

**Re: Docket ID AMS-FV-07-0090**

Federal Register pages 56678-56680, vol. 72, no. 192, October 4, 2007

Dear USDA Agriculture Marketing Service,

Thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking for a Marketing Agreement for Leafy Greens. These comments are provided to you on behalf of the Carolina Farm Stewardship Association (the Association), and I am the Association's Executive Director. The Association is a 501(c)(3) non-profit organization with over 1,000 members in North and South Carolina. Our members are predominantly family farms and market gardeners that use sustainable and organic production practices to produce a variety of fruit, vegetable, livestock and dairy foods. A significant number of Association members grow leafy greens, most often for direct sale to the public at farmers markets and through community-supported agriculture, as well as for direct sale to restaurants and wholesale distribution. Because of the generally prevailing climate conditions in the Carolinas, the leafy greens can be successfully grown in some part the region throughout the year, and therefore many small farmers are able to rely on leafy greens as an income source.

Any federal and/or regional regulatory regime for the handling of leafy greens therefore would have a significant economic impact on a large number of small farmers in the Carolinas, and must be crafted in such a way as to preserve the economic viability of these small scale farms. Loss of farmland in the Carolinas is moving at a rapid pace, and North Carolina in particular has lost over 6,000 farms and since 2000; a regulatory regime that disadvantages small scale sustainable farms would exacerbate this problem by forcing those farms out of business.

Over its 25-year history in promoting and assisting small sustainable and organic farms, the Association has established a high level of knowledge of the production, handling, and distribution best practices for leafy greens. Based on this experience, the Association considers that the scale and nature of a given leafy greens operation are key determining factors in crafting appropriate rules for the handling of leafy greens. It is critical that any regulatory regime, whether voluntary or mandatory, does not create unnecessary, unwarranted burdens on small scale sustainable farms and market gardeners.

As an organization comprised largely of sustainable small farmers, market gardeners, home gardeners, and the communities that support and interact with these growers, the Association is sadly aware of the undue burden that regulators have repeatedly and inappropriately placed on the small grower as a result of the problems inherent in the large-scale industrial food production model that dominates the American food supply. Regulations necessitated by the development of this industrial food system's large, national-scale industrial production methods, with their consequent requirements of hyper-efficiency and minimal labor per given food unit produced, have consistently served to inappropriately add to the capital demands and paperwork burden of the small grower. Small scale growers practicing organic and sustainable methods are producers

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who by the nature of their operation rely on labor-intensive personal attention to the health of all aspects of their operations to maximize production, including the cultivation of beneficial microbes to enhance soil fertility, reduce incidence of disease, and control harmful pathogens. These practices are undertaken in lieu of the capital intensive, low labor input methods of the industrial operation.

Moreover, because of the direct/local marketing methods small scale sustainable growers depend upon, they rely almost exclusively on the quality of their product to gain and maintain market share. Their advantage is almost never a better price than their industrial counterpart, but rather that their products stand out because of their quality, flavor, uniqueness, freshness, and keeping qualities. Most of these factors require more labor and processes that greatly reduce the likelihood of a microbial pathogen becoming established.

Because of the competitive nature of the well-functioning market in locally-based direct-sales produce, and because of their limited access to credit and capital, these growers have little to no ability to withstand the devastating effects that a food borne illness outbreak caused by their produce would have on the viability of their operations. In our typical farmer's direct/local marketing environment, there is little question for a consumer where a contaminated product came from—he recognizes the producer because he made a purchase from the grower face-to-face. Small scale sustainable growers are acutely aware of this and are very vigilant in avoiding such a catastrophe, expending major efforts and resources to insure that they have done all they can to avoid such a disaster. And because of the limited customer base of any one small scale sustainable farm, the risk to the general public of an outbreak of food borne illness is inherently limited, in sharp contrast to the risk posed by industrial-scale operations that distribute leafy greens, in particular fresh cut greens, on a regional and/or national scale.

The Association offers the following specific comments regarding particular aspects of any possible federal leafy greens handling protocols.

#### **Voluntary vs. Mandatory Nature of the Proposed Regulations**

With respect to whether any proposed leafy greens handling protocol is of a mandatory or voluntary nature, the scale and nature of a given leafy greens operation is of the utmost concern. Clearly if the nature of an operation is to produce a cut, washed, ready-to-eat product, there already are in place mandatory handling requirements enforced by state-authorized health departments. The most effective means for promoting and ensuring good handling practices for small scale sustainable farms would be a voluntary program that focused on (1) providing those growers with the latest research on the causes of pathogenic contamination; and (2) providing them with a practical preventative protocol that includes great detail regarding the science behind all research recommendations: combined with grant opportunities for community-based, state of the art processing facilities. Such a system will insure the greatest active participation of the small grower in any national effort to secure our greens from pathogenic contamination.

Any mandatory program, most especially one that failed to provide the above mentioned resources, will put many small leafy greens producers out of business. Any regulatory regime will be most effective if it takes advantage of the small grower's direct contacts with his markets, as due to those contacts, these growers already demonstrate they are willing and effective providers of safe leafy greens handling information to their customers.

### **Markets Addressed by the Proposed Regulations and Market Governance**

In your request for comments, you focus on regional vs. national implementation of any proposed leafy greens handling regime. This distinction does not address the reality of production systems—the more appropriate distinction would be based first on producer type.

For example, direct market growers of leafy greens across the nation should first determine together how to best adapt any handling program to their segment of the leafy greens industry. Only then, through regional producer groups, should this vision be submitted for the review, regional adaptation, and final approval/acceptance. Clearly the interest, needs and challenges of leafy greens production on scale and using the methods of the Association's members are much closer to similar producers in other geographical regions than they are to industrial scale operations in the Carolinas. Given the ready availability of sophisticated electronic conferencing systems, the Association envisions little or no difficulty working with our members' counterparts in other regions, and in general these technological modalities obviate any concern about the issue of distance making it impractical for committees to meet, whether the committee at issue is national and market segment-based or regional and market segment-based.

It is inappropriate to fragment the voices of the independent small producers. For example, all farmers bringing leafy greens to tailgate and farmers markets have a very high market-driven interest in arriving with very well cooled and greens that were harvested properly, quickly chilled to the ideal temperature, and properly stored. Lacking capital intensive chilling and handling systems, these growers rely on proper irrigation to insure ideal water uptake prior to harvest; harvesting very close to time of sale (often less than 18 hours and rarely more than 24); and rapid movement into a chilling system. Small scale sustainable growers in any region follow these practices to insure a product that appeals to and satisfies the customer and also reduces the time window for pathogens to develop. This especially true for areas with markets occurring two or more times per week since the market culture those growers are helping to create results in customers shopping frequently and buying only 3-4 days worth of leafy greens at a time. This very different from the large producer who can easily take the 5-6 days just to get their product in front of the customer.

With respect to the subdivision of the country into smaller regions for the purposes of committee representation and program administration, once small scale sustainable farms that direct market their leafy greens have spoken together throughout the nation, any such regional subdivisions should be based on already existing and producer and advocacy groups in which small leafy greens growers are currently stakeholders, such as the

regional Sustainable Agriculture Working Groups (SAWGs). The SAWGs are natural vehicles for such a program and already have the trust of and communication channels to this class of growers to insure that growers are a part of this process rather than having it imposed on them.

To further ensure that the interests of small scale sustainable growers are adequately represented, the Association supports a system that empowers each producer group to agree amongst its own members what approach will guarantee that any regulations affecting them insure both the safety of their products and the ongoing viability of their operations. We understand that there may be expertise available from the government that can benefit small scale sustainable producers in this process. It is critical that this expertise be made available to those producers in a manner that allows their existing, well-developed skills in creating effective handling and marketing systems to incorporate that government information into their existing systems. The handling system must not be imposed on small scale sustainable growers in a way that makes their operations harder than they need to be.

Small scale sustainable growers are constantly solving problems and educating themselves on best practices. In the Carolinas such educational opportunities include the Association's own Sustainable Agriculture Conference, the Organic Growers School, and other forums where these growers readily share what they have learned from experience with one another. This culture of mutual support and cooperation can be used to insure that small producers remain in control of their share of this program. Producer, education, and advocacy groups that are truly grower-based should be the focus points for this process. The farmers who so desire should be allowed to function through these groups with thorough documentation of which farmers these groups represent. It is also critical to create an open channel for individual, unaffiliated growers. The expressed will of each type of producer group committees described above should have the determining weight on portions of any role that directly effects that particular group. It would be totally inappropriate for the large-scale, industrial production sector to have any input on the small direct marketing or local small scale wholesale farming segment of the program.

#### **Specific Issues Any Regulatory System Should Address**

Any review of proposed regulation of leafy greens handling should first consider whether a Marketing Agreement or a Marketing Order are even appropriate models when seeking to protect food safety on a national scale. In the past, both models have typically allowed a small board of processors and handlers to set the rules for all farms in the nation that wish to sell their vegetables to processors. This has placed disproportionate power in the hands of large operations and corporations that have typically been represented on these boards. It would be inappropriate to institute a national or a system of regional boards that is not segmented based on the scale and nature of the operations governed, as described in the section above, because it would provide government-sanctioned authority to dictate the growing practices for all other farms—large or small—in the nation to entities that would not reflect the diversity of the industry.

Another issue is that appropriate guidelines, suitable for small as well as large farms, have not yet been developed. For example, the California Leafy Green Marketing Agreement (LGMA) guidelines have already been implicated in two recalls, showing that more research is needed before a set of uniform standards can be required throughout the nation.

As discussed above, it is critical that any federal regulations do not discriminate against the many farmers who employ organic farming practices and farmers who promote biodiversity on farms. Any conflict between any leafy greens handling rules and the National Organic Program standards must be resolved in favor of the NOP.

Another issue is that the risk of *E. coli* 0157 contamination comes predominantly from “fresh cut” lettuce and spinach—the pre-washed, pre-cut bags of greens that have recently become so popular. Food safety science firmly establishes that the conditions inherent in cutting, washing, and bagging leafy greens are highly conducive to *E. coli* 0157 contamination risk, relative to the handling processes for leafy greens that are not cut, washed and bagged. Therefore, even if the USDA were to require standardized growing practices, such practices should apply only to large-scale suppliers of “fresh-cut” bags of leafy greens, and exclude whole leafy greens that have never been implicated in an *E. coli* 0157 outbreak, such as kale, arugula, and chard. A one-size-fits-all approach is totally inappropriate in addressing this important health and environmental rulemaking proposal.

Another issue is the fact, discussed above, that the scale and nature of the farming operation must be considered in any rulemaking, and rules should be tailored to the scale and nature of segments of the leafy greens market so that they do not create costly and overly burdensome requirements for to small- and medium-scale growers, which otherwise could potentially drive these farmers out of business. A cost-benefit analysis must be employed in establishing handling standards, appropriate to the scale and nature of the type of operation, that ensure the rights of small scale sustainable farms to compete in the marketplace. The solutions for addressing any handling safety issues applicable to small-scale sustainable farms must be tailored to those farms, and must not result in demands for capital investments beyond the financial reach of those farms, nor in paperwork burdens that are outsized relative to the nature and scale of these operations. The solutions for this market will only be cost-effective if they take advantage of the natural relationships between this farms and the customers to whom they direct market.

Another issue is the necessity that any federally-based handling standards ensure the allocation of reasonable and sufficient resources to educating small farms about best handling practices, and to transferring appropriate technology to those farms, in order to protect the economic viability of those farms. Federal authorities would have an obligation under a federally-based handling system to ensure the effective, practical communication of the science regarding the movement of pathogens within agriculture and the mechanisms of contamination, as well as access to appropriate technology, to small-scale farms. And this educational obligation would extend to the education of inspectors under the system, to ensure that those inspectors are aware and supportive of

the handling standards and practices appropriate to the scale and nature of small scale, sustainable and organic farming operations.

Finally, any proposed regime of handling rules must address and acknowledge the proven effectiveness of sustainable farming practices that mimic and incorporate the functioning of natural environmental systems, in conjunction with the competitive nature of the well-functioning, locally-based direct-sales produce market, in limiting the risk of pathogen contamination of leafy greens. To a significant extent, any federal regulation system will be duplicative of this proven, market-based model. The Association observes that a more strategic and cost-effective approach to leafy greens handling that protects the health of the consumer and the economic viability of small farms would be the investment of government resources in the development of processing infrastructure accessible to small farms, infrastructure that would be governed by existing health and safety inspection regimes, rather than in the creation of new, largely duplicative, and burdensome regulatory schemes.

Thank you for your consideration of the Association's comments. I welcome you to contact me further for any additional information that the Association may be able to provide, and look forward to continuing dialog between the USDA Agricultural Marketing Service and the sustainable farming community on this and other related issues of concern.

Sincerely,



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