



## Key Provisions and Talking Points for Proposed Amendments to S. 510 Food Safety Modernization Act

The National Sustainable Agriculture Coalition (NSAC) applauds Congress and the Administration for taking steps to decrease food-borne illnesses by strengthening federal food safety oversight and enforcement. We believe, however, the bill can be improved to be more supportive of sustainable agriculture and less injurious to small and medium-sized family farms and local and regional food systems with a variety of simple but important revisions and additions.

NSAC's specific policy recommendations regarding S 510 are organized below into four thematic categories: **facilities definition; national training program; produce standards; and traceability and recordkeeping.**

Though not addressed below given the absence of registration fees in S. 510, we would also add that we strongly oppose the fees included in the House bill and can only endorse a final outcome that either has no fees or that includes a sliding scale progressive fee structure based on ability to pay.

### I. Facilities Definition

**Section 102. Registration of Food Facilities:** Under current FDA regulations, which S 510 does not propose to alter, any farm counts as a facility if it either co-mingles products from several farms or synthesizes, prepares, treats, modifies, or manipulates crops or dairy products, including cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting, distilling, labeling, or packaging. Therefore, any farm that does one or more of those things is a facility and hence subject to the registration, preventive controls, enforcement, as well as requirements in sections of the bill which apply whether an entity, including a farm, is a facility or not.

The only exception in current regulations is for farms that, despite doing one or more of the actions above, direct markets more than 50 percent of the processed food to consumers. Those farms, including the up to 50 percent of food they sell into wholesale markets, are exempt from the facility definition and hence from many of the key provisions in the bill. That current regulatory exemption would be codified under the terms of the HR 2749, the House-passed bill.

**NSAC Recommendation:** Farms that would otherwise qualify as 'facilities' but whose three year average annual market value of agricultural production is less than \$1,000,000, do not co-mingle product, and are not involved in high risk processing activities, should be in a separate food safety track, one based on training programs to assist farms develop food safety plans, including via a new food safety training and education program (see training section below). In addition, FDA should conduct a formal rule-making process to establish regulations in respect to what constitutes on-farm manufacturing or processing. This rule should be informed by a risk-based analysis of specific activities as they relate specific foods.

FDA should focus on the scale of the food production enterprise and ensure that the burden imposed on the farm facilities is commensurate with the potential risk introduced into the system.

In most of the recent outbreaks of food borne illness, the main source of the problem was co-mingling and centralized processing. Tracking small and medium-sized farm facilities into a food safety training program to develop food safety plans would increase their knowledge with the latest science and practical applications and result in a safer food system while allowing FDA's inspectors to concentrate on larger and more complex operations which distribute over large regions and thus pose a widespread hazard should there be contamination. This also allows small and mid-sized farms that engage in on-farm value-added activities to continue to meet increasing consumer demand for local and regional fresh and minimally processed food.

## II. Training Programs

### Sec. 105 Training Relevant to Produce Standards

***NSAC Recommendation:*** FDA should coordinate with USDA, state agencies, and non-governmental and community-based organizations with relevant expertise to provide ongoing, comprehensive individual and group food safety training, education, and technical assistance, with particular attention to small and medium-sized farms and with specific outreach to limited resource, beginning, and socially disadvantaged farmers with respect to produce safety standards.

**Proposed Sec. 114 National Food Safety Training, Education, Extension, Outreach, and Technical Assistance Program for Farms:** Senator Stabenow, with Senators Bingaman, Sanders, Merkley, Gillibrand, Boxer, and Leahy, is introducing the Growing Safe Food Act to establish a food safety training, education, extension, outreach, and technical assistance program and information clearinghouse for farms, with a special emphasis on small and medium-sized farms and small-scale processors. The program would be administered through USDA's National Institute for Food and Agriculture (NIFA, formerly CSREES) as competitive grants awarded to state extension, federal/state/local/tribal agencies, non-profits and community-based organizations, agricultural producer groups, and universities or colleges. Training would include good agricultural, handling, and manufacturing practices, produce safety standards, risk analysis and preventive control mechanisms, safe packaging and storage, record-keeping, etc. The new program would be coordinated with applied research under the existing National Integrated Food Safety Initiative.

***NSAC Recommendation:*** We strongly support adding the Growing Safe Food Act to the Food Safety Modernization Act. This is a critical missing element that will keep small and mid-sized producers viable in competitive markets and increase widespread knowledge of best food safety practices. The Growing Safe Food Act should be adopted as a new section of the committee bill and integrated with its basic provisions for facility registration and produce standards.

## III. Produce Standards

**Sec. 105 Standards for Produce Safety:** S 510 requires the Secretary to develop science-based standards for the safe production and harvesting of raw fruits and vegetables which are determined to require standards to minimize food safety risks.

***NSAC Recommendation:*** While safety controls are important at every level of food production and distribution, Congress should target new FDA regulations on the points in the food supply

chain documented to be most risky: FDA should be instructed to create standards for holding, sorting, packing, processing, and transporting, not just growing and harvesting;

In addition, new food safety standards and Good Agricultural Practice guidance should:

- Be sufficiently flexible to be applicable to operations of farms of varying size. FDA needs to ensure that the burden imposed is commensurate with the risk introduced to the system. Recognizing the burden of actually implementing the practices, technical assistance and training programs should be available to smaller and limited resource producers.
- Take into consideration existing food safety programs and protocols developed by state and local agencies and private non-profits and governmental and non-governmental bodies outside the US. In developing new food safety standards and updating Good Agricultural Practice guidelines, FDA should consider alternative food safety programs developed by organizations around the country and internationally. Looking to these alternatives as possible models can help in the creation of standards and guidelines that recognize the natural variability of farms while maintaining equal levels of product safety.
- Be consistent with conservation and environmental practice standards established by other federal agencies and promote diverse cropping systems which mitigate the spread of pathogens. Conservation measure such as perennial forage, buffer strips, and grasses filter out contamination in overland water flows from livestock feedlots, loafing yards, pastures, and manure storage areas. It is imperative that new food safety standards encourage farmers to maintain and develop new conservation system practices. It is also imperative that the government deliver a consistent message to farmers and not force the farmer to choose between irreconcilable directives from different agencies.
- Be consistent between food safety standards and certified organic farming production methods and requirements – FDA and USDA should coordinate to establish the standards relevant to certified organic production. Special consideration for certified organic farms and ranches should be made so that new food safety standards and their enforcement are not duplicative with those already in place through the Organic Food Production Act of 1990 or a barrier to organic conversion. Again, the government needs to deliver a consistent message and not a conflicting one.
- Prioritize mixed fruits or vegetables or specific processes that have been consistently associated with food-borne illnesses. In most of the recent outbreaks of food borne illness, the main source of the problem was centralized co-mingling, processing and distribution, not growing and harvesting. For instance, fresh cut, ready-to-eat packaged fruits and vegetables pose a far greater risk than whole produce and should thus be a primary target of standards developed for raw commodities.
- Focus on hazards that include animals shown to be of significant risk, not animals generally. As FDA develops produce standards, it should not seek to control or eliminate the presence of all animals on or near farms. The highest-risk animals include cattle, sheep, goats, and domestic and feral pigs. In general, wild animals do not present a significant contamination risk for produce and unnecessary control or elimination of wildlife could have devastating

impacts on the ecosystems surrounding farms and may ultimately lead to greater risks for food safety and public health.

#### **IV. Traceback and Recordkeeping**

**Sec. 204 Enhancing Traceback and Recordkeeping:** S 510 proposes to establish a pilot project that will investigate new methods for rapidly tracking and tracing raw fruits and vegetables and then to issue new rules regarding traceback and recordkeeping requirements.

***NSAC Recommendation:*** Like the House-passed bill, the Senate bill should exempt from new traceability requirement fruits and vegetables that are produced on a farm and sold directly to a consumer or restaurant or grocery stores. In addition, the Senate bill should extend the same treatment to fruits and vegetables that are farm identity-preserved clear through to the final consumer. Products that are direct-marketed or whose identity is preserved from farm-gate to the end consumer are fully traceable and should therefore be uniquely addressed.

The Senate bill should also limit the potential reach of traceability requirements for all farms to no more than one up, one down recordkeeping.