



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 15 2009

Michael Durando
Chief
Marketing Order Administration Branch
Fruit and Vegetable Programs
Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1406-South
Washington, DC 20250

RE: Proposed National Marketing Agreement for Leafy Green Vegetables

Dear Mr. Durando:

The U.S. Environmental Protection Agency, Region 9, covers the states of California, Hawaii, Arizona, Nevada, the Pacific Basin, and includes 147 federally recognized tribes. EPA has an interest in commenting on the leafy greens industry's proposal and the USDA regulatory framework for the National Leafy Greens Marketing Agreement (NLGMA) because of our concerns and experience with the California LGMA developed by the Western Growers Association.

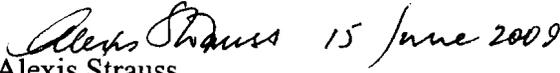
The purpose of our comments is to support a NLGMA which provides for the co-management of food safety goals and environmental goals. We wish to avoid or prevent those practices or metrics which contribute to the degradation of water quality and wildlife habitat and are not scientifically based. These practices have become known as "supermetrics" and, despite a dearth of conclusive data relative to their contribution to food safety, proliferate nonetheless.

We also have an interest in environmental and wildlife representation on the various committees being suggested at the national and regional levels as operational rules, regulations and metrics are developed. We believe this will promote the co-management of food safety and environmental goals.

We appreciate the stated purpose of the NLGMA to include fostering greater collaboration with local, state and federal regulators. We hope this will be further expanded to describe the process by which USDA, FDA and the proponents will partner to ensure there are no conflicts with other regulations or conservation programs. This has much significance in Region 9 as the west (especially California, Arizona and, to a lesser degree, Hawaii) dominates leafy green production.

Thank you for the opportunity to comment on this very complex and challenging issue.
We have attached our specific comments.

Sincerely yours,

 15 June 2009
Alexis Strauss
Director, Water Division

Enclosure

Cc: Wendy Fink-Weber, Western Growers
Ray Gilmer, United Fresh Produce
Julia Stewart, Produce Marketing Association
Melissa Schmaedick, USDA/AMS/FV/MOAB
Larry Elworth, Agriculture Counselor, USEPA
Mike Shapiro, Office of Water, USEPA

Enclosure

Specific EPA Comments

1. The NLGMA must ensure the best available science that supports good agricultural, handling, and management practices. It should put in place requirements to prevent or reduce the spread of those practices or metrics which go beyond those accepted in the NLGMA (i.e., "supermetrics") which do harm to the environment and are counterproductive to food safety goals (e.g., bare earth buffers, deer fences, removal of hedgerows, etc.).
2. EPA supports a public process in the development of the National Leafy Greens Marketing Agreement as proposed through a series of public hearings across the country to ensure transparency and scientific credibility.
3. The NLGMA should define leafy greens and limit the regulatory scope to fresh cut leafy greens that are processed, bagged and eaten raw. Bunched crops such as spinach, kale and chard, or whole heads of lettuce which are not processed nor the sources of past E.coli 0157:H7 illnesses since 1999 (U.S. Food and Drug Administration data) should not be listed. Reducing the scope of leafy green crops would reduce conservation conflicts.
4. USDA's consultation with other federal or state agencies in the development of the metrics or practices should follow a process to ensure their input is duly considered and responded to.
5. Representation of environmental, water quality and wildlife interests must be included in the Leafy Greens Administrative Committee (national/regional) and the Technical Review Board (and any other subcommittees or advisory boards that may be established, as appropriate). A more diverse committee structure is an asset to designing the constructs for co-management of food safety and environmental goals. In addition, the NLGMA and its practices and metrics must be mindful of, if not consistent with, pertinent environmental regulations and conservation programs.
6. EPA promotes agricultural conservation practices as a means to address and implement Clean Water Act (CWA) programs such as nonpoint source pollution, wetlands, and impaired waters (total maximum daily loads or TMDLs). It is important that the NLGMA recognizes the need to avoid conflict with our CWA goals and objectives for water quality and its beneficial uses.
7. As a federal action, will the NLGMA and its practices trigger NEPA review? ESA consultation (i.e., sections 7 and 9)?
8. Targeted animals should be defined as those scientifically known to be a significant risk as carriers of pathogens, especially E.coli 0157:H7. Deer should not be listed as an animal of significant risk unless compelling new research proves otherwise.
9. Practices and metrics should be defined in an explicit and precise manner to avoid ambiguity and the potential for subjective interpretation by growers, handlers or auditors.