

VIA FACSIMILE
404-463-6428



February 16, 2010

Mr. Oscar Garrison, Assistant Commissioner
Consumer Protection
Georgia Department of Agriculture
19 Martin Luther King, Jr. Drive, Room 321
Atlanta, Georgia 30334

Dear Commissioner Garrison:

I am writing on behalf of the members of United Fresh Produce Association (United Fresh) in regards to your January 8, 2010 *Notice of Intent* to consider the adoption of new regulations regarding food processing plants.

United Fresh represents more than 1,500 growers, packers, shippers, fresh-cut processors, distributors and marketers of fresh fruits and vegetables accounting for the vast majority of produce sold in the United States. We bring together companies across the produce supply chain from farm to retail, including all produce commodities, both raw agricultural products and fresh ready-to-eat fruits and vegetables, and from all regions of production. In Georgia alone, we represent close to 80 member companies that encompass at least one link in the fresh produce distribution chain, ranging from farm to fork. In regards to this *Notice of Intent*, we have several fresh-cut processing companies who will be negatively impacted by this announcement and regulation should it be codified.

While we understand that the Georgia Department of Agriculture is obligated to follow the laws approved by the state legislature, as you finalize this new regulation we encourage you to take into account the following issues with respect to finished product testing.

First and most importantly, safety cannot be tested into a food product. Instead, the produce industry believes that it has to be built in as food products are grown, processed, and distributed. Currently produce companies incorporate unique pathogen control programs in their facilities based on aggressive and robust environmental monitoring, with the goal of finding where an organism is before it can contaminate food. Such programs are unique to each food processing facility and a requirement for finished product testing could naturally lead to an unacceptable dependence on those results, at the expense of assessing other food safety programs.

Second, conducting unnecessary tests diverts limited laboratory resources and expertise from useful tests that are based on risk analysis. Additional unneeded testing requirements would also divert produce food facilities from focusing on prevention and non-routine production events. Under current federal law companies are already required to report to FDA whenever a product may cause serious adverse health consequences. Requiring a State to set up another system to record and evaluate reported test results is not an effective use of resources.

Third, in reality, every company with an aggressive monitoring and verification program expects to get some positive test results. A positive test result must be interpreted in context. It's critically important that a positive test result be treated as an opportunity to correct an undesirable condition, rather than as a "bad" result. If a responsible company is following its written food safety plan, it will react properly when it gets a positive result and

take the appropriate steps to ensure food safety. By only looking at a reported test result, investigators would have an incomplete picture. Rather, with on-site records inspection, investigators will see why the test was conducted, how the result fits into the overall pattern of test results for the equipment and facility over time, and what actions were taken to assure that potentially affected food was handled properly.

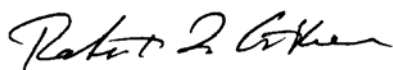
Fourth, while finished product testing can be of value to verify that a facility's overall food safety plan is working, it cannot be relied upon to ensure the product is safe for many reasons. When low level or sporadic contamination is present, a reasonable sample size properly tested is likely to give a negative result, leading to a false sense of confidence in the production system. Even increasing the sample size won't guarantee an accurate result because most of the time pathogen contamination is not uniformly distributed and may occur at low levels in only a small part of a production run. Rather, finished product testing can be useful when the focus is on positive results instead of negative results. A positive result would tell you something is wrong.

Fifth, not all food products and not all food production facilities pose the same risk. There is no one-size-fits-all approach to environmental or product testing. Therefore, testing should be determined based on the risks associated with individual products and facilities. Conducting needless tests diverts limited laboratory resources and expertise from useful tests that are based on risk analysis. Additional unneeded testing requirements would also divert processors from focusing on prevention and non-routine production events.

In regards to fresh produce specifically, as you know fresh produce has a very short shelf life. Because pathogen tests validated for fresh produce can take days to obtain confirmed results, produce ingredients and finished product lots that are tested for pathogens often have too short a remaining shelf life to be marketable by the time the results are available and are discarded. This is why routine microbiological testing is rarely used in fresh-cut processing operations, relying instead on monitoring of conditions identified in food safety plans, environmental monitoring of non-food contact surfaces for facility surveillance, and targeted microbiological testing in response to a noncompliance event. No one in the produce industry wants to sell products that may pose a health risk to consumers. If the fresh-cut produce industry were to implement the testing protocols described in the proposed regulations, the category may disappear. We respectfully submit to the Department of Agriculture that, while the testing recommended in this proposed regulation may be appropriate for some ready-to-eat processed foods, they could kill the commercialization of fresh-cut products, and in turn, hurt hundreds of growers who are suppliers to this important segment of the food industry.

As you continue to consider these new requirements we strongly encourage you to provide an opportunity for impacted stakeholders to submit public comments, as well as provide appropriate time consideration for review of comments from interested parties. Thank you for your considering our comments, and if you have any questions please do not hesitate to contact me.

Sincerely,



Robert L. Guenther
Senior Vice President, Public Policy
United Fresh Produce Association

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