California Regional Water Quality Control Board
Central Coast Region

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Docket Clerk
Marketing Order Administration Branch
Fruit and Vegetable Programs
AMS, USDA
1400 Independence Avenue SW, STOP 0237
Washington, D.C. 20250-0237

To Whom It May Concern:

Re: Comments on the advanced notice of proposed rule making for the establishment of a marketing program to address the handling of fresh and fresh cut leafy green vegetables as published in Vol. 72, No. 192, page 56678 of the Federal Register on October 4, 2007, Docket No. AMS-FV-07-0090; FV07-962-1 AN.

These comments are submitted on behalf of the Central Coast and Los Angeles Regional Water Quality Control Boards (Water Boards) in response to the call for comments from the United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS). The Water Boards are part of nine Regional Boards that regulate agricultural and other point and non-point source discharges to waters of California and protect the beneficial uses of these waters. The Water Boards listed above have programs that regulate a combined total of over 500,000 acres of agricultural crop land within the state of California. We are concerned with how the current response to food safety requirements in California is affecting waters of the state and how a federal marketing program might also affect waters of the state and their beneficial uses.

After the tragic September 2006 outbreak of E. coli 0157:H7 in spinach, California's agricultural industry developed the California Leafy Greens Marketing Agreement (LGMA) and associated Good Agricultural Practices (GAPS) in order to decrease the risk of such contamination happening again. Unfortunately, alongside the development of the LGMA and GAPS, there appears to be a competition by buyers and retailers to lay claim to the "safest" food by calling for increased requirements that go above and beyond what is called for in the LGMA GAPS. The combination of the LGMA GAPS and market driven practices has resulted in large expanses of bare dirt buffers, increased on-farm use of chlorine and copper sulfate, miles of deer fences along

riparian and migration corridors, abandoned tailwater recycling systems and streams and water conveyance systems void of vegetation where it previously existed. There have even been calls for up to 800 foot bare dirt buffers and up to one mile buffers from confined animal feeding operations.

As you can see, in California, we are currently seeing widespread abandonment of conservation practices known to reduce the movement of sediment, pesticides and nutrients into streams and rivers. The above mentioned food safety practices have set us back many years in the progress we have collectively made with our growers to develop on-farm conservation practices. Many farmers are being forced to choose between selling their crops and keeping conservation practices in place. Any marketing program brought forth by the USDA AMS must put an end to the unnecessary conflict between conservation and food safety practices. We believe that conservation practices and food safety practices can and should co-exist and have provided the following responses to select questions from your request with this in mind:

2. Would such a program be better implemented on a national or a regional basis?

   A regional basis would give such a program the flexibility to adapt to regional variations due to environmental, crop and growing conditions. However, we are concerned that a regional approach would allow for the same "one-upmanship" we are currently experiencing between competing retailers. Any program should set caps or ceilings on requirements that includes a disincentive for going above and beyond the requirements.

4. How should committee membership be allocated to adequately represent the interests of industry throughout all regions of the United States?

   Representation should be weighted toward regions that produce the majority of leafy greens. However, all regions that grow leafy greens should be represented.

   We feel strongly that any administrative committee and/or regulatory crafting committee formed as a result of this rulemaking include members that represent wildlife, water quality and small farmer concerns. Agricultural non-profit groups and academia are very important to include on the committee too.

5. What process should the committee follow to recommend regulations appropriate to the various regions? For example, would regulations for handling leafy greens on the east coast differ from those on the west coast, and if so, how should the administrative committee address the differences while developing recommendations for regulations?

There could be a nationwide set of umbrella regulations overarching individual region-wide regulations. All regulations should have cross-disciplinary peer review to account for scientific validity and regional variations.

6. What specific problems or issues should be addressed by such a marketing program?

   Many of the negative consequences to water quality and beneficial uses we are experiencing in California are based on practices that have no scientific basis for improving food safety. It is imperative that the AMS focus on what is scientifically known and where more research is needed before sacrificing water quality for little or no food safety improvement.

   In order to put a stop to the market driven practice of food safety one-upmanship previously described, it is imperative that any food safety requirements developed by the AMS provide for a ceiling on requirements that includes a disincentive for going above and beyond the requirements.

7. Would Best Practices based upon FDA guidelines be the best criteria for regulation of leafy greens handling, or are there other criteria available that might better meet the industry's needs?

   Since some regulatory agencies and non-governmental organizations have already commented on the California LGMA GAPS, we suggest that this would be a good starting point for the AMS. However, if the AMS adopts best practices that have already been crafted, we suggest that formal cross-disciplinary scientific peer review occurs before the AMS adopts them. At a minimum, the peer review panel should be independent and include food safety, water quality and wildlife expertise. The committee that approves these practices should also consist of members that represent water quality and wildlife.

   The California LGMA GAPS refers to animals of significant risk. We like that the food safety requirements are focused on animals that matter most to the safety of the general public at large. However, we do not believe that the scientific literature supports including deer on this list of animals of significant risk. Including deer on the list may have little effect on food safety while it does have negative consequences to riparian functions and wildlife migration. We would like the AMS to consider focusing regulations on animals of significant risk similar to the California LGMA GAPS but without the inclusion of deer.
   Additionally, studies indicate that vegetated filter strips can help attenuate almost 100% of total E. coli.[1] This information indicates bare dirt buffers might actually

[1] Tate and Atwell et. al., "Significant *Escherichia coli* Attenuation by Vegetative Buffers on Annual Grasslands." *Journal of Environmental Quality*, 35:795-805.

hinder food safety whereas research has shown that vegetated buffers help. Also, the many water quality benefits that vegetation provides are well known and researched. Any buffers required by the AMS must specify that they be vegetated buffers.

8. Which specific leafy green commodities should be included under the program's handling regulations?

   Based on FDA data since 1999, 98.5% of E. coli 0157:H7 illnesses from leafy greens in California have been traced to processed, bagged leafy greens. For this reason, the focus of the regulation should be on bagged "ready-to-eat" leafy greens only.

9. What are potential obstacles to the implementation of such a marketing program? For example, would distance make it impractical for the committee to meet frequently? Might regional subcommittees be appointed to meet more frequently and consider local matters for presentation at annual committee meetings?

   A potential obstacle, as mentioned earlier, would be for the marketing program to develop without some sort of imposed ceiling. Without a ceiling on management practices, the marketing program and management practices are in danger of becoming obsolete against competing interests and practices.

10. What are the potential costs associated with the implementation of such a program, including changes to current production and handling procedures, assessments, and audits?

    Millions in federal and state taxpayer dollars have been invested in on-farm environmental stewardship programs. As mentioned previously, the negative effects to this investment in the environment is already felt in California, as seen in the removal of vast amounts of on-farm vegetation and other environmental stewardship projects, and would spread to a nation-wide level if appropriate environmental considerations are not taken into account during the development and implementation of a federal marketing program.

    Also, maintaining excessive bare strips is very costly, adds to the cost of food production needlessly, and requires a lot more fuel to be burned by farm equipment, thereby increasing the carbon footprint.

11. How would a marketing program complement, duplicate, or conflict with any other existing programs, such as state food safety regulations?

A federal marketing program should compliment our existing water quality objectives, beneficial uses and existing agricultural regulatory programs. A process with a formalized structure for public and agency input that includes scientific peer review should be considered.

The development of an environmental document in accordance with NEPA 40 C.F.R. § 1508.18 (a) would provide some of the structure for public and agency input.

12. Are there other issues and/or suggestions about such a marketing program?

With respect to this rulemaking, the AMS's advance notice of proposed rulemaking does not indicate the measures the agency will take to ensure compliance with the National Environmental Policy Act (NEPA). In general, "new or revised agency rules, regulations . . . or procedures," such as this rule, constitute "major federal actions" requiring an EA or EIS pursuant to NEPA 40 C.F.R. § 1508.18 (a). As part of this rulemaking, NEPA must be adequately addressed.

In closing, we believe that a combination of public NEPA review, an administrative committee inclusive of wildlife and water quality representation, cross-disciplinary peer review and a ceiling on requirements will help to avoid conflicts, like we are seeing in California, with existing water quality and wildlife regulations. On behalf of the Water Boards listed below, I thank you in advance for your consideration of water quality impacts during the development of any AMS marketing program. If you have questions, please contact Jill Wilson, Environmental Scientist at 805-542-4762, or by email at jwilson@waterboards.ca.gov

Sincerely,

Roger W. Briggs
Executive Officer

Tracy J. Egoscue, Executive Officer, Los Angeles Regional Water Quality Control Board

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