

Commissioner Miller
Texas Department of Agriculture
P.O. Box 12847
Austin, TX 78711-2847

January 7, 2019

Dear Commissioner Miller:

The undersigned organizations urge the Texas Department of Agriculture (TDA) to extend the comment period on the proposed new Title 4, Chapter 11 regulations, until March 1, 2019.

TDA has had 18 months to work on these proposed regulations, since HB 3227, which gave the agency authority to implement the Produce Safety Rule, went into effect on June 15, 2017. Yet the agency is proposing to give affected farmers just 48 days during the height of the holiday season to be notified of the proposed rules, review them, and provide their comments.

Farmers have had very limited opportunity to engage with the agency prior to this proposed rule. Almost a year after the passage of HB 3227, TDA scheduled public meetings to get input from produce farmers. But the meetings were held during the months of April and May, the busiest time for produce farmers in much of Texas, which prevented many from attending the meetings. One of the undersigned organizations pointed out this problem in an email to agency staff, but the agency declined to schedule additional meetings.

The agency then waited seven more months before publishing the proposed rules in mid-December. At that point, farmers were extremely busy both with family holiday obligations and the extra work that comes with managing cold weather on their farms.

While the proposed rules take up only two pages of the Texas Register, they include broad, novel provisions that were not predictable given the agency's mandate to simply implement the federal Produce Safety Rule.

First, the proposed 4 TAC §§ 11.20 – 11.23 would impose annual filing requirements on thousands of exempt farmers – individuals who, until now, had every reason to believe that they would not face any new legal requirements under the TDA's implementation of the Produce Safety Rule. It will take time to communicate with these farmers, notify them of the proposed provision and allow them time to formulate their comments.

Second, proposed 4 TAC §§ 11.40- 11.43 sets out a new term, "egregious conditions," with a vague, expansive definition. This term is apparently found in FDA's "on farm readiness review" manual – a document that was prepared without public input, that is not readily available to the public, and that could be changed by the agency at any time without any notice or process. Yet TDA is proposing to enshrine the term in regulations and claim authority to enter any farm at any time and to stop sales from any farm based on this provision. Such far-reaching power requires careful consideration and an appropriate time for public input.

We therefore urge the agency to accept public comments until March 1, 2019. The additional 28 days is a small time, compared to the long-term effects these rules will have on thousands of farms across our state.

Respectfully submitted:

Farm and Ranch Freedom Alliance
Food Policy Council of San Antonio
GROW Local South Texas
GROW North Texas
Sustainable Food Center
Texas Organic Farmers and Gardeners Association

cc: Representative Tracy King
Representative Mary Gonzalez
Representative Doc Anderson
Representative Dustin Burrows
Representative John Cyrier
Representative Lynn Stucky
Senator Eddie Lucio, Jr.
Senator Charles Perry
Senator José Rodriguez
Senator Brandon Creighton
Senator Bob Hall
Senator Juan Hinojosa
Senator Lois Kolkhorst
Senator Borris Miles