

## Comments for CFA Panel on Proposed Produce Rule 4/15/13

Good morning. My name is Ariane Lotti and I am the Assistant Policy Director for the National Sustainable Agriculture Coalition, or NSAC.

NSAC is an alliance of grassroots organizations from across the country that advocates for federal policy reform to advance the sustainability of agriculture, food systems, natural resources, and rural communities. Many NSAC member groups work directly with sustainable and organic farmers and on-farm food processors who conduct activities potentially within the scope of FDA's proposed preventive controls rule and proposed produce rule.

Given the potential devastating economic impact of ill-devised food safety regulations on farmers and food processors, NSAC engaged heavily in the legislative process that resulted in the enactment of FSMA. We engaged in this process with four guiding principles in mind:

1. Everyone has a role in ensuring a safe food supply: From the farmers and field workers to the end consumer, everyone in the food supply chain has a role in ensuring safe food.
2. Focus on the highest risk: Different production systems and supply chains pose inherently different risks to the safety of our food supply. There are limited government resources, and they must be focused on addressing the highest risks.
3. Regulations should be science-based where possible: The emotional reaction to food safety outbreaks has, at times, resulted in the knee-jerk imposition of practices that have little basis in sound scientific evidence. Overall, the science behind the role of farm practices in food safety outbreaks is grossly under-examined and requires much more investigation.
4. One size does not fit all: Regulations must be scale-appropriate to be effective; a one-size-fits-all approach will put small and mid-sized farms and processors out of business and undermine other public health goals, such as increased production, availability, and access to healthy foods.

Perhaps the most controversial of these principles is this last one – that to be successful, regulations must be tailored to fit the scale and model of production. But what does this mean? I find it useful to think about real farms and real supply chains when trying to understand this concept.

Everyday, I eat a salad. If I am eating a salad at home, the lettuce comes from a farmer in Maryland that I know – Heinz Thomet, who runs Next Step Produce. I have been buying my salad greens and many of the other vegetables I eat from Heinz for as long as I have lived in DC – about four years. Heinz sells at the Dupont Circle farmers market on Sundays. Two weekends ago at the market, I asked Heinz if I could talk to him about food safety, he said of course, and I called him last week to chat about his production practices. He has invited me out to his farm multiple times but I've never been able to go visit.

Heinz grows certified organic fruits and vegetables on 10-15 acres in southern Maryland. He also grows small grains such as barley and rye on 12 acres, and his farm is 80 acres. Heinz qualifies for modified requirements under the produce rule because he grosses less than \$500,000 in annual

average food sales and sells the majority of his product through direct-market channels, including at the Dupont Circle farmers market where I shop. Under the produce rule, those modified requirements are that he must provide his name and farm's complete address on a sign or label at the point of purchase. He is also subject to the compliance and enforcement provisions of the proposed rule, and he can also have his status under the rule changed if he is linked to an outbreak or if FDA has a reason to believe that he is producing unsafe food.

I asked him to talk me through the steps he takes to prepare his salad greens to be sold at market. He is a certified organic producer, so he follows strict production standards that support environmental stewardship on his farm and prohibit the use of synthetic pesticides and fertilizers, genetically modified organisms, and irradiation. He applies compost to his fields instead of synthetic fertilizers. His compost is made up of organic matter from his farm and does not include manure because he does not raise livestock.

The farmers market is on Sunday, and the lettuce for that week's market is harvested on Saturday. After harvest, the lettuce is washed. There is a sink with wash water and one with rinse water. The water comes from an on-farm well that he had tested a few years ago, and there were no problems with the water other than it had a high pH. The water is changed either every 50 gallon-bags worth of lettuce or more often if the water has a lot of dirt in it. The lettuce is then spun, bagged, and put in a cooler for the next day's market.

Someone like me then buys the lettuce and eats it. Short of growing your own vegetables, this is as short of a supply chain as you can find.

When I am busy and I don't have time to make my lunch and bring it into work, I get a salad at the Senate cafeteria. Curious as to where the Senate cafeteria's greens came from, I did a bit of digging. The Senate Dining Services is run by Restaurant Associates, a subsidiary of Compass Group USA, which is the North American branch of Compass Group, a multinational company based in London. A farm called the "Salad Farm" provides the salad greens.

I went to the Salad Farm's website and gave the company a call. I was quickly blown off and told that I would be called back by someone who could talk to me. I left my number and haven't heard from them since.

What I know about the Salad Farm is what information is available on its website. It is a family run business. The farm's primary growing region is in the Salinas Valley of CA, but they move to Holtville, CA, and Yuma, AZ, during the winter to ensure year-around supply. They specialize in salad greens, contract with a custom processor, and have customers in the US and Canada. The website makes a big deal about food safety, explaining that they are members of the CA and AZ Leafy Greens Marketing Agreements and have been audited by Primus and AIB.

Since I wasn't able to speak with someone, the rest is conjecture. I assume that their supply chain is complex – that is, that it involves many steps from farm to table. I assume that their greens come from many growers, that greens from different farms and fields are mixed, that there are multiple washes, and that many people come into contact with the product as it makes its way across the supply chain, and across the country to the Senate cafeteria.

In writing FSMA, Congress acknowledged that Heinz and the Salad Farm are different types of operations belonging to different supply chains and involving different risks. No farmer is exempt from the responsibility to supply safe food. I have worked for and with many farmers and I have not met a single one who wishes to produce unsafe food. The Salad Farm's business model, however, is riskier – there is more product, potentially coming from different growers and different farms; greens from different farms might be mixed together; product travels great distances and must be kept at the right temperatures throughout; and the product is consumed by many more people than Heinz serves. Federal regulations should focus on managing these higher risks.

Heinz does not follow a specific food safety regime. He spoke with his extension agent, who told him that his practices conform to Good Agricultural Practices guidelines.

Heinz is concerned about the cost of the new regulations and how they will be paid for. Will it come from his paycheck? FDA's own numbers show that the typical produce farm with less than \$250,000 in income could spend over \$22,000 to comply with proposed on-farm regulations. The average net cash income for farmers nationally was 10% of sales in 2011. For almost all small farms, the new regulations could consume all those profits and more.

There is a real risk of farms going out of business. We've seen this scenario before, with the implementation of HACCP in the meat processing industry. Small and mid-sized processors closed their doors and the infrastructure to process meats locally and regionally has been obliterated.

The result to our food supply of farms going out of business due to regulations that don't take into account the scale and model of production is that our food supply will be consolidated into fewer farms, or it will move overseas because the cost of complying with regulations at home is too high. As farms consolidate, the level of risk in the systems increases.

Will the consumer be forced to pay more? FDA concludes that a consumer would pay \$4,500 per year to avoid foodborne illness from produce – yet the average U.S. household purchases only \$715 of produce each year. Will people eat fewer fruits and vegetables?

These questions and many more about the proposed rules are haunting farmers like Heinz, who feel like they have built successful businesses based off of transparency and accountability with the consumer.

So, as the FDA moves through the rule making process, here are some of the things we believe it should do to make sure that farmers like Heinz can continue to thrive and provide fresh fruits and vegetables to their communities:

- Get the modified requirements right: Right now, the proposed produce rule includes the letter of the law when it comes to the modified requirements for lower-risk supply chains, but the spirit of the law really isn't there and many questions remain around the withdrawal and restitution of status as a farm coming under modified requirements.
- Clarify when a farm is a facility and when a farm is a farm: There is a great deal of confusion among farmers, especially those that supply local and regional markets, as to whether they are subject to both the produce rule and the preventive controls rule. Furthermore, for

farmers that are now considered “farm mixed type facilities” the definitions in the proposed rules raise more questions than answers.

- Fix the areas of conflict with the National Organic Program regulations: Congress directed FDA to write regulations that did not contradict with strict regulations for certified organic production. In the proposed rule, there are some areas of conflict that need to be fixed.
- Don’t undermine beneficial conservation practices: Congress directed FDA to protect and support good conservation practices on farms. The current proposed rule is weak in this area needs to be strengthened.
- Maintain an “integrated” approach: Congress directed FDA to minimize the number of separate standards that apply to separate foods. Farmers like Heinz grow dozens, if not hundreds, of different types of produce. FDA should stick with its integrated approach.
- Provide resources for training: This is perhaps the single biggest thing that FDA could do to improve food safety practices at the farm level. FDA should partner with farm groups and other agencies with farm experience to build capacity and train farmers on practices.

Farmers are willing partners in providing the best product to consumers. But it must be a partnership for there to be both a safe food supply and a thriving agricultural sector that accommodates many different types of supply chains.

Thank you.