

# Vermont Produce Safety & Market Access Program

2/17/2016

## The Food Safety Modernization Act (FSMA): What is it?

- Signed into law in 2011; largest update of the Food, Drug & Cosmetic Act since 1938.
- Grants FDA broad new regulatory authority over food production, processing, and distribution.
- FDA charged with establishing rules to prevent foodborne illness and protect public health.
- Rules cover human and animal food; domestic food and imported food; production, processing, and transportation

## The Produce Safety Rule: Why is it important?

- New Regulations: For the first time, the produce industry will be regulated for food safety across the country.
- Farm Viability: Produce industry understands the value of high quality, safe products.
- Market Access: Market may drive compliance with federal produce safety rules beyond covered farms and before FDA-mandated inspections occur.
- State Program: Vermont producers have expressed support for the development of a state-level program to provide interface between growers and FDA.

## Final FSMA Rules

RULE	EARLIEST COMPLIANCE DATE
Preventive Controls for Human Food	September 2016
Preventive Controls for Animal Food	September 2016
Produce Safety Rule	January 2018*
Accredited Third-Party Certification	N/A – 3 <sup>rd</sup> -party certification bodies apply to FDA
Foreign Supplier Verification Programs (FSVP)	March 2017

*\*Sprout producers have only 1–3 years, depending on business size, to comply with specific sprout requirements.*

## Rules Final in May 2016

- Sanitary Transportation of Human and Animal Food
- Focused Mitigation Strategies to Protect Food Against Intentional Adulteration

## About the Produce Safety Rule

### COVERED ACTIVITIES

Growing, harvesting, packing or holding produce

### COVERED PRODUCE

Produce that is a raw agricultural commodity (RAC) except for “produce that is rarely consumed raw,” specifically the produce on the following exhaustive list: asparagus; beans, black; beans, great northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets; 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.

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## About the Produce Safety Rule

### COVERED FARMS

**Not Covered:** Less than 25,000 in annual produce sales

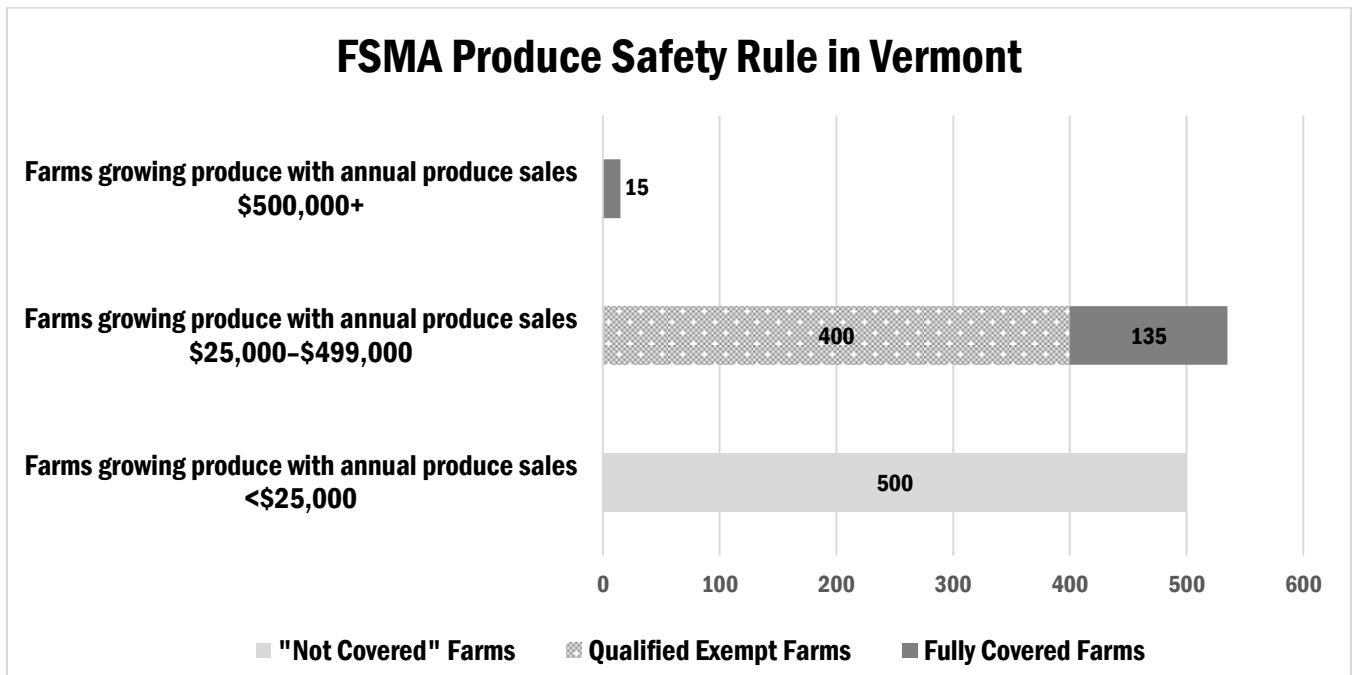
**Very Small Business:** Less than \$250,000 in annual produce sales – *Comply by January 2020*

**Small Business:** Less than \$500,000 in annual produce sales – *Comply by January 2019*

**Qualified Exemption:** (1) The farm must have food sales averaging less than \$500,000 per year during the previous three years; and (2) more than 50% of the farm's sales must be to qualified end-users.

- A qualified end-user is (a) the consumer of the food or (b) a restaurant or retail food establishment within the same state or not more than 275 miles away. (direct to consumer; direct to restaurant; direct to retail)
- A farm eligible for a qualified exemption must still meet certain modified requirements and is required to establish and keep certain documentation.
- A farm's qualified exemption may be withdrawn.
- Compliance date for retention of records supporting qualified exemption – *January 26, 2016*

**All Other Businesses** – *Comply by January 2018*



Estimates based on 2012 U.S. Census of Agriculture data provided by the National Agricultural Statistics Service (NASS) for the National Association of State Departments of Agriculture (NASDA) in August 2015.

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## Consequences for Produce Industry

- The FSMA Produce Safety Rule will impact *at least* 500 Vermont farms that grow fruits & vegetables, with full compliance required as early as January 2018.
- FDA does not want to inspect farms and is committed to providing resource to states (most likely under a cooperative agreement) to build state programs and conduct FSMA inspections.
- Many producers will need to meet market demands for food safety and/or FSMA compliance certification regardless of whether they are fully covered under the rule.
- The Vermont Agency of Agriculture is committing to providing education and technical assistance to ensure compliance prior to enforcement. (“Educate before you regulate.”)
- Infrastructure improvement costs for all fruit & vegetable farms in Vermont to comply with food safety standards could be as high as \$5–12 million (estimates based on costs required to meet Good Agricultural Practices (GAP) standards; analysis conducted by Ginger Nickerson, UVM Extension, 2012).

## Feedback from Industry Stakeholders & Vermont Vegetable & Berry Growers Association

- Industry has expressed overall support for the Agency to stand up a program and provide FSMA compliance inspections. Buy-in for the “produce safety continuum” concept—education and technical assistance for all farms—and tiered approach (focus on farms that are required to comply with the federal rule first).
- Meeting participants have expressed concerns that FDA will be looking at VT farms through eyes that are used to CA and NJ farms.
- Growers would prefer Agency presence on farms.
- Meeting participants felt that they have a better relationship with the Agency than with FDA and that the enforcement process would be more reasonable.
- Agency is mission-driven to support agriculture.

## Estimated Timeline

- **January 2016** – Seek expanded statutory authority necessary to implement FSMA Produce Safety Rule
- **Spring/Summer/Fall 2016** – Partner with UVM Extension & VT Dept. of Health to provide outreach, education and technical assistance around FSMA Rules
- **January 2017** – Seek state funding for grant program to support food safety infrastructure improvements
- **Summer 2017** – Pilot “On-Farm Readiness Reviews” (OFRR)
- **January 2018** – Roll out full produce program, including OFRR, inspections, and industry support
- **June 2018** – Likely earliest date for inspections