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Family Farm Advocacy Group Files Suit Against Texas Department of Agriculture *Says Agency Rules Violate Constitutional Rights of Small-Scale Produce Farmers*

AUSTIN – Today, Farm and Ranch Freedom Alliance (FARFA), an organization that advocates on behalf of small-scale farmers and ranchers, [filed a lawsuit](#) against the Texas Department of Agriculture (TDA) based on the agency’s violation of the Administrative Procedures Act and of the constitutional rights of small-scale produce farmers in the state.

In many states, including Texas, state agriculture departments are the primary agencies implementing the U.S. Food and Drug Administration’s new rules under the Food Safety Modernization Act (FSMA). However, in Texas, the agency published rules that go well beyond the rules set out by the FDA, placing substantial burdens on small-scale producers such as those selling at farmers’ markets.

“The federal law intentionally excludes small farms,” explains FARFA Executive Director Judith McGeary. “But TDA has chosen to force inspection and registration of small farms, under threat of substantial fines that could destroy these family-owned businesses. And the TDA rules include vague language that makes it possible for them to indiscriminately shut down a farm without due process.”

While FSMA was being debated by Congress, legislators agreed to include provisions that recognize that small, direct-marketing farms presented a lower level of risk than conventional large farms that use complex sourcing and distribution chains. Given the lower risk, and the anticipated high costs of the rules for farms, Congress and the FDA created exclusions so that small farms would not be impacted.

“Congress recognized the importance of maintaining the economic viability of small-scale American farms, which provide healthy, safe food for their local communities” says McGeary, who worked with Senator Jon Tester (D-MT) to add the amendment setting out the exemptions for small farms. “The government estimates that complying with the Produce Safety Rule could cost a small farm as much as \$25,000 in the first year, a burden that would drive most of the farms out of business if not for the Tester exemption.”

However, the TDA rules require exempt farms to undergo a “pre-assessment review” and biennial verifications that they are, in fact, exempt, and the agency claims authority to do on-farm inspections of exempt farms. “The exemptions are based on gross sales and whether the farmer sells directly to consumers and local businesses, things that can be confirmed through a review of their records,” says McGeary. “It is totally unnecessary for TDA inspectors to claim the right to enter a farmer’s property at any time, under threat of assessing fines if the farmer does not comply.”

If an exempt farmer does not allow the inspection, TDA can fine the farmer \$500 for the first day of non-compliance, which balloons to \$1,000 on the second day, and \$1,500 for every day thereafter. And if the inspector finds what he or she determines to be “egregious conditions,” the inspector can shut down all sales from the farm. FARFA’s suit also challenges TDA’s creation of this new standard.

“No one really knows what the term ‘egregious conditions’ means,” says McGeary. “Those words do not appear anywhere in FSMA or in the FDA’s Produce Safety Rule. Despite our repeated requests to not use a new term, or at least to define it clearly, the agency’s rule uses a broad, vague definition that puts all produce farmers at risk for inconsistent and arbitrary enforcement actions.”

FARFA presented all these concerns in meetings with TDA staff and in a letter to Commissioner Sid Miller in July, during the public comment period. However, those concerns were never addressed.

The lawsuit seeks a permanent injunction to end enforcement of TDA's rules as published.

Farm and Ranch Freedom Alliance [link] is a non-profit organization based in Cameron, Texas. Its membership includes independent family farmers and ranchers, consumers who support local farms and foods, homesteaders, and advocates for sustainable and regenerative farming methods.

FARFA works at the national, regional, and state level for common-sense policies for local and diversified food systems. In 2019, FARFA successfully advocated for passage of five bills [link] during the Texas Legislative Session, all of which expanded consumer access to local foods and boosted the ability of small-scale food producers to make a living.

[Link to full petition, FARFA v TDA, et al](#)

[Link to exhibits to petition](#)

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If you would like to obtain comments from farmers affected by these rules, we would be happy to put you in contact with them.