

State of Connecticut
Regulation of
Department of Agriculture
Concerning
Produce Safety

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

As used in sections 22-39g-2 through 22-39g-8 of the regulations of Connecticut state agencies, inclusive, the following definitions shall apply:

(1) The definitions in section 22-39g of the general statutes and in 21 CFR 112.3 and 112.4 as amended from time to time, shall be applicable.

(2) “Act” means the Food Safety Modernization Act adopted as section 22-39g of the general statutes.

(3) “Adulterated produce” means adulterated food as defined in the federal Food, Drug and Cosmetic Act 21 USC 342.

(4) “CFR” means the Code of Federal Regulations.

(5) “Connecticut Good Agricultural Practices” and “CGAP” mean the inspection certificate program created pursuant to the Act.

(6) “Covered Farm” means covered farm as defined in 21 CFR 112.4.

(7) “Misbranded produce” means misbranded food as defined in the federal Food, Drug and Cosmetic Act 21 USC 343.

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

(a) Sections 22-39g-2, and Sections 22-39g-4 through 22-39g-8 of the regulations of Connecticut state agencies, inclusive, shall be applicable to any covered farm.

(b) The owner of a covered farm shall register annually with the department, on a form provided by the department, and provide the following information, including, but not limited to:

- (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 facilities, e.g., greenhouse, hoop house, or residence; and
- (5) Description of produce to be grown at the covered farm.

(c) Initial and renewal applicants for registration shall pay a non-refundable registration fee of one hundred (100) dollars.

(d) The owner of a covered farm eligible for qualified exemption under 21 CFR 112.5 shall register annually with the department, without charge, on a form provided by the department, and provide the following information, including, but not limited to:

- (1) Name of owner;
- (2) Business address of owner;
- (3) Declaration attesting to the owner’s compliance with the conditions for qualified exemption under 21 CFR 112.5

(e) If a covered farm grows, harvests, packs or holds produce in a private residence, it shall be in a room, separate from living quarters, with a separate outside entrance.

(f) All registrations issued pursuant to this section shall expire on January 31st after the year of

issuance, and annually thereafter, if renewed. Any registration not renewed within sixty (60) days of the expiration date shall be deemed expired and a new application shall be made. Registrations are not transferable.

(g) Any owner 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 10 business days after such change.

(h) The owner of any produce farm that is not a covered 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 is not binding on the department for any determination that such farm is not a covered farm.

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

(a) Sections 22-39g-3 through 22-39g-8, inclusive, of the regulations of Connecticut state agencies, shall be applicable to any produce farm that voluntarily requests inspection pursuant to section 22-39g of the general statutes.

(b) A request for a CGAP producer inspection pursuant to section 22-39g of the general statutes shall be made no less than sixty (60) days prior to the expected first day of harvest.

(c) Each applicant for the CGAP program shall pay a non-refundable registration fee of one hundred (100) dollars, except owners of covered farms shall not be required to pay any fee for the CGAP program.

(d) If a CGAP registrant grows, harvests, packs or holds produce in a private residence, the produce shall be in a room, separate from living quarters, with a separate outside entrance.

(e) The CGAP applicant must 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 these regulations;

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

(3) Demonstrate satisfactory programs for training employees and contractors.

(f) After satisfactory inspection results, the commissioner shall issue a CGAP program certificate to the owner of the produce farm. Such certificate shall expire on January 31st of the year after which the CGAP program certificate is issued.

(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 and holding produce, inspection

(a) All produce shall be grown, harvested, labeled, packed and held in accordance with 21 CFR Part 112, as amended from time to time.

(b) All off-farm packing and holding of produce shall be in accordance with 21 CFR Part 112 or 21 CFR Part 117.8, as amended from time to time.

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

(a) All records shall be kept in compliance with 21 CFR Part 112 subpart O, as amended from time to time, and shall be available for inspection or made available for inspection or copying within twenty-four (24) hours of request.

(b) Each covered farm and CGAP registrant shall use a record keeping and product coding system for produce to facilitate the effective recall of produce. Such lot identification and record keeping system shall be capable to tracing produce placed into the wholesale or retail distribution back to the producing farm. Such records shall be maintained for a period of time that exceeds the expected shelf life of the produce or one year, whichever is longer. Records of produce coding and distribution 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, including equipment, tools, vehicles for holding such produce, or building under the respondent's control where produce is grown, harvested, packed, held, or transported but shall not include a private residence. Such investigation may include obtaining samples and specimens for laboratory analysis.

(c) 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, hearings and penalties

(a) The commissioner or the commissioner's designated agent may inspect produce at any produce farm where produce is grown, harvested, packed, or held. Such inspection may include, but is not limited to, any farm, field, lot, area, or building where produce is grown, harvested, packed, or held, including equipment, tools, and vehicles for holding such produce. Such investigation or inspection may include obtaining samples and specimens for laboratory analysis.

(b) For the purposes of sections 22-39g-1 through 22-39g-8 of the regulations of Connecticut state agencies, inclusive, inspection of produce shall include the place or places where produce is grown to the first place where produce enters the wholesale or retail commercial distribution chain not owned or controlled by the registrant or respondent.

(c) Additional or follow up inspections performed by the department may be subject to fee of two hundred (200) dollars, and the actual costs of laboratory analysis of any produce sampled by the department.

(d) Whenever an inspection or investigation reveals any violation of section 22-39g of the general statutes or the regulations adopted thereunder, the registrant, applicant or respondent shall be notified in writing of such violation(s) specifying the corrective action(s) to be taken, and specifying the time period within which such corrective action(s) shall be taken.

(e) Nothing in this section shall be construed to limit the commissioner's authority to issue a cease and desist order pursuant to section 22-4d. A cease and desist order shall become effective upon service by the commissioner.

(f) The commissioner has the authority to issue an order pursuant to section 22-39g of the general statutes, in order to respond to a condition that may present a public health hazard, or issue orders necessary to effectuate the purposes of this section, including, but not limited to, orders for the embargo, destruction, and release of produce. An order issued under section 22-39g shall become

effective upon receipt and remain in effect during any appeal of such order to commissioner. The following shall apply to such an order:

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

(2) Following any hearing requested pursuant to subsection (f)(1), the commissioner or the commissioner's duly appointed hearing officer shall issue a final decision as to whether such produce subject to an order complies with the provisions of section 22-39g of the general statutes and any regulation adopted thereunder and is safe for use as a food. If the commissioner or the commissioner's duly appointed hearing officer determines the produce is unsafe or unfit for use as food, the commissioner or the commissioner's duly appointed hearing officer may affirm or modify an order issued pursuant to subsection (f) for such produce as he deems 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 finds the produce is safe for use as food and is not detrimental to public health, or finds such produce can be properly packaged, marked or otherwise brought into compliance with the provisions of section 22-39g of the general statutes or any regulations adopted thereunder, the commissioner or the commissioner's appointed hearing officer may revoke or modify an order issued pursuant to subsection (f) for such produce as he deems proper to be so packaged, marked or otherwise brought into compliance and may thereafter authorize the release of such produce. The owner of produce that is released or destroyed shall pay all of the costs of storage, handling, and destruction.

(g) Any person aggrieved by a Final Decision issued pursuant to subsection (f)(2) may appeal therefrom to the Superior Court in New Britain pursuant to chapter 54 of the general statutes.

(h) 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 party which resolves the disputed violation or order.

(NEW) Sec. 22-39g-8. Penalties

(a) If the department finds that that the owner of a covered farm has failed to register pursuant to these regulations, the commissioner may issue a civil penalty.

(b) If the department finds that the owner of a farm subject to the Act or these regulations, cultivates, grows, harvests, or holds produce in this state in violation of the requirements of the Act or these regulations, the commissioner may issue a civil penalty, in addition to possible revocation of the CGAP certificate issued to the owner of the farm.

(c) The commissioner or the commissioner's designated agent may suspend, revoke, deny or refuse to renew any CGAP certificate issued for a violation of section 22-39g of the general statutes or any applicable regulation.

(NEW) 22-39g-9 through 22-39g-15 are reserved for future use

Statement of Purpose

The purpose of these regulations is to provide the sanitary standards for the growing, harvesting, packing and holding of [produce on farms] [farm produce] in this state. Section 22-39g of the general statutes, known as the Food Safety Modernization Act, provides that the Department of Agriculture 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 federal Food, Safety, Modernization Act (FSMA), which amended the Food, Drug and Cosmetic act. 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, holding and packing of fresh produce.

Section 22-39g-2 provides a registration system and fees for registration for covered farms, so that we know 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 foods 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. We have taken this and established a Connecticut Good Agricultural Practices (CGAP) program for growing, harvesting and packing 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 we have a GAP program that will be known as CGAP that will meet their needs and producer needs, and we are able to provide this at much lower cost to the producer than if they had to pay a private 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

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

Section 22-39g-7 spells out 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 we limit 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, 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.

Finally section 22-39g-8 provides for civil penalties for various violations. These civil penalties are authorized in section 22-7 of the Connecticut General Statutes.