

# INTERACTIONS BETWEEN THE FSMA PSR AND OTHER LAWS THAT MAY APPLY TO PRODUCE OPERATIONS

Extension Legal Services Initiative  
FSMA Fact Sheet

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## WHAT IS THE FSMA PSR?

FSMA PSR is the FDA's Produce Safety Rule, which establishes mandatory food safety standards for produce farms.



Some FSMA PSR requirements may overlap with on-farm activities other state or federal laws require. This factsheet discusses four federal laws where overlap is possible: the Clean Water Act (and state regulation of nonpoint source pollution), the Americans with Disabilities Act, the Fair Labor Standards Act, and guidelines from the Occupational Safety and Health Administration. In many cases, producers have adopted or modified on-farm activities in order to meet the requirements outlined in these other federal laws. Although the FSMA PSR outlines a new set of required activities for producers, these existing practices may already provide co-compliance with certain FSMA PSR requirements (satisfying both the FSMA PSR and other relevant laws), or may require only slight adjustments to do so.



## FMSA PSR OVERLAP WITH THE CLEAN WATER ACT



The Clean Water Act is a federal law that addresses water pollution and prohibits the discharge of polluted water from a point source unless a permit is obtained. A point source is a “defined or discrete conveyance” such as a pipe or ditch. For example, an operation may have a point source on its farm if vegetable wash water from spray tables or dunk tanks is discharged through a pipe or single location into a body of water. If the water discharged is polluted by containing, for example, chemical waste, biological materials, rock, sand, or agricultural waste, then this operation may be covered by the Clean Water Act and required to get a permit.

Anything not considered a point source is a nonpoint source, and the Clean Water Act requires states to create nonpoint source management programs. States vary in their approaches to nonpoint source programs, with the majority of states taking a nonregulatory approach and encouraging the adoption of Best Management Practices (BMPs) through grant programs and education and outreach. BMPs also vary by state, but generally include practices such as installing buffer strips near water, conservation practices to reduce erosion and runoff, and managing the application of fertilizers. In states that encourage but do not require the adoption of BMPs, co-compliance is not as great a concern. However, if the farm has voluntarily adopted BMPs, they

may wish to consider whether the BMPs already offer some degree of compliance with PSR standards related to water quality.

A small number of states regulate nonpoint source pollution and require farmers to use BMPs or Nutrient Management Plans. In these states, overlap with the PSR and a state regulatory program is more likely to occur. For example, in Vermont, a producer must store manure properly to reduce runoff or leaching into water. Similarly, the PSR requires a covered farm to store manure so it does not become a source of contamination for covered produce or activities, including water sources. Delaware requires management plans and retention of certain records if nutrients are applied to the soil. Similarly, the FSMA PSR requires that covered farms composting or conducting other soil amendment treatment must establish and keep records.

In these examples, the activities outlined in state law and the FSMA PSR overlap. Therefore, being in compliance with state law may mean that covered farms are already practicing activities that help them meet the compliance requirements for parts of the FSMA PSR. If the activities practiced meet one law and not the other, then producers may wish to consider how adjusting the activity will lead to co-compliance for both requirements, for example, creating records that contain the information needed for both laws rather than maintaining two separate sets of records.



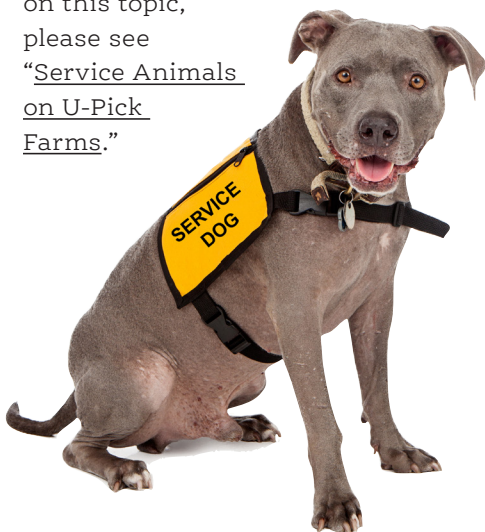
NRCS: LINDA RICHARDSON

## FSMA PSR OVERLAP WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against individuals with disabilities in all public places as well as private places that are open to the general public. Operations open to the public, such as a U-pick farm, roadside stands, or other agritourism activities, are required to make reasonable modifications to accommodate those with disabilities, including allowing service dogs on the premises. Dogs, and under certain circumstances, miniature horses, are the only recognized service animals under the ADA, but individual states may have their own laws that expand upon the ADA.

In addition to ADA compliance, operations must still meet the FSMA PSR requirements to keep animals away from produce to prevent contamination. Operations that are open to the public need to consider the activities required by both laws when writing visitor guidelines to inform the public where service animals can go on the farm and where they may be prohibited for food safety reasons. For more information on this topic,

please see [“Service Animals on U-Pick Farms.”](#)



## FSMA PSR OVERLAP WITH THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (FLSA) is a federal law that establishes employment standards to protect employees from unfair labor practices, for example, through minimum wage and overtime laws. Generally, agricultural work is exempt from minimum wage and overtime pay as outlined in the FLSA; however, packing agricultural commodities grown on another farm is not considered “agricultural work” and therefore not exempt from minimum wage and overtime requirements.

This distinction is important to keep in mind when considering the FSMA PSR definition of a “farm.” The FSMA farm definition does not differentiate between the packing of agricultural commodities grown on the farm in question or on other farms. This means, for example, that a farm employee could pack agricultural products from that farm along with products from other farms into a single CSA box and still satisfy the FSMA farm definition. However, that same activity may not be considered agricultural labor under the FLSA because the farm employee is handling agriculture products from another farm,



### UNDER THE FSMA PSR, A FARM CAN BE EITHER A:

- Primary production farm, or a
- Secondary activities farm.

For more on primary production farms, see our fact sheet on business entity formation at [go.uvm.edu/fsmafactsheets](http://go.uvm.edu/fsmafactsheets).

For more on secondary activities farms, see our factsheet on produce market intermediaries at [go.uvm.edu/fsmafactsheets](http://go.uvm.edu/fsmafactsheets).

potentially triggering minimum wage and overtime requirements.

It is important for farms that are packing agricultural commodities grown elsewhere to understand this distinction in order to determine when employees are doing work that is or is not exempt from minimum wage and overtime pay. However, this distinction should not impact a farm’s PSR compliance obligations.



# FSMA PSR OVERLAP WITH OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION GUIDELINES

The Occupational Safety and Health Administration (OSHA), which is part of the United States Department of Labor, sets and enforces standards to protect the safety and health of employees. In response to the COVID-19 outbreak, OSHA released temporary guidelines for agricultural facilities that recommended, among other things, handwashing for all employees. Some states have required additional activities for employees in the agricultural sector to prevent the spread of COVID-19.

The FSMA PSR also requires covered farms to ensure the health and hygiene of its employees through certain practices, such as making handwashing stations available and requiring employees to wash their hands. To meet the FSMA PSR requirements for toilets and handwashing facilities, it is recommended that farms follow OSHA's regulation for field sanitation. As covered farms adopt activities that result in OSHA and FSMA PSR co-compliance, it will likely be easier to respond quickly to new or updated OSHA guidelines in the future.



ELIZABETH BUCK CORNELL VEGETABLE PROGRAM

## Key Takeaways

Farms are impacted by a variety of state and federal laws. The FSMA PSR requires activities that may overlap with ongoing activities implemented to meet other laws. Compliance with these other laws should not make compliance with the FSMA PSR more difficult and may in some cases make compliance easier where requirements overlap. Producers should consider their current activities to determine if those actions meet the FSMA PSR and, if not, consider adjustments that achieve co-compliance.



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This factsheet is part of a series on legal topics related to compliance with the FSMA PSR. To access additional resources, go to [elsi.necafs.org](https://elsi.necafs.org). If you would like to view the legal research and citations that inform this factsheet, please contact [CAFS@vermontlaw.edu](mailto:CAFS@vermontlaw.edu). We also encourage readers to visit FDA's website for more information:

- [www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-produce-safety](https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-produce-safety)
- [www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-preventive-controls-human-food](https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-preventive-controls-human-food)