



COMMUNITY ALLIANCE
WITH FAMILY FARMERS

December 2, 2009

Food Safety Policy Processes that will affect Produce Growers

1. President's Food Safety Working Group

<http://www.foodsafetyworkinggroup.gov/>

The White House convened a task force in mid-2009, which includes FDA and USDA, to move forward on food safety measures that do not involve congressional action. Their activities are detailed at the web site, but include action by FDA as follows.

2. FDA draft guidance for Melons, Tomatoes, and Leafy Greens

<http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/FruitsVegetablesJuices/FDAProduceSafetyActivities/ucm174086.htm>

The FDA issued draft food safety guidance for melons, tomatoes, and leafy greens on July 31, 2009. The guidances may be found at this web site. The public comment period has been extended until January 4, 2010.

“The guidances are, in part, based on those originally developed by the produce industry with assistance from FDA. They represent the first step in a fundamental shift in strategy for the agency in the prevention of foodborne hazards associated with fresh fruits and vegetables.

“These guidances embody the Obama Administration’s and FDA’s prevention-oriented food safety strategy,” said FDA Commissioner Margaret A. Hamburg, M.D. “They will be made final as soon as possible after public comment, and will be followed within two years by enforceable standards for fresh produce.”

3. National Leafy Greens Marketing Agreement

Western Growers and other organizations proposed to create a National Leafy Greens Handler Marketing Agreement similar to the California and Arizona LGMAs. Their proposal and arguments can be found at:

<http://www.nlgma.org/index.php>

USDA Agricultural Marketing Service would administer this proposed NLGMA. They held a series of hearings on the proposal around the country this fall. CAFF testified at the Monterey hearing, where we argued that the scope of the proposal should be limited to the leafy greens

processing industry, since there is no evidence that whole leafy greens are making people ill. All testimony can be viewed at:

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=Proposed-LeafyGreensMarketingAgreement&rightNav1=Proposed-LeafyGreensMarketingAgreement&topNav=&leftNav=&page=LeafyGreensProposal&resultType=&acct=fvmktord>

Interested persons may submit proposed findings and conclusions, and written arguments or briefs based upon evidence received at the hearings listed above. Post-hearing materials should be submitted to the hearing clerk at the following address. The judge has set **January 13, 2010**, as the deadline for these documents.

Four copies of all filings should be submitted with **Docket No. AO-FV-09-0138; AMS-FV-09-0029; FV09-970-1** on all copies to:

Hearing Clerk
Office of the Administrative Law Judge
Room 1031-S
1400 Independence Avenue SW, Stop 9203
Washington, D.C. 20250-9203
(202) 720-4440 (phone)
(202) 720-9776 (fax)

4. Federal Legislation: HR 2749, S 510

The House of Representatives passed HR 2749 in June 2009, a bill to reform the FDA and give it more money and power over food safety. The US Senate is considering similar legislation, S 510, the Food Safety Modernization Act. The Senate bill passed out of committee on November 18, 2009 and could be considered on the Senate floor at any time.

Both of these bills can be viewed at: <http://thomas.loc.gov/> Just type in HR 2749 or S 510. The bills are being pushed by a coalition of consumer groups and the Pew Foundation. The bills just deal with the FDA and its authority, they do not affect USDA's food safety activities in the meat industry.

CAFF has been working with the National Sustainable Agriculture Coalition, the National Farmers Union, and other groups to try to limit the impact on farms. We agree that more attention needs to be paid to food processors and imported food, but we do not agree that farmers in the United States are the main food safety problem. We are particularly concerned about requirements to register as a food "facility" with FDA, as required by the 2002 Bioterrorism Act, which would lead to a variety of requirements. Here is a discussion about registration from the Maine Organic farmers:

Yes, farms are exempt. You can grow and harvest pretty much anything you want. (and that includes milking cows or catching fish, etc.) As defined below, you can wash, trim outer leaves, and cool produce. You can pack food, as long as it all from your own

farm. You can manufacture/process food, again as long as it is all from your own farm. You can also sell that food, so long as at least 50.01% is sold directly to individual consumers. You can even become a retail food store (like a farmstand) and do some of these activities by mixing inputs from other farms, again so long as you sell at least 50.01% directly to individual consumers.

But all of these actions that are legal when selling to individuals (harvesting, packing, manufacturing, and even mixing) turn you into a mixed-use facility when you sell more than 50.01% into wholesale markets. And certain activities make you into a facility faster than that: making juice, growing sprouts, processing seafood, at the least. It's not clear whether its 50.01% of the total farm activities, or just 50.01% of an activity that would otherwise be regulated.

Essentially the definition carves out a fairly large space for people who are primarily direct marketers, and very little space for people who want to wholesale. In Maine, we consider the chefs and retailers we work with to be individuals because they own their own stores and restaurants, and we work directly with them or their buyers. But that's not how the FDA views the world, even under existing regulations. That was fine when they weren't paying a lot of attention to what's happening at this level. But under the Legislation, you go from not being in compliance with an online registration system (under the Bioterrorism Act) to not being in compliance with: online registration; a fee (House bill-\$500/year); needing to have a food safety plan; needing to have a food defense plan; and need for a traceability system. Some of these are easily resolved. Others are not.

I have attached a letter that our coalition recently wrote to the Senate about our concerns about the bills. I have also attached some examples from the Maine farmers about who will need to register.

5. Traceability

The FDA and the USDA are stepping up their efforts to impose traceability requirements on food. A hearing is planned for next week:

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm189311.htm>

The FDA has also contracted with the Institute of Food Technologists to investigate how to implement traceability requirements. Their initial report is at:

<http://www.ift.org/cms/?pid=1002160>

PMA and United Fresh are leading a Produce Traceability Initiative with the goal of having electronic traceability of every box of fresh produce by 2012.

<http://www.producetraceability.org/>

The legislation discussed above does have traceability requirements in it.

6. GAPS

There are many efforts underway to develop generic GAPS for produce growers. Although the produce industry has insisted on crop-specific GAPS, many diversified farms would have difficulty complying with multiple audits. You can see the range of crop specific GAPS at http://www.unitedfresh.org/newsviews/food_safety_resource_center/industry_produce_safety_initiatives . Here is a sampling of other initiatives:

- United Fresh is sponsoring an effort by the large produce buyers, such as McDonalds and Wal Mart, to harmonize their audit requirements and GAPS. Contact Dave Gombas at United Fresh, 202-303-3400 ext. 411.
- Community Food Security Coalition is trying to develop some small farm GAPS that could be used with schools and institutional buyers. CAFF is participating in this effort.
- Familyfarmed.org is collaborating with Earthbound Farm, FDA, and USDA to create some small farm GAPS that can serve as a basis for an on-line tool that would allow farmers to create their own food safety plans. CAFF is participating in this effort.