



This document is scheduled to be published in the Federal Register on 12/05/2013 and available online at <http://federalregister.gov/a/2013-28869>, and on FDsys.gov

3410-02 P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 970

[Doc. No. AO-FV-09-0138; AMS-FV-09-0029; FV09-970-1]

**National Marketing Agreement Regulating Leafy Green
Vegetables; Termination of Proceeding on Proposed Marketing
Agreement**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a rulemaking proceeding that proposed to establish a marketing agreement (agreement) under the Agricultural Marketing Agreement Act of 1937 (Act) to regulate the handling of fresh leafy green vegetables in the United States. The agreement that was proposed by members of the produce industry would have authorized the development and implementation of handling regulations (audit metrics) to reflect the United States Food and Drug Administration's (FDA) Good Agricultural Practices (GAPs), Good Handling Practices (GHPs), and Good Manufacturing Practices (GMPs).

DATES: This termination is made on [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: Prior documents in this
proceeding include: Notice of Public Hearing issued on
August 31, 2009, and published in the September 3, 2009,
issue of the **Federal Register** (74 FR 45565); Notice of
Additional Time for Public Hearing issued on September 18,
2009, and published in the September 23, 2009, issue of the
Federal Register (74 FR 48423); and Recommended Decision
and Opportunity to File Written Exceptions issued on April
22, 2011, and published in the April 29, 2011, issue of the
Federal Register (76 FR 24292). The hearings were held
pursuant to the provisions of the Agricultural Marketing
Agreement Act of 1937, as amended (7 U.S.C. 601-674), and
the applicable rules of practice and procedure governing
the formulation of marketing agreements (7 CFR Part 900).

This rulemaking action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

On June 10, 2009, a petition for rulemaking and request for public hearing on a proposed national marketing agreement for leafy green vegetables was submitted to AMS. The proposal was submitted by a group of producers, handlers, and interested persons representing a cross-section of the national fresh and fresh-cut produce industry.

The proposed agreement would have established a voluntary program that would have included mandatory compliance for its signatories under the authority of the Act. The agreement would have authorized the development and implementation of handling audit metrics consistent with the FDA's good production, handling, and manufacturing practices (GAPs, GHPs, and GMPs). Signatory handlers would have been required to only handle domestic and imported leafy green vegetables that met the audit requirements established under the agreement. The program would have been administered by a board appointed by the Secretary, would have operated under the oversight of AMS, and would

have been financed by assessments collected from signatory first handlers. Proponents anticipated that the proposed agreement would help minimize the potential for microbial contamination in production and handling systems and improve consumer confidence in leafy green vegetables in the United States market.

A Notice of Public Hearing was published in the **Federal Register** on September 3, 2009, and was followed by a Notice of Additional Time for Public Hearing, which was published in the **Federal Register** on September 23, 2009.

The public hearing was held on: September 22 through 24, 2009, in Monterey, California; September 30 through October 1, 2009, in Jacksonville, Florida; October 6, 2009, in Columbus, Ohio; October 8, 2009, in Denver, Colorado; October 14 and 15, 2009, in Yuma, Arizona; October 20, 2009, in Syracuse, New York; and October 22, 2009, in Charlotte, North Carolina. At the conclusion of the hearing, the Administrative Law Judge set January 12, 2010, as the due date for interested persons to file proposed findings and conclusions or written arguments based on the evidence received at the hearing. The Administrative Law Judge issued an order extending this deadline through January 27, 2010.

A Recommended Decision and Opportunity to File Written Exceptions (recommended decision) was published in the **Federal Register** on April 29, 2011. Exceptions to the recommended decision were due by July 28, 2011. The recommended decision also announced AMS's intent to request approval of new information collection requirements to implement the agreement. Written comments on the proposed information collection requirements were also due by July 28, 2011. A total of 2,143 comments were received by USDA.

In January 2013, FDA published two proposed rules, "Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption" (78 FR 3504) and "Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food" (78 FR 3646), implementing sections of the Food Safety Modernization Act. This ongoing rulemaking may affect fundamental aspects of the proposed leafy green vegetable marketing agreement program. As a result, it is appropriate to terminate the leafy green vegetable marketing agreement rulemaking proceeding at this time.

Termination of this proceeding will remove ex parte communication prohibitions and allow USDA to engage fully with all interested parties to discuss and consider the evolving needs of the industry and consumers going forward.

Based on the above, USDA is terminating this rulemaking proceeding.

Regulatory Flexibility Act and Paperwork Reduction Act

As part of the proceedings conducted for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) and the Paperwork Reduction Act of 1955 (Pub. L. 104-13) were considered. Because this action terminates the underlying rulemaking proceeding, the economic conditions of small entities are not changed as a result of this action, nor have any compliance requirements changed. Also, this action does not provide for any new or changed reporting and recordkeeping requirements. Accordingly, all supporting forms for the proposed program will be withdrawn.

Termination of Proceeding

In view of the foregoing, it is hereby determined that the proceeding proposing a national marketing agreement for the regulation of leafy green vegetables should be and is hereby terminated.

List of Subjects in 7 CFR Part 970

Marketing agreements, Reporting and recordkeeping requirements, Vegetables.

Authority: 7 U.S.C. 601-674.

Dated: November 26, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

**[FR Doc. 2013-28869 Filed 12/04/2013 at 8:45 am;
Publication Date: 12/05/2013]**