

The Food Safety Modernization Act for Growers

What is FSMA?

The Food Safety Modernization Act (FSMA), signed into law on January 4, 2011, was passed to protect public health by improving the safety and security of the nation's food supply. FSMA includes five major elements:

- Preventative controls to reduce the likelihood of contamination;
- Inspection and compliance;
- Safety measures for imported food products;
- Mandatory recall authority; and
- Collaboration among federal, state, local, tribal and foreign food safety agencies.

What is the Produce Safety Rule?

As part of its FSMA implementation, the Food and Drug Administration (FDA) issued the Produce Safety Rule on November 13, 2015. This Rule establishes standards for safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. Produce Safety Rule standards are based on Good Agricultural Practices (GAPs), and include:

- Requirements for worker health, hygiene and training;
- Monitoring agricultural water quality through testing and implementing corrective measures if it does not meet required standards. This includes all water that may come into contact with the grapes, such as water used to mix pesticides sprays, clean equipment and tools, and wash hands, but may not include water used for drip irrigation.
- Restrictions governing the application of biological soil amendments, such as manure and compost;
- Assessing risks associated with intrusion by domesticated and wild animals or presence of fecal contamination; and
- Cleaning and sanitation of equipment, tools, and buildings.

How does the Produce Safety Rule affect you?

A vineyard is considered to be a farm under the Produce Safety Rule. A farm that has total annual produce sales averaging \$25,000 (adjusted for inflation; see <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm554484.htm> for details) or less during the past three years is not subject to the Produce Safety Rule. However, this exclusion takes into consideration the sales of ALL produce raised on the farm. For example, if your farm includes an orchard of cherries and peaches in addition to a vineyard, the annual average sales for cherries and peaches must be added to the sales of winegrapes to determine whether or not your farm is covered by this rule.

The Produce Safety Rule excludes thirty-four produce commodities, including asparagus, potatoes, collards, and figs, because these products are rarely consumed raw and their preparation by the consumer or commercial processor sufficiently reduces or eliminates microbial pathogens. This list does not include winegrapes.

However, winegrapes sold to a commercial winery ARE eligible for a commercial processing exemption from the Produce Safety Rule. For this exemption, the grower MUST take the following actions:

- Provide documentation with each shipment of grapes describing the grape variety, vineyard and specific block where the grapes were grown. This documentation must include a statement that the grapes are “not processed to adequately reduce the presence of microorganisms of public health significance”; and
- Annually obtain a written statement from each winegrape customer that documents that the customer has established and is following procedures that will adequately reduce the presence of microorganisms of public health significance by processing the grapes into wine. (The grower should obtain assurances prior to sale that the customer is willing to provide this written assurance).
- Maintain all documentation for a period of two years.

Note that if a customer will not be commercially processing the grapes, those winegrapes are not exempt from the Produce Safety Rule, and the grower must [comply](#).

What is the schedule for complying with the Produce Safety Rule?

Washington Winegrowers and the California Association of Winegrape Growers successfully worked with Congressional members to include language in the Consolidated Appropriations Act of 2018 preventing FDA from enforcing the Produce Safety Rule for growers of winegrapes. However, the schedule is as follows and could be rendered effective pending additional legislation.

Compliance dates for the Produce Safety Rule are based on your average annual produce sales (for all produce, including winegrapes) for the past three years:

- January 26, 2018 for farms with average annual sales greater than \$500,000 (January 26, 2022 is the proposed compliance date for water requirements).
- January 28, 2019 if you are a small business with average annual sales are greater than \$250,000 up to \$500,000 (January 26, 2023 is the proposed compliance date for water requirements).
- January 27, 2020 if your farm is a very small business, with annual average sales greater than \$25,000, and up to \$250,000 (January 26, 2024 is the proposed compliance date for water requirements; meaning that you do not have to start sampling agricultural water until 2024).

What is Washington Winegrowers doing for you?

In addition to securing legislative language preventing FDA from enforcing the Produce Safety Rule for growers of winegrapes, Washington Winegrowers will continue to work with the FDA to add winegrapes to the list of rarely consumed raw commodities, which would ensure a permanent exemption and reduce the cost and impact of the Produce Safety Rule, (unless compliance with the Rule is required by a grower’s customer).

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