

Farm and Ranch Freedom Alliance  
P.O. Box 809, Cameron, TX 76520  
254-697-2661



Attn: Ms. Christina Osborn  
Director for Consumer Product Protection  
Texas Department of agriculture  
P.O. Box 12847  
Austin, TX 78711  
*Via e-mail: Christina.Osborn@TexasAgriculture.gov*

January 13, 2023

Re: Comments on Proposed Rules, Title 4, Chapter 15

Dear Ms. Osborn:

The Farm and Ranch Freedom Alliance is a nonprofit advocacy organization that supports independent family farmers and protects a healthy and productive food supply for American consumers. FARFA promotes common sense policies for local, diversified agricultural systems.

FARFA submits the following comments on the proposed rules regarding egg grading.

**I. TDA should remove the unnecessary, burdensome provision that requires producers who sell eggs from their own flocks to obtain a license, file monthly reports, and pay fees to TDA.**

Chapter 132 of the Agriculture Code governs the sale of eggs, authorizing TDA to “administer this chapter and adopt and enforce necessary rules.”<sup>1</sup> Section 132.002 provides:

LIMITATION OF CHAPTER. This chapter does not apply to a person selling only eggs that are produced by the person's own flock and for which the person does not claim a grade.

Notably, this statutory exclusion is not limited to producers who are selling only direct to consumer. To the contrary, under the Agriculture Code that authorizes TDA to regulate the sale of eggs, a producer selling only eggs from his or her own flock do not have to grade their eggs, regardless of who they sell to.

Thus, TDA’s regulatory provisions requiring producers who are selling eggs from their own flocks, and for which they do not claim a grade, to get a grading license are beyond TDA’s statutory authority and inconsistent with the Agriculture Code.

TDA staff may respond that Texas Department of State Health Services (DSHS) regulations require retail food establishments to only source graded eggs, which indirectly places a requirement on farmers who sell wholesale to get a grading license. But DSHS’ regulation does

---

<sup>1</sup> Texas Agriculture Code Section 132.003.

not empower TDA to go beyond its statutory authority and impose requirements on farmers that are not contemplated by the Agriculture Code.

**II. At a minimum, TDA should not penalize farmers who sell graded eggs by removing their legal right to sell ungraded eggs directly to consumers.**

At a minimum, TDA should not require farmers who are selling eggs from their own flocks directly to consumers to grade **those** eggs or pay fees upon those sales. This requirement goes beyond both the Agriculture Code (as discussed above) and beyond the DSHS requirements on retailers.

TDA's regulations establish an illogical regime under which farmers can sell the eggs from their own flocks directly to consumers without having to grade those eggs or pay fees to the agency; yet, if that same person sells any eggs wholesale, not only must they obtain a grading license and grade the eggs that they sell wholesale, but suddenly they must also grade the eggs that they sell to consumers and pay TDA fees on those direct-to-consumer sales.

In other words, if a producer is selling ungraded eggs at a farmers' market and wants to also sell eggs to a restaurant, they not only have to become licensed and grade the eggs that they sell to the restaurant -- they **also** have to start grading the eggs they sell to the consumers at farmers markets. Moreover, they will have to pay fees to TDA for all their eggs sold, including the ones that are sold directly to consumers.


This time and monetary burden is illogical. Why should the same person, selling the same eggs to the same consumers, suddenly have to grade those eggs and pay fees just because they sell other eggs wholesale?

Again, there is no statutory basis for this requirement. Section 132.002 provides: "LIMITATION OF CHAPTER. This chapter does not apply to a person selling only eggs that are produced by the person's own flock and for which the person does not claim a grade."

TDA should thus delete section 15.1(12)(B), which provides that a producer somehow loses his or her identity as a producer, and must grade all their eggs, simply because some of their eggs are sold wholesale and graded.

Thank you for this opportunity to comment on the proposed rules.

Sincerely,

A handwritten signature in cursive script that reads "Judith McGeary". The signature is written in black ink and is positioned above the printed name and title.

Judith McGeary  
Executive Director