



Farm Direct and FSMA

Why Oregon's pioneering Farm Direct Law is (mostly) not affected by the federal Food Safety Modernization Act

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Two laws – one state, one federal

In 2011, the Oregon Legislature passed our state's pioneering Farm Direct law, creating new opportunities for Oregon farmers to make and sell small quantities of jams, jellies, pickles, and other low-risk value-added foods direct to consumers, without having to be licensed food processors.

That same year, the new federal Food Safety Modernization Act was signed into law, giving the U.S. Food and Drug Administration (FDA) authority to write new rules affecting farmers and food "facilities" – including food processors.

Until 2016, it was not yet clear if those new federal rules would override Oregon Farm Direct. Finally, we have the answer: **No (mostly).**

THE LEGAL REASONING

FSMA does not apply to "retail food establishments," businesses that:

- Sell food directly to consumers as their primary function (restaurants and grocery stores, for example);
- Manufacture/process, pack, or hold food to be sold primarily direct to consumers;
- Sell more than 50% (by sales value) direct to consumers.

DOES THAT INCLUDE FARMS? YES.

FSMA directed FDA to amend the retail food establishment definition to clarify that it includes farms that process farm products into value-added goods and sell the majority of all their products direct to consumers. FDA published this new definition in 2016.

AND FURTHERMORE...

FSMA's final Preventive Controls rule (for facilities) clarified that for these farms, products, and sales, the point of sale does not have to be on the farm or even in person. Farm sales at farmers' markets, off-site CSA drop off locations, and even online sales count as sales direct to consumers.

A NOTABLE DIFFERENCE: FSMA allows farmers to do their processing in off-farm kitchen facilities. However, farmers using Oregon's Farm Direct law must use facilities on their farms.

WHY WE SAID "NO...MOSTLY"

Unfortunately, Oregon farms that make and sell value-added products under Oregon's Farm Direct law but do not sell the majority of their products direct to consumers do not qualify as retail food establishments.

For example: a farm that sells primarily to a processor but has a small market garden and does a small amount of value-added processing for direct sales to consumers.

If the farm makes the products in its private residence, it will be exempt from federal facilities registration (per the federal 2003 BioTerrorism Rule) and therefore not subject to the Preventive Controls Rule. If not, the farm likely will have to register with FDA as a food facility, though it may be partially exempt from some of the requirements (e.g., if it is a small business and processing low-risk foods).

If you are this type of farm and want guidance on your options, please contact the OSU Center for Small Farms & Community Food Systems (contact info below).

Still Not Sure If FSMA Applies to You?

Flow chart to determine if and how you are covered by the Produce and Preventive Controls rules:

http://sustainableagriculture.net/wp-content/uploads/2016/02/2016_2-FSMA-Final-Rule-Flowchart-V3.pdf

Want More Info on Oregon's Farm Direct Law?

Oregon's Farm Direct Law: Producer-Processed Value-Added Products

OSU Center for Small Farms and Community Food Systems:

http://smallfarms.oregonstate.edu/sites/default/files/small-farms-tech-report/farmdirect_producerprocessed.pdf

Oregon Department of Agriculture FAQs:

Producer processed value-added products:

<http://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/FarmDirectMarketingProcessedProducers.pdf>

Other farm products covered by the law:

<http://www.oregon.gov/ODA/shared/Documents/Publications/FoodSafety/FarmDirectMarketingAgProducts.pdf>

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