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

29 November 2007

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

RE: Handling Regulations for Leafy Greens Under the Agricultural Marketing Agreement Act of 1937 [Docket No. AMS-FV-0090; FV07-962-1 AN]

Dear Sir or Madam:

U.S. Environmental Protection Agency, Region 9, covers the states of California, Hawaii, Nevada, Arizona, the Pacific Basin, and includes 147 federally recognized tribes. EPA has an interest in commenting on the USDA Agricultural Marketing Services' advance notice of proposed rulemaking for regulations of leafy greens (7 CFR Part 962) given our authority under the Clean Water Act, sections 303(d) [water quality standards] and 319(h) [nonpoint source pollution], and because of our direct experience with the 2007 Leafy Greens Marketing Agreement developed by the Western Growers Association (WGA) in California.

The WGA marketing agreement and its good agricultural practices (GAPs) were developed following the September 2006 outbreak of tainted spinach with E.coli bacteria (0157:H7). All leafy green handlers in the area of Salinas, California, have voluntarily signed the agreement which obligates them and contract growers to implement the GAPs designed to enhance food safety. Public agencies, such as USEPA, the state water quality regulatory agency, wildlife experts and others, reviewed the GAPs and provided input and expertise.

Since the agreement was accepted by the California Department of Food & Agriculture in February 2007, individual buyers and handlers (chain grocery stores and fast food chains) have imposed their own food safety programs on growers that go beyond the GAPs identified in the marketing agreement. We are concerned that many of these practices are not based scientifically based, and have unintended consequences to the environment with respect to conservation of natural resources, water quality, wildlife and biodiversity. Some of these individual food safety programs and metrics require farmers to poison amphibians and birds, fence out deer along riparian corridors, remove conservation practices such as vegetated buffer strips and hedgerows, and put in place bare earthen buffers despite a dearth of conclusive data relative to their contribution to food safety. These practices not only result in secondary poisoning of raptors but contribute to loss of

land for agricultural production and deterioration of ecosystem health. These practices are undoing decades of public investment in the health of working lands through conservation programs such as the Environmental Quality Improvement Program and implementing programs that address nonpoint source pollution and impaired waters. Individual buyers and handlers are escalating these unreasonable practices and creating an unsustainable framework for growers given the unproven effectiveness of some of these practices, compounded with their environmental impacts. Farmers are being put in jeopardy for violating long-standing environmental regulations that protect water quality and threatened and endangered species.

We do not support the roll-back of on-farm environmental stewardship practices. Our concerns should be adequately addressed in this rulemaking if we are to support the establishment of a national marketing program for the handling of fresh and fresh-cut leafy green vegetables.

We acknowledge the importance of food safety and recognize every farm faces the potential of producing a tainted product. We recommend an approach to address food safety be focused on the pre-cut salad processing industry, which has a recognized, serious food safety problem. This approach must be rational, transparent, scientifically supported, and without these unintended consequences to the environment. At the national level, a level playing field is important to leafy green growers who are now rigorously addressing food safety concerns. The needs and circumstances of small farmers and organic growers must also be considered to avoid the damage of an irrelevant one-size-fits-all approach.

Thank you for the opportunity to comment on this very complex and difficult issue. We have attached other specific comments (Enclosure 1) and responded to the questions as solicited by your notice (Enclosure 2).

Sincerely yours,

Alexis Strauss 29 November 2007

Alexis Strauss
Director, Water Division

Enclosures

Cc: Jon Scholl, Agricultural Advisor, USEPA
California Roundtable on Agriculture and the Environment
Farm, Food Safety and Conservation Network (California)