

Please Consider Commenting on the Proposed Water Rule as part of FSMA and attending the informational Webinar on March 11

Craig Kahlke

As many of you have likely seen, the FDA has proposed new regulations for the *Agricultural Water Rule* as part of the “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water”. On Friday March 11th at 11am we invite you to attend a webinar co-hosted by NYS Department of Agriculture & Markets and NASDA where FDA will provide an overview of the **proposed** rule and answer any questions you might have. The zoom link information is below. There is no need to register to attend, simply click on the link when it’s time.

Northeast Regional Webinar on Proposed Agricultural Water Rule

Date/Time: Friday, March 11, 2022, 11:00 AM – 12:00 PM ET

Join Zoom Meeting <https://us06web.zoom.us/j/82993921762?pwd=K241ZzRQZEhiaG1tK0lGT1BQk5Xz09>

Meeting ID: 829 9392 1762

Passcode: 996005

Linked here is the [Agricultural Water Proposed Rule Fact Sheet](https://www.fda.gov/media/154334/download) (<https://www.fda.gov/media/154334/download>), which has summarized the information nicely, so you can read ahead of time to prepare for the FDA’s presentation. Please bring all your questions so they can continue to understand any potential challenges here in NYS to adoption/implementation of the rule.

Background

On December 6, 2021, the FDA announced proposed changes to the Food Safety Modernization Act (FSMA) specifically, the **preharvest** water provision within the Produce Safety Rule (PSR). The link to the overview of the proposed rule and as it appears in the docket are here: [FSMA Proposed Rule on Agricultural Water](https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-proposed-rule-agricultural-water) (<https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-proposed-rule-agricultural-water>). The changes are meant to address stakeholder concerns (previous comments submitted to FDA) about FSMA water testing requirements. The proposed changes would require comprehensive Agricultural Water Assessments (AWA), which would include surrounding land use, weather events, and topography, to identify any potential contamination risks to the water sources used on farms.

These proposed changes are open to public comment until **April 5th, 2022**. Stakeholder and growers are strongly urged to comment during this time to make the voices of New York’s growers and related industry heard, ensuring that your unique challenges in your tree fruit or small fruit operation will be addressed.

Effective comments on the change, whether for, or against, should be factual, succinct, clearly demonstrate section being addressed, and clearly supported with examples or evidence. It is also important to offer reasonable and achievable alternatives to what is currently proposed.

Start by leading off with an introduction to demonstrate that you have stake in the game. This does not need to be more than a job title, farm, or business. This will show that proposed changes will have a direct impact on you.

Second, identify clearly what part of the rule adversely affects you. To make sure the reader knows exactly what provision you are talking about, specifically address them by title or number. Without the use of sections and subsections the message may not come across as strong, or the reader may not understand what subpart is being referenced.

Next, demonstrate why or how the provision adversely affects you. Explain why the proposed rule may be unattainable, may cost you too much time, or may otherwise be bad for your farm.

Effective Comments need to be factual and to the point. Just calling the rule stupid or telling them to throw the whole thing away is not going to go far. Keep emotions and name-calling out of your comments and focus on exactly how your farm will be impacted. Keep comments short and to the point, but support arguments with real examples.

Remember, to make the most out of the comment stay factual, to the point, and specifically call out subsections being referenced. Lead in with background demonstrating that this will affect you, identify subsections being referenced, briefly explain why this provision does or does not work, and finish with how or what may work with you.

Comments can be written and faxed to the FDA at 301-827-6870 or mailed to:
Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

To read more about the rule or if you would like to comment on the proposed rule, you may do so at [FSMA Proposed Rule on Agricultural Water](https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-proposed-rule-agricultural-water) (<https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-proposed-rule-agricultural-water>)

Comments must be submitted by April 5, 2022.

NOTE: Contact Craig at 585-735-5448 or cjk37@cornell.edu to discuss specifics to your farm or any general questions or concerns you may have. This proposed rule as compared to the current one in place is more open-ended (Agricultural Water Assessment) and less specific (compared to the required water testing in the current rule). A suggested plan of action would be to read the factsheet and key parts of the rule and think about how an AWA would look on your farm, and the potential challenges to your operation. Make a point to bring these questions to me or FDA/NYS Ag & Mkts when attending the March 11 webinar. Again, the comment period ends on April 5. FDA then has to read and respond to every comment. For now, the current water-testing requirements are under enforcement discretion as in the PSR (<https://www.fda.gov/food/cfsan-constituent-updates/fda-announces-enforcement-discretion-policy-certain-fsma-regulations>). Many of you already do water testing as required by most 3rd-party GAPs audits. We urge you to continue this testing.

Additional Resources:

Phil Tocco, a food safety educator with MSU Extension, recently put out an excellent Podcast “Understanding FDA’s New Proposed Water Rule” with Annalisa Hultberg, a food safety educator with the University of Minnesota. I urge folks to listen to it here: <https://www.buzzsprout.com/936625/9993253>

FDA Launches Agricultural Water Assessment Builder to Help Farms Understand Agricultural Water Proposed Rule Requirements

Questions on this or other food safety topics? Contact Craig Kahlke at 585-735-5448 or cjk37@cornell.edu

The U.S. Food and Drug Administration (FDA) released a new user-friendly online [Agricultural Water Assessment Builder](#) to help farms understand the proposed requirements for an agricultural water assessment in the [Agricultural Water Proposed Rule](#). Use of the tool is optional.

If finalized, the proposed rule would require farms to conduct systems-based agricultural water assessments to determine and guide appropriate measures to minimize potential risks associated with pre-harvest agricultural water. The assessment would include an evaluation of the water system, agricultural water use practices, crop characteristics, environmental conditions, potential impacts on source water by activities conducted on adjacent and nearby land, and other relevant factors, such as the results of optional testing. Covered farms would be required to conduct pre-harvest agricultural water assessments annually, and whenever a significant change occurs that affects the likelihood that a known or reasonably foreseeable hazard will be introduced into or onto produce or food contact surfaces.

The Agricultural Water Assessment Builder prompts users to answer questions and/or fill in information specific to their farms. Information entered into the tool is not shared with the FDA and will not be saved. However, users have the opportunity save or print the information they provide to their local computers.

This user-friendly tool incorporates information from the Agricultural Water Proposed Rule, the Final Qualitative Assessment of Risk to Public Health from On-Farm Contamination of Produce, and the 2015 Produce Safety Final Rule.

The development of this tool is consistent with our objectives in the [New Era of Smarter Food Safety Blueprint](#) to look for smarter tools and approaches for food safety. We welcome feedback on this optional tool, such as suggestions related to the tool's functionality and, useability. Feedback on the tool can be sent to agwaterbuilder@fda.hhs.gov.

For Additional Information

- [Agricultural Water Assessment Builder Information Page](#)
- [Federal Register Notice announcing the Proposed Rule](#)
- [FSMA Proposed Rule on Agricultural Water](#)
- [FSMA Final Rule on Produce Safety](#)
- [Final Qualitative Assessment of Risk to Public Health from On-Farm Contamination of Produce](#)