Proposed NLGMA –Questions and Answers

Q. What is the National Leafy Greens Marketing Agreement (NLGMA) and what is its purpose?

A. The proposed NLGMA is a voluntary program that provides a governance structure for farmers, handlers, retailers and consumers to work together and develop a practical program so that all types of farming and handling operations can effectively and efficiently comply with food safety requirements. Participation in the NLGMA could in the long term reduce the complexity and cost imposed on farmers and handlers to manage multiple food safety programs required by various market participants.

Q. What is a marketing agreement?

A. Marketing agreements are voluntary regulatory programs that are brought about by collective action and petition for USDA consideration by an industry. A marketing agreement:

- Is issued after a signatory (participant) registration during an initial HANDLER sign-up period
- Regulates ONLY the product handled by signatory handlers
- Provides that registration is voluntary; compliance is mandatory ONLY for those signatory handlers who registered
- Provides that individual handlers may withdraw at the close of a crop year

Q. In effect, would this marketing agreement eventually become mandatory?

A. The proposed NLGMA is voluntary, not mandatory. The marketplace already requires produce growers and handlers to adhere to Good Agricultural Practices (GAP) in their operations. The Agreement could be a vehicle for farmers and handlers to create a consistent set of practices.

Q. Is this just like the California and Arizona agreements?

A. This proposal differs from the California and Arizona Agreements in that it provides more opportunity for public participation and requires more grower representation on the Board.

Furthermore, all NLGMA Board decisions (e.g., technical requirements, administrative fees, etc.) are RECOMMENDATIONS to the Secretary of Agriculture for review and final adoption.

Q. Is this in conflict with FDA's Produce regulations?

A. No. The NLGMA program standards would apply FDA produce food safety regulations and FDA guidelines. Any proposed guidelines approved by the Board and recommended to the Secretary will go out for public comment. The standard will be consistent with any future FDA guidelines and regulations.

Q. Who would oversee and run the NLGMA?

A. The NLGMA would be governed by a Board, appointed by the Secretary, and overseen by USDA. The NLGMA Board, consisting of 26 members representing eight administrative zones, including a total of 10 growers representatives, would make recommendations to the Secretary for final review and approval. Any major changes to the Agreement, including the drafting of the Good Agricultural and Handling Practices, would be sent out for public comment prior to its adoption.

Q. Who belongs to the Marketing Agreement?

A. A leafy green handler (as defined) would be eligible to sign up as a member or "signatory" to the agreement. As a signatory they are required to abide by the standards established by the board. All standards established by the Board would be reviewed and approved by the US Department of Agriculture before adoption.

Q. Would I be required to participate in the NLGMA?

A. No, the NLGMA would be a voluntary program in that only participants who elect to become signatories would be subject to compliance. Handlers of fresh leafy green vegetables in the 50 states and the District of Columbia, also known as the production area, would be eligible to become signatories. Once becoming a signatory, participants would only handle leafy green vegetables from producers or other handlers that are also in compliance with the NLGMA. Signatories who handle product imported from outside the United States would be required to

demonstrate that those products also meet the requirements of the NLGMA. Compliance by signatories with the terms of the agreement would be mandatory.

Q. Are small growers exempt?

A. This is a voluntary program therefore handlers of any size are not required to sign up. If you are a grower who sells to a handler that is a signatory to the Agreement then you would have to adhere to the Agreement. Those small farmers participating in farmers markets or direct sales may choose not to become signatories to marketing agreements.

Q. How would small farmers be represented?

A. Two of the 10 producer positions on the Board are designated for small farmers.

Q. What about the small grower? Isn't this the "big guys" dictating what small growers should do?

A. This proposal would require that all growers of all sizes, though not signatories to the agreement, be represented on the Board. In addition, the proposal says that the final Board should include 26 members, with producers having 10 seats of which 2 *must be small producers*.

Q. How are the proposed NLGMA's Good Agricultural Practices enforced?

A. Once those practices have been adopted by the Secretary, all members of the Agreement and those it purchases from would be subject to an audit. USDA-AMS Inspection Service would have the authority to accredit other entities and license their auditors to audit on its behalf, including NOP certified agents, FDA inspectors, and third party auditing services accredited by FDA.

Q. What happens if the proposed NLGMA Food Safety Practices are not followed by a member?

A. If the Agreement is established, enforcement or compliance would include elimination from participating in the Agreement.

Q. Would product be identified as being produced under the agreement?

A. A participating handlers' compliance with the Agreement would be noted by the use of a specific NLGMA program certification on producer and handler sales transaction and shipping paperwork (bills of lading, manifests, etc.).

Q. How do consumers know that the product they buy was grown under the NLGMA food safety practices?

A. There are no requirements within the NLGMA to label or market product covered by the agreement to consumers. Individual companies participating in the NLGMA will determine how to market their products.

Q. What products fall under the NLGMA?

A. The NLGMA would cover the following fresh leafy green vegetables and their varieties: arugula, cabbage, chard, cilantro, endive, escarole, kale, lettuce, parsley, radicchio, spinach, and "Spring Mix" which is an industry term that describes mixtures of baby lettuces, mustards, chards, spinach, and chicories that vary based on availabilities. These vegetables could be whole or fresh-cut, or in bulk or packaged form. Under the proposed NLGMA, the Board could recommend, subject to USDA approval, the addition or removal of any leafy green vegetable from this definition.

Q. Why would I sign up if the rules are not established yet?

A. If you sign up early as a participant/signatory, you would have the opportunity to participate in drafting the practices, or rules, at inception. In order to be selected to the Board that is established, as a handler, you must be a signatory. Any signatory (regardless of Board appointment or not) would have the ability to discuss and review with their Board representative (for that specific Zone) the development of the standards, etc. You would also have the ability to benefit from others who have established food safety and quality measures and be pro-active in the determining of any Best Practices expertise from peers.

Q. ***Would I have the ability to withdraw or drop out if I sign up but don't agree with the standards that are established?***

A. If you register as a signatory, you are obligated to participate for one crop year; after one year, there would be an opportunity to withdraw or opt out of the program.

Q. How were the Zones determined? Are they final or can they be adjusted over time?

A. The Zones were set up based upon official data from the USDA on the amount of acreage of fresh leafy greens product grown within each region of the country. The standards to be developed by the Board and Technical Review Committee would be based nationally in scope, unless there are compelling reasons brought up during the development time period and comment period, to ensure that differences be considered. Zones may be adjusted if needed through the formal USDA rulemaking process.

Q. Would there be additional government or other regulatory oversight?

A. A Technical Review Committee (TRC) would assist the Board in developing guidelines and procedures. The TRC would consist of members who represent production, handling and food safety experts from each zone (including organic and small business interests), experts from the USDA's agencies such as the Natural Conservation Resource Commission (NRCS), National Organic Program (NOP), and Agricultural Research Service, and other federal agencies such as the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA), and the Department of Interiors' Fish and Wildlife Service, among others. The TRC also would have the authority to work collaboratively with industry stakeholder groups, local and state authorities and others as part of a subcommittee structure.

Q. If implemented, what type of outreach is planned for this new agreement, particularly toward small producers and other unconventional agricultural entities, so they are informed and aware of the program?

A. The USDA recommends that a Research and Development Committee be established to support research and development activities as well as conduct educational outreach and support, especially among small producers and handlers, organic, sustainable and other diversified agriculture businesses.

Q. What would these proposed NLGMA guidelines or standards be based upon?

A. The NLGMA program guidelines or standards would be similar to (and harmonize with) the FDA's Good Agricultural Practices (GAP), Good Manufacturing Practices (GMP), and other related FDA regulations, in addition to USDA's Good Handling Practices (GHP).

Q. Who would have the authority to enforce the proposed NLGMA including audits?

A. USDA-AMS Inspection Service would have the authority to accredit other entities and license their auditors to audit on its behalf, including NOP certified agents, FDA inspectors, and third party auditing services accredited by FDA. This presents the potential to streamline the audit process facing many farmers and handlers in today's market, thus improving operations and reducing costs. For example, the proposal would permit the program to evolve whereby an organic operation could include the NLGMA food safety program as a component of the overall organic system plan and receive a single audit.

Q. Where would the money come from to pay for the proposed NLGMA?

A. The proposed NLGMA would be paid for through assessments of the participants or "signatories." These assessments would be recommended by the Board and must be approved by the USDA. These assessments would not be allowed to exceed $0.05 per 24-pound carton equivalent of leafy green vegetables. Handler assessments would be based on volume and would

cover the administrative costs of the program; verification audit fees would cover signatory first handlers and their producers.

Q. What if I am a small handler, would I have to pay the same as the larger handlers?

A. Small businesses would not be disproportionately burdened. Verification audit fees paid by the Board out of total assessments collected would lessen the burden on small handlers. Large handlers would pay more assessments thereby covering a larger portion than the small handlers of the overall national expense of audit verification fees. Furthermore, the potential exists for the NLGMA audit to meet multiple needs through the supply chain; thus, reduce the frequency and complexity of audits.

Q. How would the proposed NLGMA affect the environment?

A. We have proposed that the Technical Review Committee have a wide range of experience and expertise (including representatives from the EPA, NRCS, FDA, etc.) when developing the practices to ensure the practices allow for co-management with conservation practices.

Q: What are the next steps in the development of the proposed NLGMA framework?

A. Once the comment period ends, USDA will analyze the comments and decide how or whether to proceed with an agreement. If USDA decides to move forward, the Secretary would issue a Final Decision and the following activities would be initiated: sign-up period for handlers, nominations and establishment of the Board and Technical Review Committee, and drafting of standards for public comment.

Q. Are the requirements for the proposed NGLMA and the implementation process the same for all sized farms? Who else within the supply chain would have to abide by the proposed NLGMA besides growers?

A. The requirements and implementation process would be determined by the Board, but the standards could be tailored to the size of the operation as per the terms of the NLGMA. Any

handlers within the food supply chain, with the exception of retailers, must abide by the NLGMA.

Q. ***How would the proposed NLGMA address imported product audits initially (FDA will ultimately address this through the proposed FDA regulation)?***

A. If an importer is a signatory to the agreement, or sells to a signatory to the agreement, then the imported product would be subject to the same requirements as domestically grown product. Audits would be conducted by USDA or by other organizations approved by USDA to conduct the audits.

Q. ***What is the proposed term of office for Board members and alternate members?***

A. Board members and alternate members would serve for terms of two years beginning on April 1 and ending on March 31. Each member and alternate will continue to serve until a successor member is appointed by the Secretary.

Q. ***What is the maximum number of terms an individual could serve?***

A. Board members would be allowed to serve three consecutive 2-year terms of office, or a maximum of six consecutive years. The 6-year term limits would not apply to alternate members.

Q. ***Could the term of office for Board members and alternate members be modified?***

A. The proposed agreement would allow for proposed changes to the term of office provisions to be considered through informal rulemaking involving a public hearing.

Q. ***Are there terms of office and term limits for members of the Technical Review Committee (TRC) and the Research and Development Committee (RDC) established under the proposed program?***

A. The proposed agreement would not establish specific terms of office or term limits for members of the TRC and the RDC. The Board, under its authorized powers and duties, would establish term limits and tenure for the TRC and the RDC.

Q. ***What is the estimated cost of compliance with the agreement?***

A: There is a per carton assessment rate proposed by the Board and established by the Secretary, after receiving public comment, that will pay for the administering of the program and conducting audits.

Q: ***What is the estimated cost of compliance for growers and handlers?***
A. Most growers and handlers are already applying Good Agricultural or Handling Practices and undergoing audits to their operations, therefore the estimated start-up costs for growers may not apply.

There is per carton assessment applied to handlers to cover the costs of administering the program and conducting audits.

In addition, AMS and FDA have provided funding for the Produce Safety Alliance to create tools to facilitate the implementation of food safety practices on fresh fruit and vegetable farms and in packinghouses.