

**BEFORE THE  
CALIFORNIA DEPARTMENT OF  
FOOD AND AGRICULTURE**

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**REQUEST FOR COMMENTS  
NOTICE OF PUBLIC HEARING:  
TO CONSIDER THE IMPLEMENTATION OF THE PROPOSED  
CALIFORNIA LEAFY GREEN PRODUCTS  
HANDLER MARKETING AGREEMENT**

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**JAMES JOHNSTON  
President  
Owner-Operator Independent  
Drivers Association, Inc**

**January 10, 2007**

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CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

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**I. INTRODUCTION**

**A. PROCEDURAL STATEMENT**

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to a “request for comments” from the California Department of Food & Agriculture (CDFA) related to a public hearing to be held January 12, 2007 in Monterey, California. These comments concern a proposal to implement a California Leafy Green Products Handler Marketing Agreement. The notice of a public hearing is dated December, 13, 2006.

**B. THE INTEREST OF THE OWNER-OPERATOR  
INDEPENDENT DRIVERS ASSOCIATION, INC.**

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks. Many of OOIDA’s 148,000 members are also small business motor carriers who have DOT authority to operate in interstate commerce. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.  
P.O. Box 1000  
1 NW OOIDA Drive  
Grain Valley, Missouri 64029  
[www.ooida.com](http://www.ooida.com)

The Association actively promotes the views of small business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private business to advocate an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of small business truckers in numerous committees and various forums on the local, state, national, and international levels. A significant portion of fresh produce hauled out of California is by small business truckers and individual “owner-operators” including members of OOIDA.

## **II. SUMMARY**

The CDFR is considering implementing a state marketing agreement that would compel participants to comply with still undefined “best practices” related to proper handling of leafy green product. The Marketing Agreement was requested by representatives of the California agricultural industry. The insights and concerns of produce truckers and OOIDA members related to the proposed Marketing Agreement is the focus of OOIDA’s comments.

## **III. COMMENTS**

Recent national publicity related to the *E. coli* contamination of California produced spinach financially resonated with sufficient negative repercussions for many in the agricultural community that a Marketing Agreement is being sought as a key to responding to perceived inadequacies in handling leafy green products.

During the recent outbreak truckers, including OOIDA members, were faced with the negative financial impact related to the disposal of voluntarily recalled spinach. Buyers of the spinach placed the recalled product back onto the trailers of truckers

unconcerned about potential cross-contamination with other product. The responsible shippers offered little or no direction on how to safely dispose of the product. OOIDA is aware of truckers having to locate dumping facilities by themselves. Often these facilities were many miles away. In one particular instance, our member had to travel from Atlanta, Georgia to Memphis, Tennessee before locating a dumping facility that would accept the suspected tainted product. Hours and even days of delay in emptying trailers of the recalled product was the end result. The delays resulted in lost revenue for booked freight that truckers were unable to haul, no compensation for time and miles spent dealing with disposal and ultimately paying dumping fees themselves.

The expenses and lost revenue opportunities for truckers justify constructive solutions to prevent future outbreaks of contamination in leafy green products. Unfortunately, the proposed Marketing Agreement must be viewed with a high degree of skepticism to effectively deal with the cause and effect of contamination.

The Marketing Agreement will attempt to institutionalize certain as yet to be defined Good Agricultural Practices (GAP) for industry. Repeated phone calls from OOIDA to both the CDFA and the Western Growers Association (WGA) have yielded no answers as to what will define GAP. Absent any useful response from either organization, OOIDA has shaped further related comments from a 1998 release of GAP guidelines by the United States Food and Drug Administration (FDA) titled “Guide to Minimize Microbial Food Safety Hazards for Fruits and Vegetables.”

The agricultural sector has long been aware of preventative techniques that would minimize or eliminate altogether the threat from foodborne illnesses. The aforementioned GAP from the FDA is a primary example of the notification. There have

been many FDA initiatives targeting microbial food safety hazards. These too have been communicated to many stakeholders within the food supply chain with the exception of produce truckers. Thus ignorance or lack of adherence to GAP is self-imposed and greatly related to economics. The continuing contamination problems have brought about this request for a Marketing Agreement as a result of a specific threat from a consortium of large buyers of leafy green products. The buyers' threat to impose their own GAP certification system on growers and shippers arises from a weariness related to the legal liability associated with the sale of contaminated product. However, having GAP related to a Marketing Agreement instead of stringent regulatory oversight is unlikely to achieve overall reduction in incidents of foodborne illnesses.

Since non-signatories to a Market Agreement system can continue to market their product and there will always be buyers, especially at times of high demand and low supply, it is unlikely that the allure of a certification mark will be sufficient motivation for participation. It is conceivable that major, large shippers would feel compelled for marketing and public relations purposes to be signatories due to market pressure from large buyers. Conversely, mid-level and smaller shippers whose markets do not consist of large buyers may find no marketing benefit in being able to display a certification mark on their product signifying adherence to GAP.

A Market Agreement system that is not inclusive of all producers and shippers will not itself create the desired effect of peer pressure to adhere to a particular set of standards. Enforcement of GAP through a Market Agreement where the participants can effectively opt out annually or penalize member non-adherence with the removal of a certification mark is a dubious scheme unlikely to achieve high levels of compliance with

GAP. As a poignant reminder, producers and shippers have had knowledge of FDA published GAP and this has not achieved desired results. Simply instituting a Market Agreement as the only response to increased public scrutiny and expecting the same industry that failed to observe FDA GAP to implement enforcement standards is akin to having the proverbial fox guarding the henhouse.

Lack of inclusively bringing all stakeholders into the discussion of preventing microbial contamination in the food supply chain makes it a certainty that further outbreaks will occur. A November 2005 FDA letter titled “Letter to California Firms that Grow, Pack, Process, or Ship Fresh and Fresh-cut Lettuce” confirms the previous statement. Referring to a previous investigation of an *E.coli* outbreak the letter states “Foodborne illness investigations rarely pinpoint the point of origin of the contamination.” The letter then goes on to state “The specific source of contamination that led to the outbreaks was not identified.” Produce truckers are well aware of unsafe and unsanitary practices within the industry that can compromise food safety. Unfortunately, these practices are given only ancillary mention in GAP or not addressed at all. The following are examples of poor practices observed by truckers that can have significant repercussions to food safety.

Produce truckers have for a long time lamented about their treatment at many shipping facilities in California. Produce truckers are often given use of bathroom facilities lacking soap, towels and sometimes even water to wash with. At some locations facilities are nonexistent. This practice is prevalent in the Huron, Imperial Valley and Santa Maria shipping areas. Some large shippers in the Salinas Valley are not immune from this scathing criticism. Truckers are then required to be present and sometimes

assist in the loading of their trailers. Truckers will often face the same conditions at a receiving location where the requirement for them to manually unload is nearly universal. Produce truckers have long witnessed portable toilets used by field produce workers, which are carried on towed trailers and hauled to the worksite splash their contents upon both the road surface and the fields in which they enter and exit.

Produce truckers are sometimes required to exchange pallets to be loaded. Often the sanitary condition of pallets given and received is questionable. It is not uncommon for a trucker to have good or even new clean pallets taken off their trailer only to be replaced with pallets sodden with field waste, dried animal blood, indications of spider infestation or unknown remnants from previous chemical shipments. This practice encourages the entry of pathogens into the trailer, shipping facility and food supply. FDA GAP briefly makes mention of the pallet issue yet it is not uncommon for truckers to be forced to accept pallets of questionable origin.

Shipper and receiver economic pressures to maximize trailer space utilization forces many truckers to load produce inconsistent with refrigeration manufacturer specifications. Product is loaded in a manner which does not allow for proper air circulation in transit thus creating “hot zones” within the trailer. This accelerates product decay and creates an excellent environment for growth of pathogens.

#### **IV. CONCLUSION**

The Market Agreement response to continued contamination is at best a face saving gesture by industry motivated by legal and economic concerns. It is an ineffective way to deal resolutely with shortcomings in GAP when those with the most knowledge of a particular problem are routinely excluded from the discussion process.

Small business truckers, owner operators and their drivers are the dominant purveyors of transportation services to the California agricultural community. It is unlikely that a Market Agreement will alter the status-quo and only encourage shippers to impose self-serving and meaningless conditions upon truckers under the guise of increased food safety.

Respectfully submitted,

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**JAMES J. JOHNSTON**  
President  
Owner-Operator Independent  
Drivers Association, Inc.

January 10, 2007