FOOD SAFETY MODERNIZATION ACT:
IMPACTS FOR FARMERS, PRODUCERS AND STATES

CSG Regional Policy Webinar
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Food Safety Modernization Act (FSMA)
A Brief History

Signed into law January 2011

- Congressional response to illnesses like the Listeria tainted cantaloupe that caused 33 deaths and the 9 deaths and 700 people sickened by salmonella in peanut butter in 2008.

- Goal is to reduce contamination and improve traceback
Law Gives Food and Drug Agency;

- Authority to order recalls
- Ability to Shift Food Safety Approach from Responding to Preventing
- Inspection and Compliance Authority
- Greater Oversight Over Imported Food
- Ability to Collaborate with Other Agencies and Improve Training of Food safety Officials
FDA has released two portions of regs

- **Proposed Rule for Preventive Controls for Human Food:**
  Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food

- **Proposed Rule for Produce:**
  Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption
Rules Yet To Be Released

- Imported Food
- Feed Manufacturer
- Third Party Verification
Comment Process

The Comment Period Has Been Extended to September 16, 2013

To Comment go to www.regulations.gov
Document FDA-2011-N-0920-0013 (Hazard Analysis)
Or
Document FDA 2011-N-0921-0001 (Produce)

Fee Proposal in Budget
Food Safety Modernization Act
The Impact of the Produce Rule

Thursday May 2, 2013
Southern Legislative Conference
Food Safety Modernization Act Webinar
Produce Safety Proposed Rule

• The Extent of this Rule....
  – Establishes science-based minimum standards for the safe production and harvesting of produce
  – The most significant revision to food safety law in this country since 1938:
    o 1,000 pages
    o 500 scientific, economic and industry references
    o Over 110 FDA questions

• Page 3537 of the Federal Register....
### Produce Safety Proposed Rule

<table>
<thead>
<tr>
<th>Covered Produce</th>
<th>Exempt Produce</th>
</tr>
</thead>
<tbody>
<tr>
<td>almonds, apples, apricots, aprium, asian pear, avocados, babaco, bamboo shoots, bananas, Belgian endive, blackberries, blueberries, broccoli, cabbage, cantaloupe, carambola, carrots, cauliflower, celery, cherries, citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and uniq fruit), cucumbers, curly endive, garlic, grapes, green beans, guava, herbs (such as basil, chives, cilantro, mint, oregano, and parsley), honeydew, kiwifruit, lettuce, mangos, other melons (such as canary, crenshaw and persian), mushrooms, nectarine, onions, papaya, passion fruit, peaches, pears, peas, peppers (such as bell and hot), pineapple, plums, plumcot, radish, raspberries, red currant, scallions, snow peas, spinach, sprouts (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow and zucchini), tomatoes, walnuts, watercress, and watermelon</td>
<td>arrowhead, arrowroot, artichokes, asparagus, beets, black-eyed peas, bok choy, brussels sprouts, chick-peas, collard greens, crabapples, cranberries, eggplant, figs, ginger root, kale, kidney beans, lentils, lima beans, okra, parsnips, peanuts, pinto beans, plantains, potatoes, pumpkin, rhubarb, rutabaga, sugarbeet, sweet corn, sweet potatoes, taro, turnips, water chestnuts, winter squash (acorn and butternut squash), and yams.</td>
</tr>
</tbody>
</table>
Produce Safety Proposed Rule

• **Which categories of produce are covered?**
  - Produce defined as a fruit and vegetables
  - Includes mushrooms, sprouts, herbs and tree nuts
  - Does not include grains

• **What is not covered**
  - Produce rarely consumed raw
  - Produce used for personal consumption
  - Produce that is subjected to processing or manufacturing (requires registration under food facilities)
Produce Safety Proposed Rule

• **Which farms are covered?**
  - Domestic and foreign farms that grow, harvest, pack, or hold covered produce with an average food sales during the previous 3-year period or $25,000 (US dollars) or more.
  - Farms of “mixed-type” type of facilities

• **Farms with a “qualified exemption”**
  - Farms with average food sales of less than $500,000 that sells primarily to consumers and located within a 275 mile radius of customers.
  - $25,000 Exemption
Produce Safety Proposed Rule

• Which hazards are covered?
  – Worker Training and Health and Hygiene
  – Agricultural Water
  – Biological Soil Amendments
  – Domesticated and Wild Animals
  – Equipment, tools, and Buildings
  – Sprouts

• Focused on identified routes of microbial contamination

• Considers risk posed by practices, commodities
Produce Safety Proposed Rule

• **Alternatives are Permitted**
  - Science based alternatives that are equivalent are permitted related to water and biological soil amendments of animal origin

• **Variances Provide Flexibility**
  - U.S. State or Foreign country may petition FDA for a variance from some or all provisions if deemed necessary in light of growing conditions

• **Recordkeeping Required**
  - Required that certain standards are being met (agriculture water testing results)
Produce Safety Proposed Rule

- **Compliance Dates**
  - 60-days after publishing of *final* rule

- **Staggered Implementation**
  - **Very Small Farms ($25,000 to $250,000)**
    - Four years after compliance date
    - water six years
  - **Small Farms ($250,000 to $500,000)**
    - Three years after effective dates
    - water five years
  - **Other Covered Farms**
    - Two years after effective date
    - water four years

Southern Legislative Conference – May 2, 2013
 Produce Safety Proposed Rule

- **Industry Key Issues to Consider**
  - We oppose the concept of producers of any size should be “exempt” from the basic rule
  - We are also concerned about produce commodities being *wholly exempt* from the rule
  - The exemption list should be addressed as part of Guidance rather than regulation
  - Alternative list is too restrictive
  - Rule is inadequate for petitioning for variances
  - Clearer definitions and “bright line” on what constitutes a farm and food facility
  - Segregation of processed and fresh produce under rule
Thank You!
Questions and Discussion

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The Food Safety Modernization Act

Impacts on Local Farms & Resources

Roger Noonan, President

www.newenglandfarmersunion.org
Committed to the economic viability of New England’s family farmers and fishermen.

Legislation – Education - Cooperation
Roger Noonan, President NEFU

Owns and operates diversified organic family farm.
Growing Consumer demand for local foods has reached a tipping point, developing into a strong mainstream trend over the past decade and creating a structural competitive shift in the U.S. food industry.
Local Products now account for up to a quarter of retail fresh produce offering and sales are expected to continue to expand over the next five years.

Rabobank Agfocus Feb 2012

www.newenglandfarmersunion.org
Buying local makes an impact

Direct farm to consumer sales account for nearly $8 billion dollars of sales.

And demand is rising…

Emergence of Retail Agriculture; Report to the Farm Credit Council Sept. 2010
www.newenglandfarmersunion.org
Local Foods Displace Summer Business of growers and shippers in California

- Some western growers report a 10-15% drop in sales during the summer months.

Rabobank Agfocus Feb 2013

www.newenglandfarmersunion.org
Action Needed to be taken!

THERE'S SOMETHING WRONG WITH THIS BANANA
And the Food Safety Modernization Act was signed into law Jan 4, 2011
It represented just a little light reading...
We ask for clarity and redefinition of terms

Farm is defined under FDA’s organizing principles as: Growing and harvesting its own Raw Agricultural Commodities (RACs) and preparing them for use as food.

This definition makes a farm that aggregates RACs from other farms or further processes its own RACs become a mixed type facility and triggers even more regulatory burden under the preventive controls rule

Ownership is referred to often but not defined.

What about cooperative ownership?
We ask that the FDA conduct an Environmental Impact Assessment

The proposed Produce rule likely have a significant impact on our environment.

- Increased use of ground and public water resources
- Increased use of synthetic fertilizers
- Increased stockpiling of manure and composting

The FDA concedes the cost of compliance will likely put some farms out of business.

The farms that represent our best stewards of our soil and water resources may convert their land to other uses potentially further increasing the environmental impact of this rule.
FSMA creates a significant regulatory burden for small businesses and burdens public

The costs of compliance are disproportionally borne by smaller farms.

Small farms will have restricted access to expanding markets.

Increased demands will be made on public resources:

- NRCS & SWCD increased demand for applicable conservation practices
- Land Grant Universities and Extension Service increased demand for research to support Alternatives and Variances
Thank You!

Questions?