

This is the third in a series of informative articles on the Food Safety Modernization Act (FSMA) Produce Safety Rule and the New York State Department of Agriculture and Markets (Department) implementation strategy for this rule. So far, this series has discussed covered produce, farm activities, and compliance dates. This article will discuss instances where farms may be exempt from the rule.

The Produce Safety Rule requires farms with average annual produce sales over \$25,000 to comply with all subparts of the rule. However, there are certain exemptions from the rule that would subject farms to recordkeeping requirements, but not to on-farm inspections. There are three potential exemptions for farmers:

- Qualified exemption
- Rarely consumed raw exemption
- Processing exemption

First, some farms may be eligible for a qualified exemption from on-farm inspections if they generate less than \$500,000 in average annual food sales. A majority of these food sales must also be to a qualified end user. A qualified end user is defined as: a consumer, a retail store or a restaurant within the same state or within 275 miles of where the food was produced. The FDA defines food as all human and animal food, including items such as chewing gum, bottled water and dietary supplements.

In addition, some farms may be eligible for an exemption if they only sell produce that is defined by the FDA as “rarely consumed raw.” Rarely consumed raw produce includes: asparagus; black beans, great Northern beans, kidney beans, lima beans, navy beans and pinto beans; garden beets (roots and tops) and sugar beets; cashews; sour cherries; chickpeas; cocoa beans; coffee beans; collards; sweet corn; cranberries; dates; dill (seeds and weed); eggplants; figs; horseradish; hazelnuts; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; winter squash; sweet potatoes; water chestnuts; and milk. This is considered an exhaustive list.

Produce not included in the above list is considered covered produce and subject to the Produce Safety Rule. If a farm sells both rarely consumed raw produce and covered produce, the part of the operation that grows and handles covered produce will be subject to inspection.

Lastly, some farms may be eligible for an exemption if they only sell produce destined for further processing that includes a validated kill step to reduce pathogens. For example, a farm that sells grapes to a facility that makes wine would be eligible for the processing exemption. If a farm sells both produce destined for further processing and other covered produce, the covered produce and the associated farm operation will be subject to on-farm inspections.

Although farms may be exempt from on-farm inspections through the qualified exemption, rarely consumed raw exemption or processing exemption, they are still subject to some recordkeeping requirements. For example, they will be required to keep a written record proving that an annual review and verification of their continued eligibility for the exemption was performed. However,

they will not have to keep a majority of records required by non-exempt farms, such as records of worker trainings, records of agricultural water sampling and analysis, records of applied biological soil amendments of animal origin, and records pertaining to cleaning and sanitizing tools or equipment.

For more information on FSMA, the Produce Safety Rule in New York State and to determine your farm's coverage or exemption under the rule, please visit the Department website at: <https://www.agriculture.ny.gov/FS/general/fsma.html>.

Questions can also be sent to Aaron.Finley@agriculture.ny.gov and Steve.Schirmer@agriculture.ny.gov. Additionally, we encourage producers to complete an informational survey, which will help determine coverage rates and compliance dates. The survey can be found at: <https://www.surveymonkey.com/r/9HM3NTP>.