1 New Section; Produce Safety. Amend RSA by inserting after Chapter 143 the following new chapter:

Chapter 143-A
PRODUCE SAFETY

143-A:2 Definitions. –

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Covered produce" means any fruit of vegetable as listed in 143-A:3, including any mix of fruits or vegetables, such as a fruit basket.

III. "Department" refers to the department of health and human services.

143-A:3 Exemptions.

I. Covered Produce includes all of the following:

(a) Fruits and vegetables such as almonds, apples, apricots, apriums, artichokes-globe-type, Asian pears, avocados, babacos, bananas, Belgian endive, blackberries, blueberries, boysenberries, brazil nuts, broad beans, broccoli, brussels sprouts, burdock, cabbages, Chinese cabbages (bok choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and uniq fruit), cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw, and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas-pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprouts (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow, and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams;

(b) A mix of intact fruits and vegetables, such as a fruit basket.

II. Covered Produce does not include:

(a) Produce that is rarely consumed raw, specifically the produce on the following exhaustive list: asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts;

(b) Produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management;

(c) Produce that is not a raw agricultural commodity, as defined in 21 C.F.R § 112.3(c).

III. Produce is eligible for exemption from the requirements of this chapter under the following conditions:

(a) The produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;

(b) The covered farm discloses in documents accompanying the produce, in accordance with the practice of the trade, that the food is "not processed to adequately reduce the presence of microorganisms of public health significance";

(c) The covered farm complies with the requirements of 21 C.F.R. § 112.2(b)(3);

(d) The covered farm complies with the requirements of 21 C.F.R. § 112.2(b)(4);

(e) The requirements of 21 C.F.R. § 112 Subpart A and Subpart Q apply to such produce; and

(f) An entity that provides a written assurance under 21 C.F.R. § 112.2(b)(3)(i) or (ii) acts consistently with the assurance and documents its actions taken to satisfy the written assurance.

143:A-4 State Produce Sanitation Control Authorities. – The Department shall serve as the state produce sanitation control authority for the commercial sale and processing of produce. The Department shall enforce the FDA Food Safety Modernization Act, Public Law 111-353 for standards of growing, harvesting, packing, and holding of produce for human consumption, 21 C.F. R. Part 112, as incorporated by reference.

143:A-5 License Required; Labeling; Records. – No person or facility shall process produce until a license has been granted by the department of health and human services. A license shall be issued to any facility which has complied with the rules of the commissioner of the department of health and human services relative thereto. All licenses issued under this section shall expire on ENTER DATE next following the date of issuance. All records shall be open to inspection by agents of the department at any time.

143:A-6 Revocation of License. – In case any produce facility shall be deemed by the commissioner of the department of health and human services to be conducted in an unsanitary manner, or there shall be any practice deemed in violation of any law, or of any legally adopted regulation of the commissioner, it shall be the duty of the commissioner to notify the facility concerned, and in case the required changes in conditions, methods or branding are not effected within the time specified, to close such facility, or to suspend, revoke or cancel the license as the commissioner may deem expedient.

143:A-7 Procedure. – When denying or revoking a license, the department shall give written notice of the reasons for the action and provide information related to the licensee’s right to request a hearing.

143:A-8 Effect of Revocation. – Any person or facility whose license has been suspended or revoked, or for whom a renewal has been denied, shall discontinue the processing and sale of produce. The sale or processing of produce from a non-certified facility shall constitute a violation of this subdivision.

143:A-9 Regulations. – The commissioner of the department of health and human services is empowered to make all necessary regulations for the proper enforcement of the respective duties of each agency under this subdivision.

143:A-10 Penalty. - Whoever violates any provision of this subdivision, or regulations made under authority of the preceding RSA ###, shall be guilty of a misdemeanor.

143:A-11 Forfeitures. – Any produce sold in violation of this subdivision may be forfeited.

143:A-12 Funding of Program. – The commissioner of the department of health and human services is authorized to receive and expend federal funds appropriated for administration of this new statute, to adopt rules and to enforce the standards of the Produce Safety Rule, and to employ the necessary personnel.

143:A-13 Repeal. - This chapter is repealed if the federal government declines to award federal funds or ceases to award federal funds to the State of New Hampshire to implement the provisions of federal law embodied in this chapter or if the federal funds awarded are exhausted.