

Food Safety Legal Considerations

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Workshop #4
Food Safety Basics**

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Community Food Producers & Food Safety (CA Laws)

- Food Safety Modernization Act (FSMA)
- Community Food Production and Safety Act
- California Health and Safety Codes
- CDFA Small Farm Guidelines (overview)



Produce Safety

ALLIANCE



Key Components of the Food Safety Modernization Act (FSMA) Produce Safety Rule



Cornell University
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FDA Food Safety Modernization Act & Produce Safety Rule

- **Produce Safety Rule:**
Focus on the growing, harvesting, and post-harvest handling of produce
- Focus is on the prevention, not detection of issues
- First ever mandatory regulation for the production, harvest, and handling of fruits and vegetables





FSMA Produce Safety Rule

- Published in the Federal Register on Nov. 27, 2015 and became effective on Jan. 26, 2016

Business Size	Years to Comply After Effective Date (1-26-16)*
All other businesses (>\$500K)	2
Small businesses (>\$250K-500K)	3
Very small businesses (>\$25K-250K)	4

**Compliance dates for certain aspects of the [agricultural water requirements](#) allow an [additional two years](#) beyond each of these compliance dates.*



Subparts of the Produce Safety Rule

- A – General Provisions
- B – General Requirements
- C – Personnel Qualifications and Training
- D – Health and Hygiene
- E – Agricultural Water
- F – Biological Soil Amendments of Animal Origin and Human Waste
- I – Domesticated and Wild Animals
- K – Growing, Harvesting, Packing, and Holding Activities
- L – Equipment, Buildings, Tools, and Sanitation
- M – Sprouts
- N – Analytical Methods
- O – Records
- P, Q, R – Variances, Compliance, and Withdrawal of Qualified Exemptions



FSMA: Are you in or are you out?



**PSA Supplemental
Activity**



Exclusions & Exemptions

- Some growers may be **excluded** based on:
 - Commodities grown (e.g., rarely consumed raw)
 - Average annual produce sales
 - Personal/on-farm consumption
- Some growers may be **exempt** based on:
 - Processing activities that include a ‘kill step’
 - Average annual food sales and to ‘qualified end users’
- Ultimately, all growers should understand and take action to reduce food safety risks on the farm





Exclusions: Average Annual Produce Sales & Produce Definition

- Farms with average annual value of produce sold during the previous 3-year period <\$25,000 are excluded
- *Produce* means any fruit or vegetable (including mixes of intact fruits and vegetables) and includes mushrooms, sprouts (irrespective of seed source), peanuts, tree nuts, and herbs





Covered Produce



- Food that is produce and that is a raw agricultural commodity (RAC) is covered by the Produce Safety Rule. This includes a produce RAC that is grown domestically and a produce RAC that will be imported or offered for import in any State or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- Covered produce includes all of the following:
 - (1) Fruits and vegetables. The Rule includes a list of 98 specific (e.g., carrots) and categorical (e.g., citrus) examples
 - (2) Mixes of intact fruits and vegetables (such as fruit baskets)



Exclusions: 'Rarely Consumed Raw'

- Produce that is rarely consumed raw, specifically the produce on this exhaustive list (34 items) are not covered.

asparagus
black beans
Great Northern beans
kidney beans
lima beans
navy beans
pinto beans
garden beets
(roots and tops)
sugar beets
cashews
sour cherries

chickpeas
cocoa beans
coffee beans
collards
sweet corn
cranberries
dates
dill
(seeds and weed)
eggplants
figs
ginger

hazelnuts
horseradish
lentils
okra
peanuts
pecans
peppermint
potatoes
pumpkins
winter squash
sweet potatoes
water chestnuts



Exclusions: Personal/On Farm Consumption

- Produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management is not covered.





Exclusions: Raw Agricultural Commodities (RAC)

- Produce that is not a RAC is not covered
 - Definition of a RAC is in Section 201(r) of the FD&C Act
 - The term “raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing

RACs



Not RACs





Exemptions: Commercial Processing

- The produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance (e.g., validated canning processes, process such as distilling or winemaking)
- **Specific documentation and written assurances required annually**





Food Safety Preventive Controls for Human Food Rule

- **Will growers fall under two regulations?**
 - **PC Rule:** Focus on the manufacturing, processing, packing, or holding of human food
 - Concern that some growers may fall into this regulation in addition to the produce rule
 - New definitions of farm, sales, holding, and packing activities have helped to clarify
 - More clarification expected in guidance





Qualified Exemption

1. During the previous 3-year period, more than half of the average annual monetary value of the food the farm sold was directly to qualified end-users
 - a) The consumer of the food (consumer does not include a business); or
 - b) A restaurant or retail food establishment that is located:
 - i. In the same State or the same Indian reservation as the farm that produced the food; or
 - ii. Not more than 275 miles from such farm
- AND
2. The average annual value of all food the farm sold during the 3-year period preceding the applicable calendar year was less than \$500,000



Recap

- There are several ways the farm or operation may be excluded or exempt from the FSMA Produce Safety Rule
- Exclusions and exemptions are largely based on the types of commodities grown, total sales of produce annually, 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



Growers may be exempt from the regulation, but not from the market.





The PSA Website

<http://producesafetyalliance.cornell.edu/>



- You can even friend us on Facebook!



- Join the listserve!

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California Retail Food Code (CalCode)



California Retail Food Code (CalCode)

BACKGROUND

California regulates most aspects of food production, food marketing and food safety, while the primary responsibility for enforcing retail food law rests with local enforcement agencies. The California Retail Food Code (CalCode) requires that all food, with some exceptions, sold, served or donated to the general public be from an “approved source”. Existing approved sources generally include food grown or produced on a commercial farm.

Selling Fresh Fruits & Vegetables

- To ensure produce sold-or donated- to the public is safe to eat, the [California Retail Food Code](#) (“Cal Code”) requires retail food facilities to obtain food from **“approved sources.”**
- Food sold to the public should be “approved source.”
- There are a number of ways to become an approved source.
- New CA laws, AB 1990 and AB 234, regarding **Community Food Producers** make it easier.

How to become an Approved Source

- Community Food Producer
- Certified Producer's Certificate (CPC)—*this is required to sell at Certified Farmer's Markets*
- Community Supported Agriculture (CSA)

As an approved source...

- You can sell
 - Directly to the public
 - To restaurants
 - To markets
- You can donate to
 - Food bank
 - Food kitchens



Key Requirement for Approved Source Growers

- Follow CA Dept. of Food & Agriculture (CDFA) Small Farm Food Safety Guidelines.



AB 1990 (Gordon)

Community Food Promotion and Safety Act

- Defines “**community food producers**” (CFPs) as an **approved source** that includes, but it not limited to, community gardens, personal gardens, school gardens, and culinary gardens.
- Authorizes permits CFP or gleaner to sell or provide **whole uncut** fruits or vegetables, or unrefrigerated shell eggs, directly to the public, to a permitted restaurant, or a cottage food operation if the CFP meets all of the following requirements, in addition to any requirements imposed by an ordinance adopted by a local jurisdiction.
- Pertains to anyone growing those food products on land that is not zoned as agricultural.
- **Requires these producers to follow safe food handling practices and labeling requirements.**

AB 234 (Gordon)

Community Food Production: Clarification

- AB 1990 allows local environmental health department to require Community Food Producers to register with the department in some situations.
- However, effective in 2016, under AB 234 there are numerous exemptions from the requirement to register with the Department of Environmental Health, so very few Community Food Producers will need to register.
- Remember, Community Food Producers are producing whole, uncut, unprocessed fruits and vegetables, and shell eggs.
- **Note:** Cottage Food Operation AB 1616 (CFOs) required to register with the Los Angeles County Department of Public Health.

AB 1990 (Gordon)

Community Food Promotion and Safety Act

- All Community Food Producers, whether exempt from registration or not, must follow the California Small Farm Food Safety Guidelines provided by the California Department of Food and Agriculture (CDFA).

California **SMALL FARM** Food Safety Guidelines



CA Small Farm Food Safety Guidelines

- Guidelines, not regulations. However, Community Food Processors must follow these guidelines under AB 1990.
- Focus is on microbial foodborne human pathogens.
- The most important disease organisms are *Salmonella*, *E. coli* O157:H7, *Listeria*, *Shigella* and *Bacillus cereus*.
- Primary pathways for these pathogens to enter the field or packing shed are:

CA Small Farm Food Safety Guidelines

- Contaminated irrigation or processing water
- Poor field or packing shed worker hygiene
- Improperly aged or treated organic soil amendments (manure, etc.)
- Domestic or wild animals entering the field
- Contaminated harvest equipment
- Inadequate or unsanitary processing and storage conditions and improper transportation

CA Small Farm Food Safety Guidelines...Best Management Practices **Prior to Planting through Transportation**

- Record keeping
- Keeping animals out of the field
- Proper use of manure
- Cleaning and sanitizing equipment
- Use disinfectants to wash produce

