'm a partner with my
6 brother and mother in Dan Graiff Farms
7 located in New Jersey, Newfield, New Jersey.

8 We farm 250 acres in New Jersey,
9 contract 150 acres in Florida, plus purchase
10 produce from Canada, New York and California.
11 All farms are third party audited by either
12 USDA good agricultural practices and good
13 handling practices, audit verification
14 program or Primus Labs.

15 We do, we produce and handle baby
16 spinach, baby arugula, and operate a small
17 fresh cut packing operation. According to
18 the Small Business Administration
19 classification, which I just found out now
20 was, we would actually be a larger grower and
21 small handler.

22 I also today represent the

1 Vegetable Growers Association of New Jersey
2 with 1,298 members. Our production season
3 for leafy greens is from March until the end
4 of November.

5 Most of this production goes
6 through wholesale trade with lesser amounts
7 for fresh cut and direct sales to consumers.

8 New Jersey, like most of the
9 northeast and mid-Atlantic states, is not
10 home to sprawling farms encompassing
11 thousands of acres. In fact, the average
12 size of a New Jersey farm is 71 acres, with
13 the largest single grouping between ten and
14 49 acres.

15 New Jersey has been in the
16 forefront in the Mid-Atlantic and northeast
17 in promoting food safety through the
18 collaborative efforts of the New Jersey
19 Department Ag, and the Rutgers Cooperative
20 Extension.

21 To date, approximately 1,500 New
22 Jersey fruit and vegetable growers have been

1 trained in food safety practices with many
2 operations passing third party audits.

3 We support having a standardized
4 fruit safety audit, as long as it fits the
5 environment in which they are being used.

6 There are few concerns, a few
7 areas of concerns, related to this proposal.
8 Number 1, will this take the place of other
9 audits and super-metrics?

10 It appears that the bar for audits
11 continually goes up and in some cases it is
12 one firm saying that their audit is better
13 than the next.

14 In a recent study from Canada,
15 approximately 95 percent of all information
16 requested on different audits were the same.
17 It does not appear that this market agreement
18 precludes a buyer from asking for more
19 audits.

20 We strongly support USDA being the
21 auditing agency for the NLGMA and would like
22 it to be the auditor for all commodities.

1 Number 2, the makeup of zones.

2 How are these zones structured.

3 It does not appear that the environment of or
4 growing practices are taking into
5 consideration when proposing the five zones.

6 Who would think that Florida and
7 New England have similar climates, or Georgia
8 and Ohio. It would make more sense to place
9 Maryland north and west to Michigan in one
10 zone, Maryland south and west to Mississippi
11 River in one zone. Zones should be realigned
12 before proceeding with the proposal.

13 Number 3. We're glad to see the
14 technical committee which will recommend the
15 metrics for audits.

16 We request that the technical
17 committee appoint, instead of encouraging
18 them to do so, a subcommittee within each
19 zone to provide advice and suggestions on the
20 metrics which would have direct impact on
21 that zone.

22 Thank you for giving me the

1 opportunity to testify at this hearing.

2 JUDGE HILLSON: Thanks for you
3 testimony, Mr. Graiff. I will receive your
4 written testimony into evidence as Exhibit
5 126, and I will ask the USDA panel if they
6 have any questions? Ms. Schmaedick.

7 CROSS EXAMINATION

8 MS. SCHMAEDICK: Melissa
9 Schmaedick, USDA. Thank you, Mr. Graiff, for
10 your testimony. On Point 2, the make up of
11 the zones, you have a couple of suggestions
12 in terms of the placement of Maryland,
13 Michigan. Do you have, and then you state
14 zones should be realigned before proceeding
15 with the proposal.

16 Do you have a suggestion of how
17 they should be redefined?

18 MR. GRAIFF: Well, just in, like as
19 far as being from New Jersey, we have Florida
20 in our group. Now, in 2007, I went down to
21 Florida and actually grew for one season, my
22 brother and I.

1 Totally different. Their
2 irrigation methods, weather, you know, so to
3 have Florida, and then jump all the way up to
4 Carolinas and northeast states, I think we
5 have more in common with Michigan, Ohio, the
6 way we grow, the way we irrigate and
7 everything else, to kind of more do the zones
8 for production types and areas.

9 Instead of having like Georgia is
10 going up with Michigan. No, it's different
11 seasons, different times of the year,
12 different ways of growing. And I just feel
13 that we have a little more in common with
14 having the zones that way.

15 MS. SCHMAEDICK: And have you been
16 here for most of the day?

17 MR. GRAIFF: Yes.

18 MS. SCHMAEDICK: So has your
19 understanding of the term zone changed any
20 based on testimony?

21 MR. GRAIFF: I understand that it's
22 not, it wasn't put in place for, as far as

1 the growing production, and they are going to
2 take into account differ regions.

3 But one of our issues and my issue
4 is if I had a representative from Florida
5 talking on behalf of me with different ideas
6 and different problems, down in their zone,
7 it kind of, it doesn't really feel
8 comfortable for me on that point.

9 I'd rather have somebody from our
10 area to test it by, or to make
11 recommendations.

12 MS. SCHMAEDICK: So based, is it
13 accurate to say then that you would redefine
14 zones to reflect growing practices and
15 climates?

16 MR. GRAIFF: Yes, I would say, more
17 so, growing regions.

18 MS. SCHMAEDICK: Growing regions,
19 okay. Would you, in looking at the United
20 States, the leafy green production area, how
21 many potential regions then would there be?

22 MR. GRAIFF: Well, having the five

1 zones isn't a problem. With, I said as far
2 as you have the central states, the western
3 states, eastern states. If you break them up
4 that way, it's not a problem.

5 It's just that I feel, and
6 actually kind of slight in our zone. Granted
7 California has a lot more production area
8 than we do, but in our zone we have 16, I
9 believe there was 15 states in our zone.

10 And that's, you know, they only
11 have two handlers and one producer
12 representing 15 states is kind of, my
13 feeling, a little bit slighted.

14 MS. SCHMAEDICK: Okay. And then on
15 Point 3, so are you requesting that the
16 subcommittees of the technical review board
17 be a requirement for development of regional
18 methods?

19 MR. GRAIFF: I would think so.
20 Just to have that option to have a little
21 more input. Instead of relying on three
22 people to have a subcommittee to, you know,

1 you can get a lot more input that way.

2 MS. SCHMAEDICK: Just one more
3 question on the zones and the administrative
4 committee and representation. In your
5 opinion, is the 23-member committee too big,
6 not big enough, just the right size? Would
7 you change that number at all?

8 MR. GRAIFF: I don't have a
9 problem, I think the 23 is okay. I feel that
10 part of it, I mean it seems Zone 1 and 2 have
11 a good majority of the 19 votes for the
12 zones.

13 But I think with the
14 representation we can rough through that.

15 MS. SCHMAEDICK: Okay, my last
16 question. If this program were implemented,
17 would you be willing to participate in the
18 administrative committee and the development
19 of metrics?

20 MR. GRAIFF: I don't think I have
21 the expertise to be able to do that. I mean,
22 I would like to see somebody from our area,

1 you know, either a land grant from our area
2 be involved in it.

3 But as far as just a handler, I
4 don't think I would have the expertise on
5 that. When we did our food safety manual, I
6 hired people that, you know, had expertise in
7 that area to help me go through it.

8 So I would feel more comfortable
9 having some from land grant that had
10 expertise in that area to do that.

11 MS. SCHMAEDICK: Okay, thank you.

12 JUDGE HILLSON: Do we have other
13 questions from the USDA panel? Mr. Souza.

14 MR. SOUZA: Hi, good afternoon, Mr.
15 Graiff, Anthony Souza, USDA. Just a couple
16 of questions for you. How long have you had
17 a food safety program in your organization?

18 MR. GRAIFF: This is our second
19 year.

20 MR. SOUZA: I see in your testimony
21 that you farm 250 acres and contract another
22 150 in Florida?

1 MR. GRAIFF: Yes.

2 MR. SOUZA: The contracted acreage
3 in Florida, is that subjected to audits as
4 well?

5 MR. GRAIFF: Yes, they are on a
6 Primus Lab audit.

7 MR. SOUZA: You also state in your
8 testimony that you purchase products from
9 Canada, New York and California, is that
10 correct?

11 MR. GRAIFF: Yes.

12 MR. SOUZA: Is product purchased in
13 those areas, also, are they also required to
14 have some sort of audit?

15 MR. GRAIFF: Yes.

16 MR. SOUZA: You also state that you
17 operate a small fresh cut packing operation?

18 MR. GRAIFF: Yes.

19 MR. SOUZA: All the aforementioned
20 product from Canada and New York, Florida
21 and California, do you process that in fresh
22 cut in your operation?

1 MR. GRAIFF: Yes, we package for
2 food service.

3 MR. SOUZA: Is it your
4 understanding that if the proposed rule comes
5 through, that that operation would be subject
6 to audits, as well.

7 MR. GRAIFF: Yes.

8 MR. SOUZA: Is that operation
9 currently subject to audit?

10 MR. GRAIFF: Yes, it is, USDA
11 audit.

12 MR. SOUZA: You have a USDA audit
13 on that plant?

14 MR. GRAIFF: Yes.

15 MR. SOUZA: For the small fresh cut
16 packing operation, was there a huge expense
17 incurred by your company in preparation for
18 an audit of that facility?

19 MR. GRAIFF: Yes, just because of
20 capital investment, doing the processing
21 facility itself. We've done it over the past
22 six years.

1 So, we've incurred it that way.

2 As far as the audit, just extra time and, you
3 know, which definitely is money. But, for
4 us, we made the decision to jump into the
5 fresh cut industry in 2002, and kind of
6 slowly built into our business.

7 So we're just taking natural steps
8 and, in 2006, with the e. coli outbreak in
9 spinach, we were right in the middle of that.
10 So we just automatically are taking the steps
11 as we have to.

12 It's basically a cost of business
13 right now to us.

14 MR. SOUZA: In preparing for audits
15 of your fresh cut packing operation, were
16 there major changes in the production
17 activities in order to comply with that
18 audit?

19 MR. GRAIFF: Not really. I think
20 more of just the logs, keeping paper trails
21 on everything, more than anything.

22 As far as doing the practices, I

1 think we were, because we were going into the
2 fresh cut and bagging the product, we were
3 already doing a lot of the requirements
4 without, you know, other than documentation.

5 MR. SOUZA: Receiving company and
6 running it through your facility from Canada,
7 New York, California, and then the product
8 you contract out from Florida.

9 Could you explain a little bit
10 about your trace back program and it's
11 importance?

12 MR. GRAIFF: What we do is we have
13 a random number that I use and every day, for
14 specific commodities coming in, they were
15 going back from the number which is placed on
16 every box.

17 It goes to my computer where I
18 have lot number, or if it's coming from our
19 fields, it would be planting number, which
20 has the field that we harvest in and planting
21 dates. If it's a product coming down to
22 Florida, we have load numbers, which have lot

1 numbers from the growers down in Florida.

2 Or the same with California and
3 Canada.

4 MR. SOUZA: In practices, have you
5 ever tested that trace back program?

6 MR. GRAIFF: We haven't done a mock
7 recall, that was one part of the audit that
8 we had missed a few points on. But I plan on
9 doing it this year.

10 MR. SOUZA: Thank you, no further
11 questions.

12 JUDGE HILLSON: Anything else from
13 the USDA panel, and further questions? How
14 about the proponents panel, any questions?
15 Mr. Resnick.

16 MR. RESNICK: Thank you, Your
17 Honor, Jason Resnick, Western Growers. Thank
18 you very much, Mr. Graiff for your testimony
19 this afternoon.

20 Can you decide the leafy greens
21 that you grow?

22 MR. GRAIFF: Spinach.

1 MR. RESNICK: And were you affected
2 by the e. coli outbreak in spinach in 2006.

3 MR. GRAIFF: Yes, we had product in
4 the field that we couldn't sell when the FDA
5 put a hold on all spinach. After, we
6 actually kind of, losing some of the product
7 that we had in the fields, for about a month
8 or so, I guess we thought we benefitted from
9 it, because once they did find where it came
10 from, a lot of people were looking for east
11 coast spinach, because it was kind of pushed
12 to the west coast, you know, they narrowed it
13 down to the west coast.

14 After that, I think spinach has
15 never rebounded, I don't think, as far as it
16 should be, you know, back as far as sales.
17 It's gotten close but not there, but the
18 spinach part is the smallest part of our
19 business.

20 I believe arugula is what we
21 concentrate on.

22 MR. RESNICK: You say in your

1 testimony that New Jersey has been in the
2 forefront in the mid-Atlantic northeast in
3 promoting food safety through collaborative
4 efforts of the New Jersey Department of
5 Agriculture in Rutgers Co-operative
6 extension.

7 Can you describe a little bit
8 about measures New Jersey has taken?

9 MR. GRAIFF: Actually, Dr. Kline is
10 here today from Rutgers. He has meetings
11 through the state and the region promoting
12 food safety or giving points on food safety.

13 He has brought manuals to show
14 people, he has manuals to sell to people for
15 that. And I think that it's been a big push
16 from Rutgers and New Jersey Department of Ag.

17 MR. RESNICK: Do you feel that New
18 Jersey and the region that you represent, is
19 farther along in food safety than other areas
20 in the northeast and Midwest?

21 MR. GRAIFF: I think as far as
22 knowledge being presented, yes.

1 MR. RESNICK: Would you be
2 concerned about growers in other regions
3 having an outbreak and then it possibly
4 affecting your business?

5 MR. GRAIFF: Oh, always.

6 MR. RESNICK: Is that a major,
7 that's a major question?

8 MR. GRAIFF: Always, yes. I think
9 anytime there's an outbreak, no matter where
10 it is, whether it's stuff coming, I mean,
11 we've seen that with the tomatoes and, you
12 know, it ended up being the jalapenos and you
13 can see how bad a wrong turn can hurt an
14 industry. So, yes.

15 MR. RESNICK: You say in your
16 testimony that we support having a
17 standardized food safety audit, as long as it
18 fits the environment in which they are being
19 used. Can you elaborate on that?

20 MR. GRAIFF: I think, which goes
21 back to the scales, large scale, small scale.
22 I think it has to be flexible, which has been

1 brought up a lot today, about the flexibility
2 of the program.

3 Just so that small growers can
4 comply. Obviously, you know, with a larger
5 grower that is growing thousands of acres
6 compared to a grower that's only 50 acres,
7 there's going to, you know, it definitely
8 needs to be there. You know, a flexible
9 program for that.

10 MR. RESNICK: And, based on what
11 you've heard and your understanding of the
12 proposal to date, how does the proposed
13 agreement have that type of flexibility built
14 into it?

15 MR. GRAIFF: I think I heard a
16 little bit more of it today, that it is
17 definitely some flexibility there. And it's,
18 it's been said a lot today, the if's.

19 And it's hard to say when you
20 don't see the metrics and everything, the
21 metrics isn't right in front of you, yet.
22 So, anytime you're looking at signing

1 something or wanting to go along with
2 something, and all the things aren't in front
3 of you, you have to kind of like sign a blank
4 piece of paper, it makes you nervous.

5 Especially as a smaller grower. I
6 mean we're large by the SBA standards but,
7 you know, I, reaching out and dealing with
8 other growers in California and Canada and
9 what not, you know, we're still small.

10 MR. RESNICK: Thank you for that.
11 You asked the question and raised a concern,
12 will this take the place of other audits and
13 super metrics.

14 Did you hear the testimony from
15 the representative from Wegman's?

16 MR. GRAIFF: Yes.

17 MR. RESNICK: Did you hear him talk
18 about and testify that they accept the
19 California LGMA?

20 MR. GRAIFF: Yes.

21 MR. RESNICK: And that they would
22 accept the national LGMA?

1 MR. GRAIFF: Yes.

2 MR. RESNICK: Does that give you
3 some comfort that a national LGMA might do
4 away with some of these skewed metrics and
5 redundant audits?

6 MR. GRAIFF: Yes, I think it would.
7 Especially because you here some of the
8 private owner and companies, have a,
9 supposedly a high standard.

10 And so it would be nice to have,
11 where it's a standard audit system. And
12 everybody agreed.

13 MR. RESNICK: Thank you very much,
14 I have no further questions.

15 JUDGE HILLSON: Any questions from
16 interested parties? Any further questions
17 from the USDA panel?

18 MR. GRAIFF: Thank you very much.

19 JUDGE HILLSON: Thanks for
20 testifying. And Mr. Murray. Do you have a
21 statement?

22 MR. MURRAY: Yes, I do.

1 JUDGE HILLSON: Thank you. And I'm
2 going to mark Mr. Murray's written statement
3 as Exhibit 127.

4 (Whereupon, the document referred
5 to was marked as Exhibit Number
6 127 for identification.)

7 JUDGE HILLSON: I appreciate your
8 patience, Mr. Murray, it's been a pretty long
9 day.

10 MR. MURRAY: It sure has.

11 Whereupon:

12 AL MURRAY

13 was called for examination and, having first
14 been duly sworn, assumed the witness stand
15 and was examined and testified as follows.

16 JUDGE HILLSON: Please state your
17 name and then spell it for the record?

18 MR. MURRAY: Sure, my name is Al
19 Murray, M-u-r-r-a-y, and I serve as Assistant
20 Secretary of Agriculture to the New Jersey
21 Department of Agriculture.

22 JUDGE HILLSON: And it looks like

1 you have a statement you want to read for the
2 record? Why don't you proceed to do so.

3 DIRECT EXAMINATION

4 MR. MURRAY: And, as you can see,
5 hopefully it will be quick and then we'll
6 done.

7 All right, at first I just want to
8 preface my comments by saying that we do not
9 oppose this agreement. We actually support
10 it.

11 However, as you will see through
12 some of my comments that we just have a
13 couple of concerns and we think, the purpose
14 of this hearing is to hear our comments and
15 maybe we can make some changes that could
16 help our interests in the state.

17 So what I'm going to do is give
18 you a background about industry. I'm here
19 representing the Department of Agriculture,
20 but as James Graiff represented the New
21 Jersey Vegetable Growers Association, we have
22 a produce safety task force in our Department

1 that I chair.

2 And I'll be, these comments
3 represent a collaborative effort on that. So
4 that being said, let me give an introduction
5 and then we'll dive into this.

6 New Jersey farmers and related
7 food businesses is well aware the need for
8 strengthening the food safety system and the
9 potential of a national marketing agreement
10 regulating leafy green vegetables is going to
11 have to achieve his goal and increase
12 consumer confidence in leafy green
13 vegetables.

14 Food borne illnesses outbreaks
15 over the past several years. E. coli in
16 spinach in 2006. And salmonella saintpaul in
17 2008, that were first linked to tomatoes, but
18 later it was determined to originate in
19 imported peppers have impacted New Jersey
20 farmers through lost consumer confidence and
21 sales, even though none of that produce in
22 question, came from a New Jersey.

1 As a matter of fact, in both of
2 those cases, we were about ten days before
3 harvest. So we had the product in the field,
4 we were ready to go and then all of a sudden
5 the brakes were put on sales.

6 And it was devastating to our
7 farms. We're third in the country in the
8 production of spinach, by the way.

9 The resulting fall out of the 2006
10 spinach outbreak, led the New Jersey
11 Department of Agriculture to form a Produce
12 Safety Task Force, to deal with issues of
13 food safety and to respond quickly with
14 accurate information for consumers worried
15 that a recall or illness outbreak applies to
16 New Jersey produce.

17 The task force includes
18 representative from the New Jersey Department
19 of Agriculture, the New Jersey Department of
20 Health and Senior Services, Rutgers
21 University, they have a food science
22 division, and Rutgers Co-operative Extension.

1 As a matter of fact, Dr. Wes Kline
2 is here. He's not testifying but he's
3 probably one of our foremost experts in New
4 Jersey, for food safety and has been a
5 pioneer in helping a lot of farmers meet the
6 audits.

7 He's actually on vacation today,
8 which I'd rather go to the beach on my
9 vacation. And various sectors of the produce
10 marketing chain, from growers to retailers to
11 restauranters.

12 On April 13, 2007, the task force
13 presented testimony to the FDA during
14 hearings on the produce safety in College
15 Park, Maryland.

16 Much of what was said that day,
17 continues to hold true and applies to this
18 proposal. We do not dispute the risks
19 addressed in the proposed rule concerning
20 leafy green vegetables, nor the need for
21 agricultural producers to be more mindful of
22 food safety, if they hope to remain

1 competitive in the marketplace.

2 We recognize the participation in
3 this proposed agreement remains voluntary at
4 this time.

5 We also recognize that the
6 industry has been proactive by introducing
7 programs, such as third party auditing
8 systems, good agricultural practices, or farm
9 products traceability to help mitigate the
10 threat of food borne illnesses on our nations
11 food supply.

12 It is our contention that the
13 components of the proposed program must be
14 tailored to reflect the diversity of all our
15 growers and their farms.

16 This includes standards that are
17 attainable regardless of farm size, climate,
18 environmental factors, growing practices and
19 regional differences.

20 It is with this thought in mind,
21 that today's suggestions could easily become
22 tomorrow's mandates. But the task force has

1 reviewed and discussed the proposed rule and
2 submits the following comments as a consensus
3 opinion of this group. First of all, an
4 overview of our industry.

5 While New Jersey might be viewed
6 as one of the smaller states in the nation,
7 finally it remains an important and viable
8 part of our state.

9 Agriculture remains New Jersey's
10 third largest industry. And bringing in,
11 just the farm gate receipts to our farmers
12 totaling 1.1 billion dollars annually.

13 Leafy green vegetables are an
14 important crop in New Jersey. Because of our
15 climate many different types of leafy green
16 vegetables are grown, primarily in the spring
17 and then the fall.

18 Since our National Ag Statistics
19 Service doesn't keep complete data on all
20 leafy green vegetables grown in New Jersey.
21 I sort of hate to give the specifics here,
22 because we grow a lot more than what it

1 shows.

2 But, what we do know, is that
3 lettuces, cabbage, collards, endive,
4 escarole, kale and spinach are grown on about
5 6,800 acres in New Jersey.

6 And the value of these items total
7 over 32.6 million dollars. However, the
8 statistics kept by our National Ag Statistic
9 Service, doesn't take into account that our
10 farmers also grow broccoli raab, dandelion,
11 spring mix, red and green chards, mustard
12 greens, turnip tops, parsley.

13 Because of our proximity to
14 Philadelphia and New York, we grow a whole
15 host of different ethnic greens to meet those
16 markets, and herbs.

17 Like many northeastern and mid-
18 Atlantic states, New Jersey's agriculture
19 industry consists of small family farms.
20 Very few of our 10,300 farms encompass more
21 than 1,000 acres.

22 Rather the average New Jersey farm

1 is just comprised of 71 acres. The task
2 force is not suggesting that smaller farms be
3 exempted from produce safety regulations, in
4 fact, ensuring that smaller farm operators
5 are trained in food safety practices and
6 prepared to undertake third party audits,
7 using USDA standards has been the main focus
8 of the task force since its inception.

9 Rutgers Co-operative Extension and
10 the New Jersey Department of Agriculture have
11 worked together to train over 1,500 New
12 Jersey fruit and vegetable farmers in the
13 basics of food safety.

14 Many of continued on to pass third
15 party audits. As you are all aware, in
16 recent years, consumers renewed their
17 appreciation for locally grown farm products,
18 because the public debates issues such as
19 global warming, carbon foot prints, food
20 miles and other issues.

21 Consumers have increasingly turned
22 to their local farmer and demand for locally

1 grown products has significantly risen. It
2 was our concern that any metrics resulting
3 from this proposal, take into account the
4 small family farm. There remains a fear in our
5 industry that any metrics resulting from this
6 program may not be attainable for the small
7 farmer.

8 I might even require large capital
9 investments that are not cost effective for
10 this size of the operation. To some there
11 even exists a suspicion that this proposal is
12 a way for the larger growers to drive out
13 smaller ones.

14 Just a quick comment on that, I
15 think that shows that this proposal, that's
16 the fear that we hear from our smaller
17 farmers. Which, for this proposal, in order
18 to succeed or to gain more, I think there
19 needs to be more information on.

20 I mean I know there's plenty of
21 information out there, but somehow I don't
22 think the smaller farmers are being reached

1 with this.

2 And I think they, they'd do
3 anything that they think from government is
4 suspicious.

5 And that is something that, you
6 know, we're been hearing out in the field.
7 Audit standards. One of the more frustrating
8 aspects of enhancing food safety measures on
9 the farm, it's the question of what standards
10 are use.

11 Unlike many large agri-business is
12 smaller in New Jersey and northeastern
13 farmers intend to grow a variety of fruits
14 and vegetable on a single form. This is
15 often do to them either operating a market or
16 farm stand, at their farm, or participating
17 in one of the more off-site community farm
18 markets, both which require offering an array
19 of items to the consumer, instead of
20 concentrating on just one crop for the
21 commodities market.

22 However, those same farmers also

1 frequently sell to retailers, either directly
2 or through a broker and those retailers often
3 have numerous audit standards that must be
4 met. This could lead to a farmer having to
5 pay for and pass several third party audits,
6 in order to continue selling their produce.

7 We believe that if this program is
8 implemented properly, one important result
9 should include a universally accepted set of
10 standards for leafy green vegetables.

11 We recommend such standards, we
12 customize to the different growing zones,
13 thus taking into account different soil
14 types, water sources, growing practices,
15 etcetera.

16 This way our farmers would no
17 longer endure the burden of complying with
18 different standards for different customers,
19 or being forced to contract with multiple
20 third party auditing firms, as specified by
21 different customers.

22 Zones. This is one of your

1 concerns and we noted, revolves around the
2 composition of the five zones. IN addition
3 to New Jersey, Zone 5 also consists of Maine,
4 New Hampshire, Vermont, New York,
5 Connecticut, Massachusetts, Pennsylvania,
6 West Virginia, Maryland, Delaware, Rhode
7 Island, North Carolina, South Carolina,
8 Florida and the District of Columbia.

9 I do note that Zone 1 consists of
10 five states. Zone 2 consists of eight
11 states, Zone 3 consists of 11 states, Zone 4
12 consists of ten states in Zone 5 it's 16
13 states and then the District.

14 We recognize, and then again we
15 don't know how these things were picked, but
16 we're making an assumption that these zones
17 were probably based on production and land
18 mass.

19 And we do note that Zone 1 will be
20 represented by four handlers and two
21 producers. While we don't discount the
22 importance of leafy green vegetable growers

1 of Hawaii and Alaska, this zone will also be
2 essentially representing California,
3 Washington and Oregon with four handlers and
4 two producers.

5 Meanwhile, Zone 5's 16 states will
6 be represented by two handlers and a
7 producer. Each of the states that comprise
8 Zone 5, is unique unto themselves.

9 Each has different soil types,
10 water sources, growing seasons, varied
11 production practices and marketing channels.
12 We recommend that a mechanism be put in place
13 that allows each zone to devise metrics that
14 are relevant to their respective environment.

15 I think this is where this becomes
16 significant. The September 3rd copy of the
17 Federal Register references the technical
18 review board and it's role to assist
19 developing metrics.

20 In Section 970.45, it reads,
21 quote, the technical review board may appoint
22 subcommittees as necessary to facilitate

1 input and review from regions throughout the
2 production area, end quote.

3 We believe that the word may
4 should be changed to shall. Whereby the
5 technical review board shall appoint
6 subcommittees.

7 This will give better
8 representation and input from a zone such as
9 Zone 5, that represents the majority of the
10 states.

11 There's no doubt that a national
12 leafy green vegetable marketing agreement has
13 great potential to help mitigate the threat
14 of food borne illnesses, while helping foster
15 consumer confidence in leafy green
16 vegetables.

17 However, all efforts should be
18 made to create a program that recognizes the
19 diversity of agricultural practices and is
20 offered to farmers at an affordable cost that
21 takes into account their farm size, unique
22 environmental factors and geographical

1 differences.

2 Further, once this set of metrics
3 has been agreed upon, they should serve as a
4 universal standard, thus freeing the growers
5 from multiple demands.

6 Finally, each of the established
7 zones should have the ability to develop
8 metrics that are consistent with the
9 uniqueness of the respective industries.

10 On behalf of the Department of
11 Agriculture and the New Jersey Produce Safety
12 Task Force, thank you for this opportunity.

13 JUDGE HILLSON: Thank you for your
14 testimony, sir. I'll receive your statement
15 as Exhibit 127, and I'll first ask the USDA
16 panel if they have any questions. Ms.
17 Schmaedick.

18 (Whereupon, the document referred
19 to, previously marked as Exhibit
20 Number 127 for identification, was
21 received in evidence.)

22 CROSS EXAMINATION

1 MS. SCHMAEDICK: Thank you, Melissa
2 Schmaedick, USDA. Thank you, Mr. Murray, for
3 your testimony. I've two general questions
4 for you. The first is has your task force
5 discussed any alternate definition of the
6 zones or representative makeup of the
7 administrative committee?

8 MR. MURRAY: I think, the zone part
9 is just a concern to us because we feel, I
10 guess, the trickle down effect as to
11 representation on the board.

12 We feel that our industry is very
13 large when you have a seat at that table.
14 You know, from the testimony today, and we
15 will recognize this.

16 You know, the administrative part
17 of this, I don't think is the concern to the
18 grower. Concern is the technical review
19 board that's made up.

20 Because, one, it just says them
21 may as opposed to shall. And, two, that
22 technical board, we know that the

1 administrative board is the one that will
2 appoint the technical board.

3 So, if you look in the, if the
4 administrative board, Zone 5, we're going to
5 have two handlers and producer.

6 They're going to represent 16
7 states. So, right there the odds are against
8 us that we may have a seat at that table.

9 You know, if you just go by 3 and
10 16. That being said, we know that board is
11 the one that's going to produce the technical
12 review board or appoint the technical review
13 board.

14 So we feel that that even dilutes
15 our chances even further to have, you know,
16 at least one grower from each zone. You
17 know, obviously the land grant university of
18 Cornell, you have Rutgers, I mean you have a
19 lot of great, I guess Clemson would be
20 considered part of that as well.

21 I mean you've got some really
22 great land grant universities that are

1 involved in there.

2 We just think that the player we
3 are in this leafy greens industry, that our
4 chances of being involved are not as great.

5 MS. SCHMAEDICK: So, if I were to
6 ask you for guidance on how to best approach
7 taking the concerns that you've mentioned
8 into consideration, would you suggest
9 focusing on changing the term may to shall --

10 MR. MURRAY: Yes.

11 MS. SCHMAEDICK: -- with regard to
12 the technical review board?

13 MR. MURRAY: We'd agree with that
14 and also subcommittees where subcommittees
15 could be more regional. I think for New
16 Jersey and I hope, I think New Jersey
17 identifies more with York, Pennsylvania and
18 north.

19 I think that's sort of like the
20 dividing line. So if there were
21 subcommittees, then you know we would be able
22 to work to develop metrics that we think

1 would work for our respective cause.

2 I've just stated earlier, numerous
3 times. You know, Florida really doesn't have
4 anything in common with us, except for maybe
5 what we grow different. But the way they
6 approach things are a lot different.

7 And to have them as part of the 16
8 states, with Carolinas and such, we just feel
9 that our needs might not be addressed. Where
10 such a subcommittee could be helpful in that.

11 Again if it went from may to
12 shall, so that it would make it more,
13 there'll be more teeth into whatever will
14 come out of that.

15 MS. SCHMAEDICK: So, if, would you
16 recommend, if this regional subcommittees
17 became a requirement, would you also
18 recommend that they be comprised of the same
19 type of membership that's been recommended
20 for the technical review board, specifically
21 land grant universities and conversation
22 members, so on and so forth.

1 MR. MURRAY: I don't think we
2 thought that through as much, because I was
3 thinking we would want our land grant
4 university, it's what the producers will be
5 able to weigh into. You know, do I want to
6 pick it up to smell, to pack, the whole bit.

7 I mean they can give an awful lot
8 of insight as to what works and what doesn't.
9 And I think that's where we need a little
10 more input.

11 MS. SCHMAEDICK: Would you suggest
12 any alternatives to, currently the way the
13 agreement is proposed, the administrative
14 committee would nominate the members of the
15 technical review board.

16 Do you have an alternate way of
17 selecting members of the technical review
18 board or its subcommittees, that you can
19 recommend?

20 MR. MURRAY: At this time, no. I'm
21 sure we can make that a task force agenda and
22 sending something back to you in short order.

1 MS. SCHMAEDICK: In your opinion,
2 is that something that should be explored.
3 Is the mechanism for which the technical
4 review board members are identified?

5 MR. MURRAY: Again, and it's all
6 based on the fact that the zone is 16 states
7 and the District.

8 And then, of that, you know, you
9 have two handlers and a producer for the
10 administrative side, and then you're charged
11 to pick grower, a food safety expert, and of
12 course, the rest.

13 I just need to dilute our
14 representation to this process.

15 MS. SCHMAEDICK: My second question
16 in general, addresses some of the concerns
17 that you've raised about the ability of small
18 producers to participate in the proposed
19 program.

20 My general question is, what are
21 your recommendations for best adapting the
22 proposed program to --

1 MR. MURRAY: One of the things, I'm
2 sorry to interrupt.

3 MS. SCHMAEDICK: That's okay.

4 MR. MURRAY: On the things I think
5 where that is becoming a concern is on
6 970.68, talking about traceability.
7 Traceability is not really defined there yet.
8 Wes Kline and myself have met with people
9 that are selling traceability systems and
10 stuff.

11 And I think we saw one of the
12 prices, you know, for a farmer it would be
13 \$2,900 to \$12,000. The average farmer in New
14 Jersey, is 54 years old and I'm going to say
15 he, because most of them are he.

16 He has another job off the farm,
17 usually the wife is the bookkeeper and taking
18 care of the bills. And she usually has
19 another job off the farm, as well.

20 WE just think we know, well when
21 we're talking about even something simple or
22 what might seem not that much to a larger

1 grower or bigger agri-business, nine or ten
2 thousand dollars is an awful lot of money.

3 And that's one of the reasons why
4 we're concerned. When we testified to the
5 FDA, and of course it's very easy for us to
6 say this, but we thought that there should be
7 some kind of cost-share program put into
8 place, that could possible help some of these
9 farmers, you know, comply with some of these
10 rules, or the metrics that will be developed.

11 MS. SCHMAEDICK: Did you have any
12 recommendations on what that might look like,
13 the cost-share program?

14 MR. MURRAY: Not at this point, no.
15 Like I said, it's very easy for one
16 government agency to push it off onto another
17 government agency. That was just something
18 that was discussed at some point.

19 You know, give a helping hand to
20 these family farmers to help them comply.
21 Because I think, I don't think anybody
22 doesn't want to comply to this.

1 I mean are we seriously now
2 speaking for the farmers that we talked to in
3 New Jersey. I mean they recognize that, you
4 know, they're good practices. We've trained
5 over 1,500 of them.

6 As a matter of fact, you were the
7 first state, it's a matter of opinion,
8 although I wasn't involved in it. WE had our
9 certification program and we worked with it,
10 with USDA, we were the first state to do
11 that, before the it became a USDA program.

12 As a matter of fact, Leanne
13 Skelton, and she was the person that awarded
14 us our first designation. So the will is
15 there, but scare is that, you know, as we all
16 know, and I mean I feel like I'm preaching to
17 the choir.

18 Farming is an extremely tough
19 industry. And these farmers are operating on
20 such thin margins that determine whether
21 they're going to continue or whether they're
22 going to fold and the land is going to go to

1 development.

2 And in a state like New Jersey,
3 where we've got eight a half million people
4 crammed in our borders, sometimes selling out
5 is a very lucrative or promising option. And
6 my job in the department of Agriculture is to
7 keep these framers viable and to keep them on
8 the land.

9 And, a program such as this,
10 again, like I said, we're not against this
11 program at all.

12 We've been working in this for
13 many years, is to make this affordable, and
14 to make it so that our farmers can
15 participate and can pass and can continue to
16 operate in the marketplace.

17 MS. SCHMAEDICK: In your opinion,
18 could your concerns about the scalability or
19 the ability of smaller businesses to
20 participate in a program.

21 Could those be addressed through
22 the, if the technical review board were to be

1 reconfigured in some way, such that regional
2 subcommittees could work on how to address
3 the scalability issue for that region. Would
4 that be one way of --

5 MR. MURRAY: You could do that, you
6 could have a technical review board with a
7 small farm. We would have to first define
8 what, I mean obviously we're not going to get
9 this figured out today, but I understand what
10 you're saying, and it's a possibility.

11 It certainly is a possibility,
12 because I know that, you know, farming
13 practice, a farming practice in the northeast
14 are a lot different than they are in the
15 southeast. Even though we're all lumped
16 together into one zone.

17 And that's why I think it's
18 important that that be addressed somehow.

19 MS. SCHMAEDICK: Thank you for your
20 testimony.

21 JUDGE HILLSON: Further questions
22 from the panel? Ms. Carter.

1 MS. CARTER: I'm Antoinette Carter
2 with USDA, I just had one question for you.
3 In the testimony you noted the, I guess,
4 extensive training that Rutgers Co-operative
5 Extension and the Department of, New Jersey
6 Department of Agriculture as undergone.

7 In previous testimony, we've heard
8 recommendations that should this proposal be
9 adopted, that it include an education and
10 outreach component? Does the task force have
11 any opinion with regards to that
12 recommendation?

13 MR. MURRAY: It's a great
14 recommendation. We're already practicing
15 that. We're just so fortunate because our
16 borders are very close. Every February we
17 had the state agriculture come in, where all
18 the farmers, from all the different
19 commodities gather in Atlantic City, the pass
20 resolutions, things like that.

21 There's an educational component
22 there, where we, and food safety has been one

1 of the major issues since '06, even before.

2 You know Wes saw it on the horizon
3 that we should start getting involved in it.
4 We also have a vegetable growers convention,
5 James Graiff, who testified earlier, he's an
6 officer in that association.

7 In January they have a major
8 convention, that actually attracts all
9 throughout the east coast, and food safety is
10 always a major educational seminar on that.
11 In fact, that's where Wes does some of this
12 training and gives the materials out.

13 And that's where we've been able
14 to train about 1,500 people through this.
15 And he's going county to county, as well, you
16 know, to offer the training.

17 I think the outreach is not the,
18 is not a problem for us.

19 MS. CARTER: Based on what you've
20 just shared, in terms of recommendations of
21 how that component could be implemented, any
22 additional thoughts on that?

1 JUDGE HILLSON: At this time, no.
2 That's funny because I went by, I was
3 thinking back to the question earlier. As
4 you know, when you seek specialty crop
5 monies, each state, I'm sure aren't' going to
6 need. Each state, depending on their, on how
7 many vegetables they grow, they receive a
8 share.

9 And I know Wes and I had been
10 talking on that for our next allotment, is to
11 take some of that money and see if we can do
12 some sort of land grant, or land grant
13 program, to help some of the farmers that are
14 just about there, to give them that extra
15 little push so that they can become compliant
16 and make this a part as we continue to
17 receive it.

18 We're not sure and we're still
19 checking to make sure that we can do that.
20 But, you know, it just popped into my head
21 and I thought it was worth noting.

22 MS. CARTER: Thank you.

1 JUDGE HILLSON: Anything else from
2 the panel? Dr. Hinman.

3 DR. HINMAN: Don Hinman, USDA. You
4 mentioned the devastation of the spinach
5 outbreak, and ten days before harvest as an
6 example of how hard it hit you.

7 Did the Department of Agriculture
8 or anybody else in the state, come up with a
9 numerical, a dollar figure of the amount of
10 lost sales or some figure estimating the
11 damage.

12 MR. MURRAY: WE did try to quantify
13 that, I don't remember the exact figure, I
14 mean, that's something that I can send
15 forward to you on that.

16 All I know is that it was ten days
17 before harvest. We had one of those
18 beautiful falls where it just, everything
19 looked great, it was going to be a great crop
20 quality, it was wonderful, and then all of a
21 sudden it hit.

22 And these guys could not move a

1 truckload. Most of it they tried to send to,
2 they couldn't even send it to the soup
3 kitchens or to other areas, just because
4 nobody wanted it.

5 And, as it's been said before, and
6 I've talked to retailers, that category I
7 don't think has ever quite recovered from
8 that. And that's where, again, I was talking
9 about how some of the smaller growers get
10 suspicious and stuff. Because in the 26
11 years that I've been with state government,
12 New Jersey's never had a problem.

13 That's not to say that there ever
14 could be a problem, I realize that. But they
15 look at it as sometimes that a program is
16 being pushed on them that wasn't their
17 problem to begin with, but they're the ones
18 who have to pay to, fix a problem they don't
19 have.

20 So, it's a, that's where some of
21 this also comes from.

22 DR. HINMAN: There's no question.

1 You stated on your first page here, we
2 recognize that participation in the proposed
3 agreement remains voluntary at this time.

4 Can you explain a little about
5 what concern you may be expressing with that
6 statement?

7 MR. MURRAY: Sure, the concern
8 there is, you look at the way that this
9 proposal reads, and this is something that I
10 don't think a lot of people have read the
11 fine print in this yet. But basically it
12 says any handler that signs on to this, can
13 only handle leafy greens that are under this
14 agreement.

15 So, basically, yeah, it's
16 voluntary, but it's restricting the market.
17 I mean breathing is voluntary, but if I don't
18 do it I'm going to die, you know.

19 And, that's another question was
20 raised, but I mean it's not something that,
21 we'll let other people argue it. Is that
22 even a restriction of trade or a restriction

1 of commerce, by saying that, I mean that's a
2 question that's been brought up, we haven't
3 explored it.

4 But by telling any handler that
5 signs that agreement, can we buy greens from
6 people that are signed up to the handler?

7 That's where we came up with, you
8 know, yeah, it's voluntary, but is it really
9 voluntary? It's just more of an ironic
10 statement more than anything else.

11 DR. HINMAN: Thank you, Mr. Murray,
12 no further questions.

13 JUDGE HILLSON: Okay, how about the
14 proponent panel?

15 MR. RESNICK: No questions.

16 JUDGE HILLSON: How about the
17 opposition panel? Okay, well thank you very,
18 very much for your testimony, and you may
19 step down. I don't think we have any
20 housekeeping matters, do we? In that case,
21 where are we going next? I've got to look it
22 up here.

1 We're going, I will continue this
2 hearing until this Thursday, October 22nd in
3 Charlotte, North Carolina. The Syracuse
4 portion of the hearing is adjourned. Thank
5 you.

6 (Whereupon, the proceedings in the
7 proceedings were concluded at 6:35 p.m.)

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