

**Food Safety Modernization Act – Produce Safety Rule
Exemption Decision Tool**

Complete the following questions to determine if you will be affected by the Food Safety Modernization Act (FSMA) and the Produce Safety Rule. This is just a guide, for more in-depth information visit: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/>.

1. Does your farm grow, harvest, pack or hold produce?

Yes... Continue to #2

No... The Produce Safety Rule does not apply to you. However, if you process human or animal feed, other rules of FSMA may apply to you.

2. Is the produce grown for personal consumption only?

Yes... The Produce Safety Rule does not apply to you.

No... Continue to #3

3. Are your average annual produce sales less than \$25,000 (based on a rolling 3 year average, adjusted for inflation)?

Yes... The Produce Safety Rule does not apply to you. However, your buyers may still request GAP certification or other food safety assurances.

No... Continue to #4

4. Will all of your produce undergo commercial processing in a way that reduces harmful pathogens (e.g. tomatoes to be processed and canned into tomato paste)?

Yes... The Produce Safety Rule likely does not apply to you. You will need to include certain documentation accompanying the produce and will need to obtain written assurances from the processor.

No... Continue to #5

5. Is the produce you grow on the list of raw agricultural commodities that are rarely consumed raw?

This is an exhaustive list from the FDA:

(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); eggplant; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; winter squash; sweet potatoes; water chestnuts)

Yes, all of our produce is on the list... The Produce Safety Rule does not apply to you.

No, we grow produce not on the list... Continue to #6

If you have made it to this step, you are likely covered by the Produce Safety Rule, meaning that you will have to comply with the rule. However, you may be eligible for a qualified exemption:

6. Are your average annual food (all food including produce- grain, milk, hay, etc.) sales less than \$500,000 **AND** do you sell at least 50% of food directly to qualified end users? A qualified end user is either the consumer of the food OR a restaurant or retail food establishment within the same state or Indian reservation **or** less than 275 miles away.

Yes... You are eligible for a qualified exemption... Continue to #7

No... You are fully covered by the Produce Safety Rule and are subject to the full requirements... Continue to #8

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7. Farms that are qualified exempt must keep documentation to show that your farm satisfies the criteria for the exemption, including records of an annual review and verification of eligibility. Qualified exempt farms must also prominently display the name and complete address of the farm either on the label of the produce or at the point of purchase (e.g. sign at a farmers market). Dates for these requirements are below.

For Qualified Exempt Farms	Date of Compliance
Retention of records supporting eligibility for exemption	Jan. 26, 2016
Labeling requirement	Jan. 1, 2020

8. If you are fully covered by the Produce Safety Rule, there are different dates by which you will need to comply. The largest farms, with annual produce (not all food) sales exceeding \$500,000, will have to comply earliest, followed by small and very small farms. There are significant water testing requirements for agricultural water, but farms will have an additional two years to comply with those standards. Review the table below for specific dates.

Business Size of Covered Farm	Date of Compliance	Water Compliance Dates
Large farms (more than \$500,000)	Jan. 26, 2018	Jan. 27, 2020
Small farms (more than \$250,000, less than \$500,000)	Jan. 28, 2019	Jan. 26, 2021
Very small farms (more than \$25,000, less than \$250,000)	Jan. 27, 2020	Jan. 26, 2022

Values based on average annual produce sales, previous three year average

Compliance with agricultural water requirements allow an additional two years beyond each compliance date

What next? Several groups and agencies will be conducting training and outreach to ensure that producers understand the Produce Safety Rule and its requirements. Review some of the [key requirements](#) on the Produce Safety Rule and check out some additional resources at these pages:

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>

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

This information is intended to be a general guide and should not be considered legal advice. Review the [Food Safety Modernization Act](#) in its entirety to determine how you are affected, or contact the Montana Department of Agriculture foodsafety@mt.gov