

FSMA and the Produce Safety Rule: does the rule apply to me?

Annalisa Hultberg, MS
University of Minnesota Extension On-Farm GAPs Education

You may have heard about the FSMA Produce Safety Rule, new federal food safety legislation for fruit and vegetable farms. This rule sets the first-ever federal regulatory standards for the production, harvest, and handling of fruits and vegetables in an effort to prevent microbial contamination and reduce foodborne illnesses. New standards are established in the following major areas:

- Worker Training and Health and Hygiene
- Agricultural Water
- Biological Soil Amendments of Animal Origin
- Domesticated and Wild Animals
- Equipment, Tools, and Buildings



Q1. IS MY FARM COVERED BY THE FSMA PRODUCE SAFETY RULE?

While food safety is important for all farms, the FSMA Produce Safety Rule regulation only applies to some farms. There are several ways the farm or operation may be excluded or exempt from the FSMA Produce Safety Rule. Exclusions and exemptions are based on the types of commodities grown, total annual sales of produce, and where and to whom the food is sold. Definitions play a key role in understanding if a farm is subject to the FSMA Produce Safety Rule or not, so you will have to think about your own operation, read the Rule, and then determine if it applies to you.

First, some farms are not covered by the FSMA Produce Safety Rule:

- Farms with total sales of produce less than \$25,000*
*This value is a three-year rolling average and it is adjusted for inflation. The adjusted value for 2017 is \$26,632.

Second, the following types of produce are not covered by the FSMA Produce Safety Rule (for definitions of the following, see § 112.2 and § 112.3 of the Produce Safety Rule)

- Produce that is rarely consumed raw* (see exhaustive list at the end of this factsheet)
- Produce for personal or on-farm consumption
- Produce that is not a raw agricultural commodity
- Produce destined for commercial processing where there is a kill-step

Next, determine if your farm is eligible for a qualified exemption. Your farm is eligible for a qualified exemption* if you meet all of these categories:

1. Your average annual **food** sales (produce and all other crops and value-added products) over the previous 3 years are less than \$500,000**; **and**
2. More than 50% of those food sales are to “qualified end-users,” such as restaurants, grocery stores and other retail food establishments (including direct-to-store sales) located in your same state or Indian reservation or within a 275 mile radius of your farm. Consumers are qualified end users regardless of location (direct marketing through farmers markets, community supported agriculture, internet sales, etc.).

*For more details on the criteria for meeting the conditions written above, see FDA Produce Safety Rule summary of exemptions and key provisions.

**This value is a three-year rolling average and it is adjusted for inflation. The adjusted value for 2017 is \$532,645.

Q2: MY FARM IS ELIGIBLE FOR A QUALIFIED EXEMPTION, WHAT DO I DO NEXT?

You will need to demonstrate that your farm is eligible for the qualified exemption. This means you must keep sales records and make them available upon request.

If your farm is eligible for the qualified exemption, you must also follow modified labeling requirements:

- When a food packaging label is required, you must prominently and conspicuously display **on the food packaging label** the name and the complete business address of the farm where the produce was grown; or
- When a food packaging label is not required on food you must prominently and conspicuously display, **at the point of purchase (i.e. at the time of sale, like at the farmers’ market)**, the name and complete business address of the farm where the produce was grown, on a label, poster, sign, placard (internet sales: e-notice)

The complete business must include the street address or post office box, city, state, and zip code for domestic farms, and comparable full address information for foreign farms.

Commercial processing exemption note: If you rely on the commercial processing exemption, you must meet each of the criteria in 21 CFR 112.2(b), for all produce that you intend the exemption to cover. This includes requirements for providing a disclosure statement with each shipment, collecting annual assurance statements from your customers, and maintaining certain records.

Q3: MY FARM IS COVERED BY THE RULE, WHAT DO I DO NEXT?

The regulation states that if your farm is covered by the rule, ‘**at least one supervisor or responsible party from the farm**’ must complete food safety training at least equivalent to the standardized curriculum recognized by the FDA. (§112.22(c)). The Produce Safety Alliance (PSA), a national group based at Cornell University, has developed a FSMA training course that is one way to fulfill the training requirement of the Rule. At the training, you will learn the specifics of what a covered farm must do to be in compliance with the Produce Safety Rule. Currently, it is the only training that meets the training requirement of the Produce Safety Rule.

UMN Extension is working closely with partners to host FSMA trainings in all areas of the state for produce farmers. All growers, including those that may be exempt from the full rule and any others interested in learning about produce safety and Good Agricultural Practices (GAPs) are encouraged to attend. For more information on upcoming FSMA trainings in Minnesota, see the MDA Produce Safety Program website, below.

FOR MORE INFORMATION

UMN Extension, On-Farm GAPs Education Program: Annalisa Hultberg at (612) 625-1951 or hultb006@umn.edu. Website: <http://safety.cfans.umn.edu/>

Minnesota Department of Agriculture Produce Safety Program at (651) 539-3648 or producesafety.mda@state.mn.us.
Website: <https://www.mda.state.mn.us/food/safety/producesafetyprogram.aspx>

Produce Safety Alliance: <https://producesafetyalliance.cornell.edu/>

FDA FSMA Produce Safety Rule:
<https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>

*The following 34 produce items are considered “rarely consumed raw” and are not covered by the Produce Safety Rule: Asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts. FDA states that this list is exhaustive. Produce not on this list is not exempt under the “rarely consumed raw” provision.



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