



Support HB 2397 / SB 1376 Stop TDA's Intrusion onto Small Farms

The Federal Food Safety Modernization Act (FSMA) was signed into law in 2011, giving the U.S. Food and Drug Administration (FDA) new powers in food safety. In 2017, the Texas Legislature directed the Texas Department of Agriculture (TDA) to implement a specific provision of FSMA, the Produce Safety Rule.ⁱ

Contrary to the clear language and intent of the 2017 law, TDA is going beyond the federal rule, wasting taxpayer resources and infringing on the rights of small farmers. Furthermore, TDA has set standards without clear definitions or due process, giving themselves unchecked power over small farm businesses.

The first problem is that TDA is requiring all farms, no matter how small, to complete a "Farm Inventory Survey." Registration is not required under FSMA or any federal regulation, but that is effectively what TDA has implemented.

TDA is also insisting on **inspecting** all produce farms, no matter how small. This includes farms that make less than \$25,000 annually (such as backyard gardeners who may sell their extra produce in the summer), and that are therefore "not covered" by the federal rule that TDA is supposed to be implementing. There are tens of thousands of farms (possibly as many as 200,000) in Texas that sell produce but are "not covered" under the federal rule,ⁱⁱ yet TDA is expending tax dollars to inspect them.

TDA is also insisting on inspecting farms classified by the federal rule as "qualified exempt,"ⁱⁱⁱ whose only requirement is to keep appropriate records and signage. TDA staff are spending time searching the internet and contacting anyone who even mentions selling produce (they have even contacted people who aren't in business yet), and then driving all over the state to inspect them.

These inspections impose not only improper government intrusion, but also hold potentially devastating consequences for farms. TDA's regulations claim authority to stop all sales from a farm where an inspector deems there to be "egregious conditions." This is defined as a "practice, condition, or situation" that "is likely" to cause "a serious adverse health consequence" or "an imminent public health hazard." This term does not appear in FSMA, the Produce Safety Rule, or any federal regulation. TDA provides no guidelines or standards in the regulation; it is an entirely subjective standard, with no provision for due process or appeals.

In adopting FSMA, Congress made a determination that small, direct-marketing farms are low-risk and that it does not make sense – for farmers, consumers, or government efficiency – to inspect them. Not a single foodborne illness outbreak has been traced to any of the not-covered or qualified exempt farms in Texas. Yet TDA is going beyond the task it was directed to do by the Legislature, wasting resources, and burdening small farms. **HB 2397 / SB 1376 reins in TDA's overreach and directs it to implement the federal rules without creating new, intrusive, and subjective provisions.**

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ⁱ HB 3227 of the 85th Regular Session, specifically directed TDA to implement the FDA’s “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (21 C.F.R. Part 112).”]

ⁱⁱ The 2017 Agricultural Census identified 209,120 Texas farms with less than \$25,000 in annual gross sales. *See* USDA National Agricultural Statistics Survey. 2017 State Profile: Texas. “Farms by Value of Sales.” www.nass.usda.gov/agcensus. The publicly available data does not indicate how many of those farms sell fruits and vegetables as all or part of those sales, but it’s certain that a large percentage do.

ⁱⁱⁱ Qualified exempt farms are those selling less than \$500,000 annually in food sales, and who sell a majority of the food directly to “qualified end-users.” Qualified end users are individual consumers and restaurants and retailers who are in-state or within 275 miles of the farm and who in turn sell directly to consumers. In other words, these are small, direct-marketing farms.