

USDA-AMS Proposed Rule;
**Leafy Green Vegetables Handled in the United States; Hearing
on Proposed Marketing Agreement No. 970**

Docket No. FV09-970-1

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Renaissance Syracuse Hotel
701 East Genesee Street
Syracuse, NY

Presented by New Jersey Department of Agriculture
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EX. 127

Introduction

New Jersey farmers and related food businesses are well aware of the need for strengthening the food-safety system and the potential that a National Marketing Agreement Regulating Leafy Green Vegetables could have to achieve this goal, and increase consumer confidence in leafy green vegetables.

Food borne illness outbreaks over the past several years – *E. coli* in spinach in 2006, *salmonella saintpaul* in 2008 (that was first linked to tomatoes but later determined to originate in imported peppers) – have impacted New Jersey farmers through lost consumer confidence and sales, even though none of the produce in question came from a New Jersey farm.

The resulting fall-out of the 2006 spinach outbreak led the New Jersey Department of Agriculture (NJDA) to form a Produce Safety Task Force to deal with issues of food safety and to respond quickly with accurate information for consumers worried that a recall or illness outbreak applies to New Jersey produce.

The Task Force includes representation from the NJDA, the NJ Department of Health and Senior Services, Rutgers University, Rutgers Cooperative Extension, and various sectors of the produce marketing chain, from growers through retailers and restaurateurs.

On April 13, 2007, the Task Force presented testimony to the FDA during hearings on produce safety in College Park, Maryland. Much of what was said that day continues to hold true, and applies to this proposal. We do not dispute the risks addressed in the proposed rule concerning leafy green vegetables, nor the need for agricultural producers to be more mindful of food safety if they hope to remain competitive in the marketplace.

We recognize that participation in the proposed agreement remains voluntary – *at this time*. We also recognize that the industry has been proactive by introducing programs such as third party auditing systems, good agricultural practices, or farm products traceability to help mitigate the threat of food-borne illnesses to our nation's food supply.

It is our contention that the components of the proposed program must be tailored to reflect the diversity of all our growers and their farms. This includes standards that are attainable regardless of farm size, climate, environmental factors, growing practices, and regional differences.

It is with this thought in mind – that today's suggestions can easily become tomorrow's mandates – that the Task Force has reviewed and discussed the proposed rule and submits the following comments as the consensus opinion of this group.

Overview of Industry

While New Jersey might be viewed as one of the smaller states in the nation, farming remains an important and viable part of our state. Agriculture remains New Jersey's third largest industry bringing in farm gate receipts totaling over \$1.1 Billion dollars annually.

Leafy green vegetables are an important crop in New Jersey. Because of our climate, many different types of leafy green vegetables are grown primarily in the spring and the fall. Since the National Agricultural Statistics office does not keep complete data on all leafy green vegetables grown in New Jersey, I hesitate to give specific numbers. What we do know, is that lettuces, cabbage, collards, endive, escarole, kale, and spinach are grown on 6,800 acres. The value of these items totals over \$32.6 million dollars. However, the statistics kept by the National Agricultural Statistics Service does not take into account that our farmers also grow broccoli rabe, dandelion, spring mix, red and green chards, mustard greens, turnip tops, parsley, and a host of ethnic greens, and herbs.

Farm Size Matters

Like many other Northeastern and Mid-Atlantic States, New Jersey's agricultural industry consists of small, family-owned farms. Very few of our 10,300 farms encompass more than 1,000 acres. Rather, the average New Jersey farm is comprised of just 71 acres.

The Task Force is not suggesting that smaller farms should be exempted from produce safety regulations. In fact, ensuring that smaller farm operators are trained in food safety practices and prepared to undertake third-party audits using USDA standards has been the main focus of the Task Force since its inception.

Rutgers Cooperative Extension and the New Jersey Department of Agriculture have worked together to train over 1,500 New Jersey fruit and vegetable farmers in the basics of food safety. Many have continued on to pass third party audits.

As you are all aware, in recent years, consumers have renewed their appreciation for locally grown farm products. As the public debates issues such as "global warming", "carbon footprints", "food miles" and other issues, consumers have increasingly turned to their local farmer and demand for locally grown products has significantly risen.

It is our concern that any metrics resulting from this proposal take into account the small, family farm. There remains a fear in our industry that any metrics resulting from this program may not be attainable for the small farmer, or might require large capital investments that are not cost-effective for the size of the operation. To some, there even exists a suspicion that this proposal is a way for the larger growers to drive out the smaller ones.

Audit standards

One of the more frustrating aspects of enhancing food safety measures on the farm is the question of what standards are used.

Unlike many large agri-businesses, smaller New Jersey and Northeastern farmers tend to grow a variety of fruits and vegetables on a single farm. This often is due to them either operating a market or farmstand at their farm or participating in one or more off-site community farmers markets, both of which require offering an array of items to the consumer instead of concentrating on just one crop for the commodities market.

However, those same farmers also frequently sell to retailers, either directly or through a broker, and those retailers often have numerous audit standards that must be met. This can lead to farmers having to pay for and pass several third-party audits in order to continue selling their produce.

We believe that if this program is implemented properly, one important result should include a universally accepted set of standards for leafy green vegetables. We recommend such standards would be customized to the different growing zones, thus taking into account different soil types, water sources, growing practices, etc.

Our farmers would no longer endure the burden of complying with different standards for different customers, or being forced to contract with multiple third party auditing firms as specified by different customers.

Zones

Another concern we have noted, revolves around the composition of the 5 zones. In addition to New Jersey, Zone 5 also consists of: Maine, New Hampshire, Vermont, New York, Connecticut, Massachusetts, Pennsylvania, West Virginia, Maryland, Delaware, Rhode Island, North Carolina, South Carolina, Florida, and the District of Columbia. It is noted that Zone 1 consists of 5 states, Zone 2 consists of 8 states, Zone 3 consists of 11 states, Zone 4 consists of 10 states, and Zone 5 consists of 16 states and a District.

While we recognize that the zones are probably based on production and landmass, we note that Zone 1 will be represented by four handlers and two producers. While we don't discount the importance of the leafy green vegetable growers of Hawaii and Alaska, this zone will be essentially representing California, Washington and Oregon with four handlers and two producers.

Meanwhile, Zone 5's 16 states will be represented by two handlers and a producer. Each of the states that comprise Zone 5 is unique unto themselves. Each has different soil types, water sources, growing seasons, varied production practices, and marketing channels. We recommend that a mechanism be put into place that allows each Zone to devise metrics that are relevant to their respective environment.

The September 3rd copy of the Federal Register references the Technical Review Board and its role to assist in developing metrics. In section 970.45, it reads, "The Technical Review Board may appoint subcommittees as necessary to facilitate input and review from regions throughout the production area." We believe the word "may" should be

changed to “*shall*”, whereby the Technical Review Board shall appoint subcommittees. This will give better representation and input from a zone such as Zone 5 that represents a large amount of states.

Conclusion

There is no doubt that a National Leafy Green Vegetable Marketing Agreement has great potential to help mitigate the threat of food borne illnesses while helping foster consumer confidence in leafy green vegetables.

However, all efforts should be made to create a program that recognizes the diversity of agricultural practices and is offered to farmers at an affordable cost that takes into account their farm size, unique environmental factors, and geographical differences.

Further, once a set of metrics has been agreed upon, they should serve as a universal standard, thus freeing the growers from multiple demands.

Finally, each of the established zones should have the ability to develop metrics that are consistent with the uniqueness of their respective industries.

On behalf of the New Jersey Department of Agriculture and the New Jersey Produce Safety Task Force, thank you for the opportunity to present our comments.