

FARM BASED FOOD SAFETY

VIRGINIA COOPERATIVE EXTENSION

factsheet

FSMA for Direct Marketers

Wythe Morris, ANR Agent

Commercial Horticulture/ GAP Food Safety

Although the **Food Safety Modernization Act** was passed and signed into law on January 4, 2011, the new program will take several years to roll out; even longer to become fully effective. Direct Marketers have asked many questions as to how this will affect their small business enterprises. In addition to FSMA, the **Tester-Hagan Amendment, S.510**, was passed. This amendment was designed to relieve smaller direct marketers from the burden of required audits and GAP Certification based on pre-qualification.

The intent of this factsheet is to help to answer the many questions that have come about as a result of the new law and amendment.



What is a direct market? Direct markets are defined as those markets where product moves from the farm directly to the consumer. Examples of direct markets include **farmers' markets, farm-based roadside stands, pick your own operations, and consumer supported agriculture (CSA's)**. With the new FDA directive, additional direct markets would include sales to **restaurants and retail food establishments**.

Are there exemptions to FSMA? Under the existing FDA Directive issued on January 4, 2013, FDA is proposing that the smallest farms participating in direct marketing (\$25,000 sales or less) be exempt from food safety (GAP Certification) compliance. These farms would still need to pre-qualify and come under the Tester-Hagan Amendment. (Note: The FDA Directive is in comment period until May 16, 2013.)

What are the "pre-qualifications" under Tester-Hagan?

In order to qualify as a direct marketer under Tester Hagan, the farm or grower must meet the following criteria areas:

1. **Markets** Limited retail and direct markets
 - A. Direct Market sources must account for greater than 50% of a farm's sales
 - B. Sales are conducted within the state **or**
 - C. No greater than 275 mile radius of the home farm
2. **Sales** Product Sales does not exceed \$500,000 annually (based on previous three years average documented and verified)
3. **Signage** Direct Marketers are required to prominently and conspicuously display at the point of purchase, the name and business address of farm or facility where the food was manufactured (produced).
4. **Training** The owner, operator, or agent in charge of the facility has participated in training so that they can:
 - A. **Identify potential hazards** associated with the food product being produced
 - B. **Implement preventive controls** to address the hazards
 - C. **Monitor the preventive controls** to ensure that such controls are effective

Does the Tester-Hagan Amendment relieve small growers from product liability? Many growers get the impression that this amendment relieves them from food safety liability. This is not the case. Direct markets by all definitions listed are considered retail food establishments. This means that although they may claim exemption from federal FSMA food safety compliance under S.510, they are still regulated by state and local agencies, i.e. licensed by locality and state health departments.

S.510

"NO PREEMPTION— Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law."

What if I decide to sell wholesale products? Once a grower moves from direct market sales to wholesale sales (larger quantities to intermediary buyers), GAP Certification compliance will be required. Depending on size of farm operation, growers have a set period of time to comply with FSMA.

For more information, contact your local Virginia Cooperative Extension office.