



CA Leafy Greens Marketing Agreement & Marketing Order

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Background

- Beginning in early 2004, the FDA and California DHS indicated that they considered lettuce and other leafy greens commodities a concern. The industry began developing standards to improve the safety of leafy green produce
- New outbreaks during the fall of 2005 further eroded the confidence of buyers, consumers, legislators, and state and federal regulatory agencies.
- In April of 2006 Western Growers, along with other trade organizations, published commodity specific guidance on lettuce and leafy greens.
- On September 14, 2006 the FDA announced an E coli outbreak on spinach. The announcement brought the entire produce industry to a standstill.
- The Centers for Disease Control and Prevention reported 199 persons infected with E coli (from 26 different states). All total, three deaths in confirmed cases have been associated with the outbreak..



Background cont.

- The FDA, California state administration officials, and the California DHS reported that this was the 20th food borne outbreak in the last nine years related to leafy greens and demanded immediate industry action. Distributors, retailers, and food service also demanded immediate industry action
- Compounding the spinach outbreak were two other E coli outbreaks in November and December of 2006. According to the Centers for Disease Control and Prevention, the Taco Bell outbreak in November 2006 resulted in 71 persons infected with E coli (from five different states). In December 2006 the Iowa Department of Public Health reported that the Taco John outbreak sickened at least 50 in Iowa and 27 in Minnesota.
- In the wake of the E coli outbreak and subsequent media frenzy (over 20,000 stories focused on food safety were published and exacerbated the problem), there has been an erosion of market confidence in spinach and other leafy green produce.



Losses

- In addition to the loss of confidence on the part of the FDA, CFSAN, and the California DHS, we now have a crisis of confidence on the part of the California legislature, state and federal regulatory watchdogs, distributors, retailers, food service, and the consumers themselves – all of which has resulted in significant monetary losses for the leafy green industry.
- The California legislature has held hearings on the outbreak strongly criticizing the industry and regulatory agencies. The threat of onerous legislation is real and pressing. Key legislators are watching closely at how the industry responds – positioning themselves to step in if or when the industry fails to respond appropriately. New legislation to regulate the production of lettuce and leafy greens has been introduced in California and it cleared first committee earlier this week.
- In the wake of the spinach outbreak alone estimates are that growers and shippers lost more than \$100 million ... and today there is still reduced demand ... Without a proactive response on the part of industry, market, legislative, and regulatory demands could result in millions more in lost revenue for the leafy green industry.



Statistics

- Shortly following the spinach E coli outbreak in September 2006 awareness of the situation was nearly universal.
- Surveys indicated that four of every five primary shoppers (80%) had seen, heard or read something dealing with fresh produce, while an astounding 89% had seen, heard, or read something specifically about bagged spinach.
- A majority of consumers (52%) expressed the highest degree of concern over the illnesses associated with bagged spinach. Only 12% of consumers expressed no concern over the illnesses associated with bagged spinach.
- A majority of consumers (50%) also assigned the lowest level of safety to fresh bagged spinach. Only 7% of consumers assigned the highest level of safety to fresh bagged spinach.
- About one consumer in seven (15%) assigned the lowest level of safety when rating fresh bagged salads without spinach. Just over one-quarter (26%) of consumers assigned the highest level of safety to fresh bagged salads without spinach.
- Just over one-quarter of consumers (26%) volunteered the belief that they would never again purchase fresh bagged spinach – even after the FDA gives consumers clearance to so. However, this number dropped to 8% when you looked only at those who had purchased fresh bagged spinach in the past.



Statistics

- Once again, just over one-quarter of consumers (26%) volunteered the belief that they would never again purchase fresh bagged salad with spinach – even after the FDA gives consumers clearance to so. However, this number dropped to 7% when you looked only at those who had purchased fresh bagged spinach in the past.
- More than seven in ten consumers (71%) were either much more confident or somewhat more confident in the safety of the nation's produce after hearing that farmers had implemented stringent safety programs.
- Similarly, almost four of every five consumers (79%) were moved to greater confidence on this issue after hearing that the FDA was constantly monitoring the safety of the nation's food supply and thus could quickly advise consumers on safety issues.
- Almost seven in ten primary shoppers (69%) gave the produce industry an excellent (23%) or good (46%) rating on its handling of the recent spinach incident. Only 7% rated the industry poorly.



Statistics

- By November 2006 the perceived safety of bagged spinach had rebounded strongly among those who had previously purchased it.
- More than one in five consumers (21%) rated bagged spinach as very safe, compared with only 8% in September. Moreover, 49% of previous purchasers rated bagged spinach not safe at all in September, while only 8% did the same in October.
- 72% of the primary shopper sample who previously bought spinach now said it was either very likely or somewhat likely that they would purchase fresh bagged spinach again.
- While consumer confidence in the safety of bagged spinach had improved during the month following the E coli outbreak, consumer perceptions of the produce industry actually declined slightly.
- More than two-thirds (67%) expressed greater confidence in the safety of the nation's fresh produce system based on a statement about farmer's implementing stringent safety programs – which was down from 71% in September.
- 64% of the sample said the produce industry had done either an spinach incident – which was down slightly since September (69%



Statistics

- 61% of all primary shoppers expressed some degree of confidence in the overall safety of the nation's fresh produce – which was down slightly since September (65%).
- 66% expressed greater confidence in the safety of fresh produce based on the FDA's constant monitoring of the system – which was down 13 points from the 79% reading in September.
- A total of 44% primary shoppers said the recent spinach incident did have some level of impact (29%) or a lot of impact (15%) on their overall purchase of fresh fruits and vegetables.



WG Board Direction

- Western Growers Board of Directors in a series of discussions evaluated the situation and directed Western Growers to:
 - Develop baseline “best practices” for lettuce and leafy greens production and harvest
 - Develop and implement a system for ensuring that industry best practices are being consistently and universally employed first in California and then nationally – the Board recommended a progressive approach beginning with a California Marketing Agreement, then a California Marketing Order and finally a federal regulatory framework



MA/MO Objectives

- The current marketing agreement is a response to several years of decreasing confidence in the leafy green market on the part of buyers, consumers, legislators, and federal and state regulatory agencies.
- Following the recent E coli outbreak, distributors, retailers, food service, and consumers are no longer willing to accept leafy green products with the food safety standards of the past. The market is demanding that a new paradigm be put forward to assure the confidence of all interested parties. California leafy green products are at the center of this demand.
- In the absence of industry-developed specifics the leafy green industry is being asked to meet increasingly unattainable and unaffordable standards of food safety based on irrational fears instead of common sense or sound science.



Desired Impacts

- The MA is designed to address the crisis of confidence in the leafy green industry by developing and adopting a set of standardized best practices based on the latest available scientific research and technological advancements.
- The MA will provide government oversight on the implementation of these metrics throughout the sector.
- The MA will also provide assurances that consistent practices are being employed as a minimum by all signatories to the agreement.
- The key to avoiding the threat of burdensome legislation or needless external regulation is to develop and adopt industry-driven metrics. In doing so, leafy green handlers can rapidly adopt and implement prudent standards while avoiding an inevitable and costly legislative and regulatory showdown.
- The development of this regulatory and food safety program will allow leafy green handlers to pool their resources and collectively address the existing crisis.
- The MA will allow for flexibility in the modification of the best practices adopted by the industry. Rather than relying on the relatively slow legislative process, often dominated by concerns unrelated to the best interests of the industry, the MA will provide the framework for rapid adjustments to the metrics based on the latest scientific findings.



This is a regulatory mechanism to ensure compliance with best practices.

- To restore and enhance the confidence of consumers, regulators buyers and other interested parties a mandatory program that will help ensure 100% of the industry complying with “best practices” 100% of the time is necessary. The MA and MO will be government programs guided directly by growers and handlers... the key elements are:
 - Baseline requirements
 - Agreement/mandate to comply
 - Verification and Documentation
 - Recognition in the Marketplace



Enforcement

- Government will enforce the agreement under penalty of law as determined by the Board
 - USDA trained inspectors will be deployed in the field to verify compliance with the agreement and adherence to the best practices
 - They will inspect both handlers and growers
 - A handler will be deemed out of compliance if they or their growers are not adhering to the best practices
 - Penalties are being developed by the Board. Under discussion are suspension from the agreement, monetary fines, loss of PACA license or a combination of these
 - A comprehensive list of handlers and growers and their compliance status is also contemplated



Alternatives?

- If left to the marketplace, the failure to adopt industry-determined leafy green best practices will result in inconsistent and incompatible standards, increased expenses for the growers and handlers, and metrics based on interests apart from the needs of the industry.
- If left to legislation or formal rule-making agencies, the result will be a cumbersome, lengthy, and inflexible regulatory process based on politics instead of sound science and practical economics. By entrusting regulatory powers to the legislature or outside watchdogs, it will be more difficult for industry experts to influence the shape and direction of the leafy green industry.
- In the absence of the MA, the result will undoubtedly be a continued crisis in consumer confidence, a proliferation of incoherent and contradictory metrics, and burdensome legislation and unnecessary regulation.



Current Status of the Market Agreement and Order

- The marketing agreement has been formally enacted in California and there are now 54 handlers signed on. The 54 handlers represent approximately 90% of the total volume of lettuce and leafy greens produced in California.
- April 1, 2007 is the official start date for the Marketing Agreement and Marketing Agreement Board is currently in the process of determining an assessment rate, setting up the administration of the agreement, and finalizing the inspection and verification programs.



Is there sufficient handler support for the Agreement to enable it to accomplish its goals?

- The MA should not be viewed by the industry as another burdensome regulatory obstacle, but rather, as an opportunity to promote expanded consumption of leafy green produce.
- Despite the negative publicity generated by the recent E coli outbreak, the industry currently has the attention of an otherwise indifferent public.
- By adopting best practices and promoting mandatory compliance with those practices the leafy green industry has the opportunity to reshape its image with consumers.
- If the industry takes advantage of the present situation by taking immediate action, the result could be an increase in long-term demand for leafy greens.



Can the general public benefit from the proposed Agreement?.

- Enhanced food safety guidelines with clear information on uniform implementation will raise the bar in the production and harvest operations within the supply chain and improve our abilities to prevent/minimize contamination at that level.
- Rigorous enforcement of compliance with these “best practices” under both market driven and government penalty coupled with a transparent inspection and verification program conducted by government will assure that there is a true mandatory program in place.
- While no construct can guarantee against further outbreaks of food borne illnesses, the MA is a clear indication of the leafy green industry proactively responding to market place and public concerns.
- The result will be the restoration of consumer confidence in the safety of leafy greens.



Next Steps

- We are now discussing the best methods for bringing the remainder of the industry into the system.
- It will be important to let the Marketing Agreement operate for the near term future while we move forward to enact a Market Order in California.
- To advance the Marketing Order we are considering options for a “handler” and/or “grower” order – the pros and cons of each.
- We have also been contacted by other states and are exploring the potential for similar action or programs of equivalency in those areas.



Best Practice and Metrics Development

- The development of these best practices and specific metrics began with a review of the Commodity Specific Guidance for Lettuce and Leafy Greens which was published in March of 2006
- The industry was encouraged by both the US Food and Drug Administration and the California Department of Health Services to use this recently published document as a template to which greater specificity and measurability could be added
- The first step in our process was to ensure that we had truly identified the key risk areas for the production and harvest of lettuce and leafy greens which all experts and industry member alike continue to be in the areas of
 - Water quality
 - Soil amendments
 - Adjacent land use
 - Animal activity
 - Worker sanitation and hygiene



Best Practice Development cont.

- Based on this tiered approach...industry leaders developed a “strawman” or Draft document to facilitate discussion amongst interested stakeholders
- Opinion, comment, review, critique, recommendations and input was broadly sought and encouraged
- Western Growers, United Fresh Produce Association and the California Farm Bureau Federation facilitated several months of dialogue and development with industry, academia, regulators and other interested parties to refine and improve the “strawman”
- Beginning in December of 2006 we began to circulate formal Drafts of the best practice documents
- At this point we began to receive feedback from a broader cross section of interested parties including environmental organizations, resource agencies, small farm and organic growers as well as others
- Some of the feedback was a criticism that we had not formally involved them in the development of the Drafts



Best Practice Development cont.

- While we had always encouraged and welcomed comment from all corners we took further steps to make the Drafts more accessible to the public at large by posting them on the Western Growers web site
- We also solicited comments from all of these parties by reaching out through conference calls, web based walkthroughs and meeting personally with many diverse interests and groups
- Today the industry has actively presented the proposed metrics and/or encouraged comment and input from
 - Buyers
 - Growers
 - Processors
 - Consumer Advocates
 - Environmental Organizations
 - Resource Agencies
 - Academia
 - Regulatory Agencies



Best Practice Development cont.

- In all instances where there were formal comments and suggestions we have taken great care to address and incorporate the input from all parties
- The one caveat is that we would not erode the safeguards that were being put in place to prevent contamination
- March 15, 2007 we were still receiving input from some of these parties ... which demonstrates the need to constantly improve upon and refine the best practices over time a process that is best facilitated through industry and not a formal governmental process.



Water

- Water sources and distribution systems are tested before and during production to assure the safety of this critical crop input
- Microbial Indicators with specific values are used to evaluate system performance and input quality the values in the document are based on recreational water standards which are risk based values established by USEPA for bathing swimming and incidental ingestion of water... they are rigorous and protective
- Protocols for further evaluation are established when values are exceeded
- When water integrity is uncertain additional action to test crops, treat waters are mandated



Soil Amendments

- The use of raw manure is prohibited
- Requirements for evaluating the safety of soil amendments that contain composted or heat treated animal products are established
- The requirements include a validation of the treatment process, testing for pathogens and a time interval prior to harvest
- The metrics are based on state standards for composted material
- Protocols including how to address deficiencies are established



Animal Activity

- Pre-production, pre harvest and at harvest protocols are established to evaluate whether there is evidence of intrusion of animals of significant risk
- When intrusion is observed or suspected a formal risk assessment is performed by a trained food safety expert
- If applicable, strategies to prevent intrusion and to harvest crop are developed



Adjacent Land Use

- High risk adjacent land uses are identified
 - Composting Operations
 - CAFO's
 - Compost On Adjacent Farms
 - Grazing Lands
 - Leach Fields
- A proximate safe distance from these uses is recommended
- A methodology for adjusting the safe distance based on a hazard assessment is established



Current Status of Best Practices

- The industry presented best practices as set forth in “Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens” dated March 16, 2007 at the last meeting of the Leafy Greens Marketing Agreement Technical Committee. The Technical Committee then recommended acceptance of this document as the standards for the marketing agreement with a continuing resolution to review and refine the document as industry learns more.
- This motion was approved on March 23, 2007 and the best practices were accepted as the standards to which producers and handlers will be held under the marketing agreement.

