

# COMMENTS ON THE FSMA PROPOSED RULE FOR PRODUCE SAFETY

Docket Number : FDA-2011-N-0921

**From:**

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## INTRODUCTION

The Amagansett Food Institute (AFI) is a 501 (c) (3) recognized non-profit organization which has as its mission the support of farmers and food producers on the East End of Long Island, New York. Our business members and supporters will be greatly affected by these regulations and we have some significant objections to the regulations as currently proposed. Our farmer business members are all what would be commonly thought of as small farms. Many of them farm on land which has been preserved from development by the sale of development rights and which is rented from the local town or land trust. Most farm using organic methods. All of our farmer members have diversified farms on which they grow a variety of produce for harvest throughout the growing season. They sell that produce through a variety of means, including Community Supported Agriculture (CSA) memberships, directly to the public at farm stands and wholesale to restaurants and the local food bank. While their business models may differ, all share certain characteristics including a passionate commitment to a different way of feeding ourselves, one which involves knowing your farmer and where your food comes from, a respect for the land and the soil and openness to farming methods which improve the health of the soil.

Farming on the East End of Long Island presents both problems and opportunities for small farmers. It is a very expensive place to live and to do business. The Peconic Land Trust, a local land preservation organization, estimates the current cost of farm land without development rights at upwards of \$100,000 per acre. It is almost impossible to buy a home in our area for less than \$400,000. As a result, most small farms are operating on relatively small parcels of rented land, often piecing together many non-

contiguous parcels to form their farm. Many of these farms are relatively new and are struggling to build businesses which provide a living wage. On the positive side, many people in our community, particularly the summer and part-time residents, have the means to pay what it costs for these farms to produce the fresh organic produce they sell. AFI and its members believe strongly in good food and thus in food safety. Our concern, however is that the rules will treat many of our small local farms the same as big agricultural operations with resulting costs and reporting requirements that will seriously undermine the profitability of those small farms.

### AVAILABILITY OF THE QUALIFIED EXEMPTION

Section (f)(1)(B) of FSMA mandates an exemption for farming operations which have less than \$500,000 in revenue and the proposed regulations would further fully exempt farms with revenue of \$25,000 or less. AFI believes that these levels are too low for our region. In mandating this exemption, Congress clearly intended that small farm operations with short supply chains and the majority of sales to end users should not be required to comply with all of the FSMA rules. Presumably this was in recognition of the lower risks of food borne disease outbreaks inherent in this sort of farming operation with its emphasis on transparency, sales to local and regional markets and resultant minimized risk through reduced handling, storage, and transportation. Because of the costs of operation in our geographic area, many farms which meet the other requirements of the proposed exemption --and thus are engaged in low risk activity --have revenues well in excess of \$500,000. Some others are very close to that number. One local farm which is predominantly a CSA in which the bulk of the harvesting is done by members had revenue last year in the high \$400,000 range. Compliance with the full range of these proposed regulations would be very burdensome for these operations and would not significantly reduce their already very low risk of causing a disease outbreak. AFI asks that FDA use the flexible authority granted under the Act to expand eligibility for the qualified exemption to farms having up to \$2 million in revenue. Farms with over \$500,000 but less than \$2,000,000 seeking the exemption could be required to apply for the Qualified Exemption and show that they meet the other criteria under the rule.

AFI also believes that the \$25,000 exclusion is too low. At that level, the only growers excluded from coverage would be gardeners and hobbyists. Our mission includes encouraging beginning farmers, and we believe that an exemption of at least \$100,000 is appropriate to that end.

In addition to expanding eligibility for the Qualified Exemption, AFI proposes that the rule include only covered produce in the computation of revenue for all purposes under the regulations. All of AFI's member farms and many of the other farms we work with on the East End of Long Island are diversified operations, growing a variety of crops and raising chickens (primarily for eggs and agrotourism). Including all food sold by the farm in the revenue computation under the rules will sweep into coverage farms which we believe Congress meant to exempt. In addition, it privileges one form of farming operation (monocultures of corn or potatoes for example) over another (diversified operations) without regard to proven risk.

AFI believes that our suggested approach is entirely consistent with the integrated approach to standards under the Rule, an approach which AFI supports. Commodity specific rules would make diversified farming operation much more difficult and would particularly burden small organic farms such as those we represent. Because we believe that this type of farming is essential to protecting the foodshed in our communities, we are encouraged by FDA's support of diversified farming in this Rule. Including non-covered produce in the revenue computation has the opposite effect, discouraging diversification.

## **AGRICULTURAL WATER**

The proposed rules would establish testing requirements for all agricultural water used on the farm. In our area, virtually all farms use ground water which is pumped to the surface from the aquifer on Long Island. This has been a safe and pure source of water for centuries. The proposed regulations would require farmers to test each of their wells every three months. Note that because local farmers are often farming on non-contiguous plots, they may be drawing water from multiple wells and thus be required to perform multiple tests every three months. The proposed regulations do not advance a scientific basis for this frequency of testing. In the absence of any clear scientific reason, AFI suggests that required testing

of well water should be limited to an initial test when the well is brought into service, with subsequent testing related to those results. Alternatively, we suggest that the Rules follow the standard of the National Organic program which requires annual testing only.

## MANURE

Many of our member farms use biologic soil amendments to improve the health and fertility of the soil. One way in which this occurs is the practice of running poultry through vegetable fields after the harvest. Under the proposed rules requiring a nine month interval between use of non - composted amendments and harvest, this practice would be impossible. FDA presents no scientific data to support this interval. In fact, the National Organic Program specifies only a four month interval in this instance. There is no evidence that these tried and true rules have led to an increased risk of food borne disease. AFI asks that the FDA reduce the required intervals to be consistent with those required by the NOP.

Respectfully Submitted,

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