UCCE Food Safety Workshop Series
Workshop #2: Follow-Up FSMA Questions & Answers with Vince Trotter, UCCE Ag Ombudsman and Dave Runsten, CAFF

QUESTION: Slide #8 from Dave's presentation references **AB 224**, **AB 18771** and **AB 1990**, raising the concern that numerous California state laws are referenced and that there are even more rules that now have to be followed.

ANSWER: AB 224, AB 18771 and AB 1990 predate FSMA and mostly relate to how farms conduct direct-marketing of agricultural products. All three are explained here by the UC Small Farms Program: http://ucanr.edu/blogs/blogcore/postdetail.cfm?postnum=17468.
Note: since this article, AB 1990 has been updated by the passage of **AB 234**. This mostly affects "Community Food Producers" - urban farms, community gardens, school gardens and gleaners - and I highlight recommend this article to explain the two laws: http://www.theselc.org/changing_laws_affecting_community_food_producers

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QUESTION: What is the proper concentration of hydrogen peroxide for use in sanitizing equipment, tools, etc.?

ANSWER: This page from the CDC goes pretty in-depth on hydrogen peroxide and other substances: https://www.cdc.gov/hicpac/Disinfection_Sterilization/7_0formaldehyde.html

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QUESTION: FEED Sonoma (owner Tim Page presented at Day 1) describes its business as "Micro-Regional Produce Aggregation & Distribution". Essentially, they buy from local farms and then sell to restaurants, institutions and, occasionally, retailers around the greater Bay Area. Would selling to FEED Sonoma or a similar food hub or produce aggregator fit with the Qualified Exemption from the Produce Rule which requires that you sell >50% of your product to "Qualified End Users" within the state or 275 miles from the farm?

ANSWER: Probably not. Sales to FEED Sonoma are unlikely to be considered sales to a "qualified end user," unless FEED Sonoma meets the definition of a "retail food establishment." To be a retail food establishment, FEED Sonoma's sales must be >50% retail (direct to individual consumers). It sounds like they only do retail sales "occasionally," so it seems like they wouldn't meet that >50% threshold. Farmers can still be qualified exempt if they sell >50% direct other than FEED Sonoma.

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QUESTION: What if your farm doesn't *sell* anything, but rather is organized as a non-profit and donates all of its produce to food banks, charities, etc.? Even if the value of what you donate exceeds $25,000, would you be exempt from the Produce Rule? And on a related note, how do

gleaners fit with FSMA - especially given that they may harvest (and donate) produce from multiple locations, none of which they own or operate.

ANSWER: Donated produce is not counted towards a farm's sales revenue under the Produce Rule. This is verbatim from the preamble (emphasis added):

> *(Comment 119) Some comments request clarification on how sales will be calculated for the purpose of determining a farm's size and, therefore, whether the farm is a covered farm, eligible for a qualified exemption, and/or eligible for an extended compliance period. Comments ask whether the value of produce donated to non-profit organizations such as food banks and senior centers would be counted towards sales. In addition, comments ask whether sales or donations to public institutions, such as prisons, would be counted towards sales.*
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> *(Response) For purposes of the sales thresholds in this rule,* ***FDA does not consider a donation in which there is no payment of money or anything else of value in exchange for produce to be a "sale." Such donations, including to public institutions or non-profit organizations, are not counted toward a farm's sales revenue.*** *However, sales of produce to any public institutions or non-profit organizations in which money or anything else of value is exchanged for produce must be counted as sales for purposes of this rule.*

Gleaners are not necessarily exempt from the rule, because FDA considers growers and harvesters covered separately (when they are separate operations). However, if the gleaners are harvesting and then donating the produce, the same answer applies as above -- where those donations are not counted towards the gleaners' sales, and therefore they are likely to be exempt.

Here's FDA's thinking, again from the preamble. Not quite as clear as the responses to the donation question, but still pretty straightforward:

> *(Comment 158) One comment states people harvesting remnant crops following the main harvest for non-profit organizations (referred to as "gleaners"), often for donation to food banks, should not be subject to training requirements. Another comment states that in scenarios where a farm has completed its main harvest, and a third party purchases and harvests the remaining unharvested crop, it should be the responsibility of the remnant harvesting entity to ensure that their harvesters are appropriately trained.*
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> *(Response) An operation that harvests crops but does not grow them, such as a "gleaner" operation or other remnant harvester operation, may meet the revised definition of "farm" as established in the PCHF regulation and as we are establishing it in this rule (see definition of "farm" in § 112.3(c)).* ***While we are not exempting operations that harvest remnant crops from the provisions of part 112, we believe that it is likely that most such operations (including those who do so for donation to food banks) will not be covered by this rule because they will have $25,000 or less in annual sales of produce or will be eligible for a qualified exemption***.