



## NSAC Talking Points for Amendments to the 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 five thematic categories: **facilities definition; national training program; produce standards; traceability and recordkeeping; and domestic third-party certification.**

### 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, and do not commingle product, should be exempt from registration requirements and instead be enrolled in food safety training and education (see training section below).

FDA should focus on the scale of the food production enterprise and its potential to distribute products to millions of people. In most of the recent outbreaks of food borne illness, the main source of the problem was centralized processing, distribution, and retail distribution, not growing and harvesting. In addition, most documented cases of contamination from fresh produce can be traced to processing facilities where the products from multiple farms are commingled, such as leafy greens. A group training and education program is a better fit and most cost effective mechanism for reaching the tens if not hundreds of thousands of small and mid-sized farms that engage in on-farm value-added activities to enhance farm income by meeting consumer demand for local and regional food products.

## II. National Training Program

**Proposed Sec. 114 National Food Safety Training, Education, Extension, Outreach, and Technical Assistance Program for Farms:** Senator Stabenow is introducing a new provision for the bill 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 NIFA as competitive grants awarded to state extension, federal/state/local/tribal agencies, non-profits and community-based organizations, 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 this addition to the bill. This is the critical missing element and should be adopted as a new section of the bill and integrated with its basic provisions for registration, preventative controls, produce standards and guidance, recordkeeping, and certification.

### 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.

## 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 appropriate to the scale of enterprise  
FDA needs to ensure that new standards are not unduly burdensome for some small and mid-scale producers for whom the costs of physically adopting standards can be prohibitive, whereas the costs and annual audit fees are more easily absorbed by larger growers. Recognizing the burden of actually implementing the practices, technical assistance and training programs should be available to smaller and limited resource producers.

- Reflect existing food safety programs and protocols developed by state and local agencies and private non-profits  
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 that have been designed specifically for small, mid-scale, diversified, and organic farms. Looking to these alternatives as 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.
- Be consistent with certified organic 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 an unnecessary barrier to organic conversion.
- 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 processing and distribution, not growing and harvesting. Fresh cut, ready-to-eat packaged fruits and vegetables pose a far greater risk than whole produce and should thus be the primary target of standards developed for raw commodities. The *E. coli* outbreak in spinach in 2006 was linked to bagged, ready-to-eat spinach, not to loose, unwashed spinach.
- 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.

## **V. Domestic Third-Party Auditors**

**Proposed Sec. 203. Accreditation of Domestic Third-Party Auditors and Audit Agents:** S 510 currently includes a third party certification system for farms overseas, but would deny that option to farms at home in the US. The foreign third party certification language in the bill, moreover, does not in all aspects comport with International Standards Organization guidelines.

***NSAC Recommendation:*** FDA should establish a recognized accreditation body under the International Standards Organization 17011 guidelines to accredit third-party auditors and audit agents to certify compliance of those farms subject to inspection under the terms of the Senate food safety bill.