

S. 510, the Food Safety Modernization Act: “Produce Standards”

Background:

Section 105 of S.510 seeks to address the incidence of food-borne pathogens in raw agricultural commodities by authorizing FDA to issue standards for production and harvesting of fruits and vegetables. All of the well-publicized outbreaks in recent years have been traced to large, industrial supply chains that took raw agricultural products from many farms, commingled them, and then shipped the products through warehouses and lengthy distribution chains. In contrast, direct market farms raise crops on small-scale in diverse ecosystems and sell to consumers in local markets. It does not make sense, and it is over-reaching, to bring FDA rules onto these direct-marketing farms.

Therefore, we request that you support an amendment that would clearly exempt farms that sell directly to consumers and other end users from the bill’s produce standards, as follows:

Title I, Sec. 105, add a new section:

(g) EXCEPTION FOR DIRECT MARKET FARMS – This section shall not apply to farms whose annual value of sales of food products directly to consumers, hotels, restaurants, or institutions exceeds the annual value of sales of food products to all other buyers.

Discussion:

All raw agricultural products should be produced in a manner that minimizes the risk of contamination, regardless of the scale. But farmers raising produce to sell directly to consumers face significantly different issues than those selling into the industrial supply chain, and should not be regulated the same way.

Precedents: Congress has previously recognized that federal regulations are not always appropriate for small farms and local markets. For example, USDA inspection of slaughterhouses is only required when meat is sold across state lines; meat that is sold intrastate need only be inspected the state authorities. Similarly, in the FDA’s recent rule aimed at salmonella in shell eggs, the agency exempted farms raising less than 3,000 hens, as well as farms raising more than 3,000 hens who sell all of their eggs directly to consumers. *See* 74 Fed. Reg. 33029 (July 9, 2009); 21 C.F.R. § 118.1(a). Our requested amendment merely recognizes the principle that federal regulation is not needed for direct-market farms, which are already well within the purview of state and local authorities.

When produce is sold directly from farmers to consumers, the risk of foodborne illness outbreaks is significantly reduced because of the following factors:

- **Transparency and traceability:** The consumer knows the source of his/her food. Because the consumer knows the source, authorities can more easily and quickly find the source of contamination and halt the outbreak before it spreads further. In contrast, in the 2003 spinach outbreak, the produce was sold under 34 different brand names.
- **No commingling:** produce from different farms are not commingled, preventing contamination from one farm from being spread.

- **Reduced transportation and storage:** Direct sales also mean that the time between the produce being picked and the consumer purchasing it is reduced. The reduced time spent in storage and transportation means less time for pathogens to multiply and a lower risk of a low-level of contamination actually causing illness.

For small, diverse farms, the produce standards pose significant and unfair compliance issues:

- Sustainable farms often raise both produce and animals as part of a traditional holistic model. Animals are not only used to produce meat, dairy, and eggs, but to provide on-farm fertility, pest control, and other functions that directly interact with growing fruits and vegetables. Based on FDA's past actions and statements, it is highly likely that the regulations under Section 105 would pose barriers to this type of sustainable management.
- Most of the farms that sell produce directly to consumers raise a variety of crops, and often have crops growing side-by-side or intermingled because of space and pest control issues. In contrast, industrial-scale farms selling into long supply chains typically raise only one or a small number of crops, each in large-scale monocultures. Yet, last summer, FDA proposed separate rules for melons, tomatoes, and leafy greens. A small farm that raises all of these crops, alongside others, could face impossible regulatory burdens.
- As with any small business, small farms are particularly vulnerable to regulatory burdens.

Congress should encourage, not discourage, the growth of small local farms because they benefit the economy, the environment, and our national security.

- The USDA census showed an increase of more than 18,000 small farms (those with less than \$250K sales) between 2002 and 2007. All of the increase was at the smallest end, which indicates new start-up farms.
http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/small_farm.pdf
- It is well-established that the smallest businesses (those under 20 employees) create the vast majority of new jobs, far eclipsing large corporations. Harming small farms cuts off a potentially valuable source of new jobs, at a time the U.S. is hemorrhaging jobs.
<http://www.sba.gov/advo/25ann.html>
- Farmers Markets have grown dramatically, from 1,775 in 1994 to 5,274 in 2009, with a 13% increase between 2008 and 2009 alone. S. 510 produce standards will seriously undermine the small farmers and gardeners who market their produce in these popular markets that are revitalizing local economies.
- Local foods, sold direct to consumers, help the environment and reduce our dependence on foreign oil by minimizing transport.
- A diversified local food system provides security benefits, by ensuring that a disruption (whether from terrorism or natural disasters) in one area does not disrupt the food supply across the country.