

Title 2. Agriculture

Chapter II. State Plant Board, Department of Agriculture

Subchapter A. Generally

Part 35. Produce Safety Rule

Subpart 1. Generally

2 CAR § 35-101. Incorporation by reference of federal produce safety regulations.

The Department of Agriculture hereby incorporates by reference Title 21 of the Code of Federal Regulations, Part 112 (most current revision), regarding standards for the growing, harvesting, packing, and holding of produce for human consumption as provisions of this part as though set forth herein line for line and word for word, except that:

(1) Unless the context otherwise dictates, references to "We", "the United States Food and Drug Administration", and "FDA" shall refer to the "Department of Agriculture" or "department"; and

(2) All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

Authority. Arkansas Code § 2-16-207.

2 CAR § 35-102. Definitions.

The following words or terms, when used in this part, shall have the following meaning, unless the context clearly indicates otherwise:

(1)(A) "Covered farm" means a farm or farm mixed-type facility with an average annual monetary value of produce sold during the previous three-year period of more than twenty-five thousand dollars (\$25,000) (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment.

(B) Covered farms subject to this part must comply with all applicable requirements of this part when conducting a covered activity on covered produce.

(C) A farm is not a covered farm if it satisfies the requirements in 21 C.F.R. § 112.5 and the Department of Agriculture has not withdrawn the farm's exemption in accordance with the requirements of Part 112, Subpart R;

(2) "Department" means the Department of Agriculture; and

(3)(A)(i) "Produce" means any fruit or vegetable (including mixes of intact fruits and vegetables) and includes:

(a) Mushrooms;

(b) Sprouts (irrespective of seed source);

(c) Peanuts;

(d) Tree nuts; and

(e) Herbs.

(ii) A fruit is the edible reproductive body of a seed plant or tree nut (such as apple, orange, and almond) such that "fruit" means the harvestable or harvested part of a plant developed from a flower.

(iii) A vegetable is the edible part of an herbaceous plant (such as cabbage or potato) or fleshy fruiting body of a fungus (such as white button or shiitake) grown for an edible part such that "vegetable" means the harvestable or harvested part of any plant or fungus whose fruit, fleshy fruiting bodies, seeds, roots, tubers, bulbs, stems, leaves, or flower parts are used as food and includes:

(a) Mushrooms;

(b) Sprouts; and

(c) Herbs (such as basil or cilantro).

(B)(i) "Produce" does not include food grains, meaning the small, hard fruits or seeds of arable crops or the crops bearing these fruits or seeds, that are primarily grown and processed for use as meal, flour, baked goods, cereals, and oils rather than for direct consumption as small, hard fruits or seeds (including cereal grains, pseudo cereals, oilseeds, and other plants used in the same fashion).

(ii) Examples of food grains include:

(a) Barley;

(b) Dent or flint corn;

(c) Sorghum;
(d) Oats;
(e) Rice;
(f) Rye;
(g) Wheat;
(h) Amaranth;
(i) Quinoa;
(j) Buckwheat; and
(k) Oilseeds (e.g., cotton seed, flax seed, rapeseed, soybean, and sunflower seed).

Authority. Arkansas Code § 2-16-207.

2 CAR § 35-103. Farm registration.

(a) All covered farms shall register with the Department of Agriculture and provide a:

- (1) Business name;
- (2) Mailing address;
- (3) Physical address; and
- (4) Telephone number.

(b) Registered covered farms shall notify the department of any change in the information provided at registration within ninety (90) days of the change.

(c) Covered farms shall register with the department no later than July 1 of each year.

(d) The department may post the inflation-adjusted annual threshold on its website.

Authority. Arkansas Code § 2-16-207.

2 CAR § 35-104. Penalties.

Any person who violates a provision of this rule may be subject to one (1) or more of the following:

- (1) Actions detailed in the Compliance and Enforcement Penalty Matrix;
- (2) A stop sale order; and
- (3) Civil penalties under the authority of the Arkansas Plant Act of 1917, Arkansas Code § 2-16-203.

Authority. Arkansas Code § 2-16-207.

Cross Reference. Produce Safety Enforcement Response Rules, 2 CAR pt. 36.