

**DEPARTMENT OF FISH AND GAME**

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Central Region
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November 29, 2007

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

Dear Sir:

**Handling Regulations for Leafy Greens Under the
Agricultural Marketing Agreement Act of 1937
Docket No. AMS-FV-07-0090; FV07-962-1 AN
Federal Register Vol. 72, No. 192, Pages 56678 to 56680
October 4, 2007**

The California Department of Fish and Game (Department) has reviewed the above Proposed Rule to establish a national marketing program for handling fresh leafy green vegetables. The U.S. Department of Agricultural (USDA) is proposing to establish a marketing agreement, rather than an order, to develop and use Good Agricultural Practices (GAPs)/Best Practices (BPs) for safer handling of leafy green products by "handlers". This initiative, in part, is a result of the September 2006 *Escherichia coli* outbreak in spinach in California and the industry's request to develop a nationwide marketing agreement similar to the California State Marketing Agreement (California Agreement).

The Department has been communicating and collaborating with a number of agricultural and environmental entities, local, state and federal agencies and private organizations regarding California's Marketing Agreement and the impacts of this Agreement to the California environment, particularly to wildlife, fish and the habitats they depend upon for survival. The Department encourages you to carefully consider broad participation in the development of the National Agreement. We urge you to consider the inclusion of organized scientific research and to structure the Agreement so the integration of key research findings can occur adaptively as better information becomes available. Environmental compliance under pertinent State and Federal laws and regulations is a key consideration in the construct and implementation of the Agreement. How such an Agreement is interpreted and implemented on the ground by the various elements in this industry (e.g. farmers, government auditors, buyers, handlers, marketing agents, retailers,

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etc.) is extremely critical. We encourage you to consider and avoid the affects of so-called "Super Metrics" which are a concern here in California.

The federal agreement and orders would be administered by industry representatives selected by the USDA as we understand your proposed approach. We recommend that the USDA openly include all stakeholders in the development phase of such a National Marketing Agreement. Participants could include growers (large and small), auditors, handlers, buyers, the environmental community, fish and wildlife agencies, and consumer groups in the development of the Agreement.

The California Agreement lists a number of requirements, commonly referred to as the "Metrics", which includes on-farm measures or actions to discourage or eliminate wildlife and habitat. The parties developing the Agreement broadly presumed that wildlife were responsible for transmission of the pathogenic bacteria within the vicinity of vegetable production fields. Although we recognize the wisdom of erring in favor of human health, the approach has unnecessarily impacted many unintended species and habitats in our view. Because no organized mechanism was incorporated into this Agreement to confirm/refute the assumed roles of the diverse wildlife species in California in the transmission of the pathogenic bacteria, farmers, handlers, buyers and others in the industry are placed in a no-win situation, and natural resources are sacrificed regardless of their actual role. Again, we recognize the priority of protecting human health, yet believe such Agreements can be structured more articulately to help in food safety and do a better job in protecting natural resources. In California, we are experiencing unintended results such as buyers and auditors requiring growers to go above and beyond the California Metrics, (referred to as the "Super Metrics" by some Stakeholders).

For at least the past decade, farm and environmental programs have encouraged growers to selectively convert portions of their land from "clean" farming practices to more environmental friendly programs, by re-planting or maintaining areas of riparian vegetation, grass strips, hedge rows, and constructing sediment basins in co-operation with State programs and the USDA Natural Resources Conservation Districts (NRCS), local Conservation Districts and State Wildlife Agencies. Significant public financing has been provided for these programs. Their primary purposes are for soil conservation and to improve water quality by capturing sediments, nutrients (i.e. fertilizers), pesticides, and pathogens, and to benefit habitat for fish and wildlife improvements for population maintenance. We encourage you to consider integrating such programs into the National Agreement as an additional tool to improve food safety while also helping landowners/operators to help protect natural resource values.

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As an element of the GAPs, growers in the Salinas Valley area of California are encouraged to remove habitat and to maintain barren land buffers, erect six to eight-foot fences, and indirectly to trap, shoot, and poison an array of wildlife species assumed at the onset of the Agreement to have some role in conveying pathogenic bacterial concern. The loss of habitat can degrade water quality in some areas. Fences along rivers and streams can and do block movement corridors, trap, or otherwise prevent wildlife from moving to higher ground during a flood event. Animals and birds can randomly be poisoned by the placement of baiting stations or the free spread of poisoned seed. Ponds, creeks and even groundwater may be poisoned to eliminate fish and frogs.

We are receiving more requests for Depredation permits to remove deer and elk pursuant to Fish and Game Code Sections 4181.5 and 4181 under the assumption that these animals are carriers of *E. coli* 0157:H7. We have begun some pilot sampling just recently to confirm this assumption made by those who developed the California Agreement. The above practices are resulting from growers who are indeed concerned for wildlife and the laws to protect them and their habitats, yet must meet the letter and intent of the California Agreement to survive economically. The "Super Metrics" only exacerbate this pressure. Absent the development of sound scientific evidence and ongoing information to confirm the assumed role that diverse wildlife species may have in advancing improved food safety, the losses of public trust resources may have no basis in fact, yet losses remain unmitigated, and little or no gain in food safety occurs. This "perception" issue should be considered in the development of the National Agreement.

We are beginning to work with partners here in California to address these oversights. We encourage you to incorporate ample processes on the front end of your Agreement development to avoid this situation nationally. It is unclear to us at this time how the National Agreement and the California Agreement will articulate together. Here again, we encourage your careful consideration for fish, wildlife and their habitat at both the policy and operational levels. Given the interplay between state and federal programs, we advocate due consideration such that State and National Agreements are compatible in improving food safety, farming viability, and help protect natural resources by helping farmers continue to be good stewards of their land.

In summary, we recommend a Federal Marketing Agreement include adaptive measures to protect water quality, fish and wildlife and their habitats, and mechanism to research and evaluate their roles at the onset. This requires direct engagement of the agencies with that expertise and responsibility in the development of the Agreement terms, GAPs/BPs. Ongoing scientific research

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should be coordinated and the Agreement should allow for key results to be adaptively integrated to allow the Agreement to remain cogent over time. The marketing agreement could include provisions to clarify how the Federal government will help manage outbreaks/incidents in co-operation with the appropriate water quality and fish and wildlife agencies along with the growers and the industry in the states. Such an approach should recognize the important role that agriculture provides in sustaining wildlife and habitat and consider integration of on-farm habitat incentive programs as an element of food safety.

Thank you for this opportunity to comment. If you have any questions regarding these comments please contact Dr. Andrew Gordus, Staff Environmental Scientist, at the address or telephone number provided on this letterhead.

Sincerely,



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