

260.768 Eligibility for exemption from requirements of KRS 260.765 to 260.772 and some federal regulations.

- (1) Covered produce is eligible for a commercial processing exemption and the provisions set forth in KRS 260.765 to 260.772 if:
 - (a) The covered 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. sec. 112.2;
 - (d) The requirements of 21 C.F.R. pt. 112 Subpart A and Subpart Q apply to that produce; and
 - (e) An entity that provides a written assurance under 21 C.F.R. sec. 112.2 acts consistently with the assurance and documents its actions taken to satisfy the written assurance.
- (2) A covered farm is not subject to KRS 260.765 to 260.772 if:
 - (a) It satisfies the requirements in 21 C.F.R. secs. 112.5, 112.6, and 112.7;
 - (b) An owner, operator, or agent in charge of a covered farm that is eligible for a qualified exemption is required to complete any training courses as designated by the department; and
 - (c) The United States Food and Drug Administration or the department has not withdrawn the covered farm's exemption in accordance with the requirements of 21 C.F.R. pt. 112 Subpart R, KRS 260.765 to 260.772, or any administrative regulation adopted pursuant to KRS 260.769.
- (3) A covered farm is eligible for a qualified exemption and associated modified requirements in a calendar year if:
 - (a) During the previous three (3) year period preceding the applicable calendar year, the average annual monetary value of the food the farm sold directly to qualified end-users during that period exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and
 - (b) The average annual monetary value of all food the farm sold during the three (3) year period preceding the applicable calendar year was less than five hundred thousand dollars (\$500,000), adjusted for inflation, using 2011 as the baseline year for the calculation.
- (4) If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. sec. 112.5, then the farm is subject to the requirements of 21 C.F.R. sec. 112 Subparts A, O, Q, and R and the modified requirements established in 21 C.F.R. secs. 112.6 and 112.7.

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