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Posted on Mon, Mar. 09, 2009

California raw almonds must be treated, judge rules

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last updated: March 09, 2009 07:02:36 PM

WASHINGTON — A federal judge Monday upheld requirements that raw California almonds be treated to protect consumers from salmonella poisoning.

In a blow to organic almond producers and handlers, the Washington, D.C.-based judge rejected challenges to pasteurization requirements designed by the Almond Board of California. The Agriculture Department formally imposed the rules in March 2007, setting off sparks.

The ruling issued by U.S. District Judge Ellen Segal Huvelle did not directly address the merits of the almond pasteurization standards. Instead, Huvelle dismissed largely on technical grounds the complaint filed by Fresno-based farmer Nick Koretoff, Livingston-based farmer Cynthia Lashbrook and others.

Huvelle determined the farmers had failed to exhaust potential administrative remedies. Moreover, the judge said farmers might not have legal recourse even if they could prove the safety rules would cause economic injury.

"Their fundamental concern is with the impact of the treatment regulation on their ability to sell their almonds in a niche organic market at a premium," Huvelle noted, adding that "the Supreme Court (has) specifically recognized that not every loss would qualify as a deprivation of a definite personal right of the producer."

Almond Board and Agriculture Department officials were unfamiliar with the judge's decision and offered no comment on it.

But while rather technical in nature, the 11-page ruling promises real-world consequences in the San Joaquin Valley, which dominates U.S. almond production. Among other things, the Agriculture Department estimates anti-salmonella treatments will add somewhere between two cents and seven cents per pound to the cost of almonds.

The 10-member almond board, based in Modesto, administers the federal marketing order by which the \$2.5 billion-a-year industry regulates quality control, research and advertising. The board recommended new safety rules in 2006 following incidents of salmonella contamination in 2001 and 2004, and the Agriculture Department subsequently put them in place.

The new rules required almond handlers to achieve a stricter reduction in salmonella bacteria count, by pasteurizing the nuts before shipping. Pasteurization methods range from blanching and steam treatments to use of chemicals.

"While contamination in almonds is not common, the industry determined that

aggressive measures were necessary to prevent any other occurrences," the almond board stated at the time the rules were imposed.

Organic almond growers, though, claimed in their lawsuit filed in September that the new requirements "functionally shut them out of the organic market." The growers stated that "substantial amounts" of their almonds could not be sold in the last two years.

"(Organic almond) handlers have built their businesses, in part, by marketing raw almonds to customers interested in buying food that is minimally processed, free from the use of chemicals, and not exposed to heat treatments, roasting, or other processes," the lawsuit stated.

Raw almonds could be sold for up to 40 percent more than treated almonds, the unhappy growers noted.

The 2001 salmonella outbreak first identified in Canada was traced back to bulk raw almonds. A second salmonella outbreak in 2004 resulted in the recall of 15 million pounds of almonds. Consumer confidence falls with every food scare, industry leaders note.

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