

Secretary of the State File Number

6373

Regulation of the
Department of Agriculture
Concerning

Produce Safety Standards

Regulations adopted after July 1, 2013, become effective upon posting to the Connecticut eRegulations System, or at a later date if specified within the regulation.

Posted to the Connecticut eRegulations System on **February 10, 2023**

EFFECTIVE DATE
February 10, 2023

Approved by the Attorney General on
December 22, 2022

Approved by the Legislation Regulation Review Committee on
January 24, 2023

Electronic copy with agency head certification statement electronically submitted to and received by the Office of the Secretary of the State on
February 6, 2023

Form ICM-ECOPY (NEW 6/2015)
State of Connecticut
Secretary of the State



IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES
This form should be used only for regulations first noticed *on and after March 23, 2015*.

Electronic Copy Certification Statement

(Submitted in accordance with the provisions of section 4-172 of the Connecticut General Statutes)

Regulation of the
Department of Agriculture
Concerning
Produce Safety Standards

Approved by the Legislative Regulation Review Committee: **January 24, 2023**

eRegulations System Tracking Number: **PR2018-053**

I hereby certify that the electronic copy of the above-referenced regulation submitted herewith to the Secretary of the State is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170 of the *Connecticut General Statutes*.

And I further certify that in accordance with the approval of Legislative Regulation Review Committee, all required technical corrections, page substitutions and deletions, if any, have been incorporated into said regulation.

In testimony whereof, I have hereunto
set my hand on **February 3, 2023**.

A handwritten signature in black ink, appearing to read "Bryan P. Hurlburt", written over a horizontal line.

Bryan P. Hurlburt

Commissioner

Department of Agriculture

**State of Connecticut
Regulation of Department of
Agriculture Concerning
Produce Safety**

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 22-39g-1 to 22-39g-15, inclusive, as follows:

(NEW) Sec. 22-39g-1. Definitions.

As used in this section and in sections 22-39g-2 to 22-39g-7, inclusive, of the Regulations of Connecticut State Agencies:

- (1) The definitions in section 22-39g of the Connecticut General Statutes shall be applicable;
- (2) The definitions in 21 CFR 112.3, as amended from time to time, excluding the definition of farm, shall be applicable;
- (3) “Act” means the Food Safety Modernization Act, as specified in section 22-39g of the Connecticut General Statutes;
- (4) “Adulterated produce” means produce deemed to be adulterated food pursuant to the federal Food, Drug and Cosmetic Act, 21 USC 342;
- (5) “Connecticut Good Agricultural Practices” and “CGAP” mean the inspection certificate program created pursuant to section 22-39g of the Connecticut General Statutes;
- (6) “Covered Farm” means a produce farm that meets the income and product distribution criteria of a covered farm as covered farm is defined in 21 CFR 112.4, as amended from time to time;
- (7) “Department” means the Department of Agriculture; and
- (8) “Misbranded produce” means produce deemed to be misbranded food pursuant to the federal Food, Drug and Cosmetic Act, 21 USC 343.

(NEW) Sec. 22-39g-2. Registration of covered farms, qualified exempt farms, fees.

- (a) The provisions of this section, and sections 22-39g-4 to 22-39g-7, inclusive, of the Regulations of Connecticut State Agencies, shall apply to any covered farm.
- (b) The owner of a covered farm shall register annually with the department, on a form provided by the department. Such form shall include the following:

(1) Name of owner;

(2) Business address of owner;

(3) Address of each outdoor location where produce will be grown and acreage at each location;

(4) Address of each indoor location where produce will be grown and type of indoor facility or facilities that will be utilized at such indoor location, such as greenhouses, hoop houses, or private residences; and

(5) Description of produce to be grown at the covered farm.

(c) Except as provided in subsection (d) of this section, initial and renewal applicants for registration shall pay a non-refundable registration fee of one hundred dollars to the department.

(d) The owner of a covered farm eligible for qualified exemption pursuant to 21 CFR 112.5, as amended from time to time, shall register annually with the department, without charge, on a form provided by the department. Such form shall include the following:

(1) Name of owner;

(2) Business address of owner; and

(3) Declaration attesting to the owner's compliance with the requirements for qualified exemption described in 21 CFR 112.5, as amended from time to time.

(e) A covered farm shall locate any produce grown, harvested, packed or held in a private residence in a room that is separate from such residence's living quarters, and accessible from the outdoors by a separate entrance.

(f) All registrations issued pursuant to this section shall expire on January 31 of the year following issuance, and annually thereafter, if renewed. Registrations shall not be transferable.

(g) Any owner of a covered farm who receives a registration pursuant to this section shall notify the department of any changes to the information supplied on the application for such registration no later than ten business days after such change.

(h) The owner of any produce farm may submit a declaration to the department that it is not a covered farm, on a form to be provided by the department. The declaration shall not be binding on the department for any determination that such produce farm is not a covered farm.

(NEW) Sec. 22-39g-3. CGAP Program, certificate, fees.

(a) This section and sections 22-39g-4 to 22-39g-7, inclusive, of the Regulations of Connecticut State Agencies, shall apply to any produce farm that voluntarily requests inspection pursuant to section 22-

39g of the Connecticut General Statutes.

(b) Each CGAP applicant requesting inspection pursuant to section 22-39g of the Connecticut General Statutes shall pay a non-refundable registration fee of one hundred dollars to the department, except owners of covered farms shall not be required to pay any fee for such application.

(c) Each CGAP applicant requesting inspection pursuant to section 22-39g of the Connecticut General Statutes shall meet the following requirements prior to the issuance of a CGAP certificate:

(1) Demonstrate compliance with sections 22-39g-4 and 22-39g-5 of the Regulations of Connecticut State Agencies;

(2) Maintain written records documenting standard operating procedures for training provided to employees and contractors regarding sanitation, maintenance, harvesting, washing, packing, packaging, labeling and water quality; and

(3) Demonstrate employee and contractor compliance with such standard operating procedures through on-farm evaluations of employees and contractors.

(d) Any produce grown, harvested, packed or held in a private residence by a CGAP produce farm shall be located in a room that is separate from such residence's living quarters and accessible from the outdoors by a separate entrance.

(e) Each CGAP applicant requesting inspection pursuant to section 22-39g of the Connecticut General Statutes shall request such inspection not less than sixty days prior to the expected first day of the produce farm's harvest.

(f) After an inspection demonstrating compliance with this section and sections 22-39g-4 and 22-39g-5 of the Regulations of Connecticut State Agencies, the commissioner shall issue a CGAP certificate to the owner of the produce farm. Such certificate shall expire one year after the date of issuance.

(g) The CGAP certificate shall only cover current produce conditions; shall not be interpreted as a guarantee, explicit or implied, for the adequacy of any produce of the farm; and shall not be used for advertising purposes.

(NEW) Sec. 22-39g-4. Standards for growing, harvesting, labeling, packing, packaging and holding produce.

All produce at a produce farm shall be grown, harvested, packed and held in accordance with 21 CFR 112, as amended from time to time. All off-farm packing, packaging and holding of produce by a produce farm shall be in accordance with 21 CFR 112 or 21 CFR 117.8, as amended from time to time. All produce at a produce farm shall be labeled in accordance with the Act, and 21 CFR 101.5 and 21 CFR 101.7, as amended from time to time. Such standards are limited to growing, harvesting, storing,

treatment to manipulate the ripening of produce, and packing, packaging and labeling produce when these activities do not involve additional manufacturing or processing, such as slicing or heating.

(NEW) Sec. 22-39g-5. Record Keeping.

(a) Each produce farm shall keep its records in compliance with 21 CFR 112, Subpart O, as amended from time to time, and shall make its records available for inspection or copying within twenty-four hours of a request by the commissioner or the commissioner's designated agent.

(b) Each covered farm and CGAP certificate holder shall use a record keeping and coding system for produce to facilitate the effective recall of produce. Such record keeping system shall be capable of tracing produce placed into wholesale or retail distribution back to the produce farm, and specific lot growing location. Records produced pursuant to such system shall be maintained for a period of time that exceeds the expected shelf life of the produce or one year, whichever is longer. Such records shall be made available immediately upon request by the commissioner or the commissioner's designated agent.

(NEW) Sec. 22-39g-6. Adulterated and misbranded produce, investigations.

(a) No produce farm shall sell or offer for sale adulterated produce or misbranded produce.

(b) The commissioner or the commissioner's designated agent may investigate any allegation of adulterated produce, misbranded produce, or illness or injury alleged to have been caused by produce grown and offered for sale by a produce farm. Such investigation may include inspection of any area of a produce farm, including equipment, tools, vehicles for holding such produce, and any building under the produce farm's control where produce is grown, harvested, packed, labeled, or held. Such investigation may include obtaining samples and specimens for laboratory analysis.

(c) For purposes of this section and section 22-39g-7 of the Regulations of Connecticut State Agencies, a certificate of analysis, from a laboratory of the Connecticut Department of Public Health, the Connecticut Agricultural Experiment Station, the University of Connecticut, the United States Food and Drug Administration, the United States Department of Agriculture or other accredited laboratory acceptable to the commissioner, shall be considered prima facie evidence of the ingredients and constituents of any sample or specimen submitted for analysis by the commissioner or the commissioner's designated agent.

(NEW) Sec. 22-39g-7. Inspections, enforcement, and hearings.

(a) The commissioner or the commissioner's designated agent may inspect produce at any produce farm where produce is grown, harvested, packed, labeled or held. Such inspection may take place in any farm, field, lot, area, or building where produce is grown, harvested, packed, labeled or held, and may include equipment, tools, and vehicles for holding such produce. Such inspection may include obtaining samples and specimens for laboratory analysis.

(b) For purposes of this section and sections 22-39g-1 to 22-39g-6, inclusive, of the Regulations of Connecticut State Agencies, inspection of produce shall include the place or places where a produce farm grows, harvests, packs, labels, or holds produce.

(c) Whenever an inspection reveals any violation of section 22-39g of the Connecticut General Statutes, this section, or sections 22-39g-2 to 22-39g-6, inclusive, of the Regulations of Connecticut State Agencies, the commissioner shall notify the owner or operator of the produce farm of such violation in writing and specify the corrective action required to remedy such violation and the deadline by which such action shall be taken.

(d) The commissioner may issue any order pursuant to section 22-39g of the Connecticut General Statutes in order to respond to a condition that may present a public health risk, or issue orders necessary to effectuate the purposes of this section, such as orders for the embargo, destruction, quarantine and release of produce. Any order issued by the commissioner shall become effective upon receipt and remain in effect during any appeal of such order to the commissioner. The following shall apply to any order:

(1) No person shall remove, dispose of, sell or offer for sale any produce subject to any order issued by the commissioner without the permission of the commissioner or the commissioner's designated agent. Any person aggrieved by any order of the commissioner may request, in writing, an appeal hearing, which request shall be made and delivered to the commissioner not more than five business days after the issuance of such order. Such appeal shall state specifically any findings to which the aggrieved person objects, and any other grounds for contesting the order. The commissioner or the commissioner's duly appointed hearing officer shall conduct the hearing not later than five business days after the receipt of the appeal. If no appeal is made pursuant to this subdivision the order shall be deemed a final order of the commissioner.

(2) Not later than thirty days following any hearing held pursuant to subsection (d)(1) of this section, the commissioner or the commissioner's duly appointed hearing officer shall issue a final decision as to whether the person aggrieved by the order complied with the provisions of section 22-39g of the Connecticut General Statutes, this section and sections 22-39g-2 to 22-39g-6, inclusive, of the Regulations of Connecticut State Agencies, and the produce that was the subject of such order is safe for use as food. If the commissioner or the commissioner's duly appointed hearing officer determines the produce is a public health risk, the commissioner or the commissioner's duly appointed hearing officer may affirm or modify the order issued pursuant to this section for such produce as they deem proper. The commissioner or the commissioner's duly authorized agent shall supervise the destruction or other disposition of such produce. If the commissioner or the commissioner's duly appointed hearing officer determines that the produce that was the subject of the order is (A) safe for use as food and does not pose a public health risk, or (B) can be properly packaged, marked or otherwise brought into compliance with the provisions of section 22-39g of the Connecticut General Statutes, this section and sections 22-39g-2 to 22-39g-6, inclusive, of the Regulations of Connecticut State Agencies, the commissioner or commissioner's duly appointed hearing officer may revoke or modify the order as appropriate and authorize the release of such produce. The owner of produce that is released or destroyed shall pay all of the incurred costs of storage, handling, and destruction.

(e) Any person aggrieved by a final decision issued pursuant to subsection (d)(2) of this section may appeal therefrom to the Superior Court in New Britain pursuant to chapter 54 of the Connecticut General Statutes.

(f) Nothing in this section shall be construed to prevent the commissioner or the commissioner's designated agent from entering into a stipulated agreement or any other remedy with an aggrieved person which resolves the contested violation or order.

(NEW) Sec. 22-39g-8. --- 22-39g-15. Reserved.

Statement of Purpose

The purpose of these regulations is to provide the sanitary standards for the growing, harvesting, packing, packaging and holding of produce on farms in this state. Section 22-39g of the general statutes, known as the Food Safety Modernization Act, provides that the Department of Agriculture (the department) may enforce rules adopted pursuant to the federal Food, Drug and Cosmetic Act 21 USC 301, et seq., as amended by the federal Food Safety Modernization Act, as amended from time to time. These regulations adopt by reference the applicable sections of the code of federal regulations. The Food and Drug Administration enacted regulations codified in Title 21 CFR Part 112 (Produce Safety Rule or PSR) that implement the provisions of FSMA applicable to the growing, harvesting, packing, packaging, labeling and holding of fresh produce.

Section 22-39g-2 provides a registration system and fees for registration for covered farms, so that the department knows who they are. FSMA and 21 CFR Part 112 compliance is mandatory for “covered farms” which are those produce farms with food sales in excess of \$500,000. Qualified exemptions apply for produce farms with food sales between \$25,000 and \$500,000. Produce farms with less than \$25,000 in sales of produce are exempt from FSMA and the PSR. Section 22-39g-2 has a mechanism to discern between covered farms, qualified exempt farms and exempt farms. Fees are authorized in section 22-4c of the Connecticut general statutes.

To reduce risk, buyers, distributors and large retailers commonly require produce suppliers to demonstrate compliance with Good Agricultural Practices (GAP) and be audited by third party auditing firms. GAP has some additional requirements, notably training and record keeping that is not required to be documented by the PSR. These audits can be expensive and some farms cannot afford them, effectively keeping them from entering these markets. The department had been conducting the GAP audits at little expense to the farmers under a United States Department of Agriculture program until USDA dramatically increased fees. Section 22-39g provides a mechanism for covered and exempt farms to be issued “certificates” that the produce growers would use to gain market access. The department has taken this and established a Connecticut Good Agricultural Practices (CGAP) program for growing, harvesting packing, packaging, and holding produce grown in this state.

Section 22-39g-3, CGAP, builds on the PSR and we add in those training program and record keeping requirements that GAP programs require for a successful audit. Working with buyers, distributors and large retailers, the department has a GAP program that will be known as the voluntary CGAP program that will meet their needs and producer needs, and the department will be able to provide this at much lower cost to the producer than if they had to pay a third party.

Section 22-39g-4 incorporates the PSR rule and are applicable to covered farms and any farm requesting voluntary inspection and issuance of a certificate for market access.

Section 22-39g-5 incorporates the specific PSR rule regarding record keeping and adds an additional requirement for keeping records so that fruits and vegetables can be traced should a disease investigation make that necessary. This system can be whatever the producer grower decides is appropriate for their farm and business model.

Section 22-39g-6 prohibits the introduction of misbranded or adulterated produce into the

marketplace. This is boilerplate language that is applicable to any and all foods.

Section 22-39g-7 details inspectional jurisdiction, fees for re-inspection, the process for suspension or revocation of registrations for cause, and the associated appeal process. The process for the embargo of produce for cause, and the associated appeal process, which must be done expeditiously as produce is a perishable product.

Of note the department limits our inspectional jurisdiction to the place(s) where produce is grown to the places where produce is handled, stored, washed and packed that are under the control of the produce grower. Once produce enters distribution not controlled by the registrant, such as a restaurant, an establishment where it is further processed or a retail market, the produce becomes the responsibility of the Department of Consumer Protection or the Department of Public Health, even if this activity occurs on the farm where the produce is grown.

IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES

This form is to be used for proposed permanent and technical amendment regulations only and must be completed in full.

AGENCY CERTIFICATION

Department of Agriculture

Proposed Regulation Concerning

Produce Safety Standards

eRegulations System Tracking Number **PR2019-016**

I hereby certify the following:

(1) The above-referenced **regulation** is proposed pursuant to the following statutory authority or authorities: **22-39g of the Connecticut General Statutes.**

For technical amendment regulations proposed without a comment period, complete #2 below, then skip to #8.

(2) As permitted by Section 4-168(h) of the *Connecticut General Statutes*, the agency elected to proceed without prior notice or hearing and posted the text of the proposed technical amendment regulation on eRegulations System website on **(not applicable - not a technical amendment)**.

For all other non-emergency proposed regulations, complete #3 - #7 below, then complete #8)

(3) The agency posted notice of intent with a specified comment period of not less than 30 days to the eRegulations System website on **February 27, 2020.**

(4) *(Complete one)* ☒ No public hearing held or was required to be held. **OR** ☐ One or more public hearings were held on: **(not applicable).**

(5) The agency posted notice of decision to move forward with the proposed regulation to the eRegulations System website on **August 17, 2020.**

(6) *(Complete one)* ☐ No comments were received. **OR** ☒ Comments were received and the agency posted the statements specified in subdivisions (1) and (2) of CGS Section 4-168(e) to the eRegulations System website on **August 17, 2020.**

(7) The final wording of the proposed regulation was posted to the eRegulations System website on **August 18, 2020 (revised on August , 2022).**


(8) Subsequent to approval for legal sufficiency by the Attorney General and approval by the Legislative Regulation Review Committee, **the final regulation shall be effective**

(Check one and complete as applicable)

☒ When posted to the eRegulations System website by the Secretary of the State.

OR ☐ On _____

(Date must be a specific calendar date not less than 11 days after submission to the Secretary of the State)


SIGNED
 (Head of Board, Agency or Commission,
 or duly authorized deputy)

Commissioner
 OFFICIAL TITLE

December 21, 2022
 DATE

OFFICE OF THE ATTORNEY GENERAL REGULATION CERTIFICATION

Agency: Department of Agriculture

REGULATION NUMBER: PR2018-053

This Regulation is hereby APPROVED by the Attorney General as to legal sufficiency in accordance with Connecticut General Statutes § 4-169.

DATE: 12/22/2022

**Signed: /s/ Matthew I. Levine
Matthew I. Levine
Deputy Associate Attorney General and
Section Chief for Environment
*Duly Authorized***

The Connecticut General Assembly

Legislative Regulation Review Committee

Senator John Kissel
Senate Chair



Representative Lucy Dathan
House Chair

Official Record of Committee Action

January 24, 2023

| | |
|------------------------------|---------------------------|
| Agency: | Department of Agriculture |
| Description: | Produce Safety Standards |
| LRRC Regulation Number: | 2021-020B |
| eRegulation Tracking Number: | PR2018-053 |

The above-referenced regulation has been

Approved with Technical Corrections

by the Legislative Regulation Review Committee in accordance
with CGS Section 4-170.

Catherine M. Thomas
Committee Administrator



State of Connecticut
Office of the Secretary of the State

Confirmation of Electronic Submission

Re: Regulation of the Department of Agriculture concerning Produce Safety
Standards
eRegulations System Tracking Number PR2018-053
Legislative Regulation Review Committee Docket Number 2021-020B

The above-referenced regulation was electronically submitted to the Office of the Secretary of the State in accordance with Connecticut General Statutes Section 4-172 on February 6, 2023.

Said regulation is assigned Secretary of the State File Number 6373.

The effective date of this regulation is February 10, 2023.

A handwritten signature in blue ink, appearing to read "Stephanie Thomas".

Stephanie Thomas
Secretary of the State
February 10, 2023

By:

/s/ Christopher R. Drake
Christopher R. Drake
Director, Business Services
Division