



Support HB 3373 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.

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 physically visiting 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 thousands of produce farms in Texas that are "not covered" under the federal rule, yet TDA is expending tax dollars driving all over the state to inspect them.

TDA is also physically inspecting farms classified by the federal rule as "qualified exempt," whose only requirement is to keep appropriate records and signage. FDA is not requiring physical visits to these farms, but TDA is being more intrusive than the federal agency.

These inspections 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 determined that small, direct-marketing farms are low-risk and that it does not make sense 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 3373 clarifies that the agency is to implement the federal rules without creating new, intrusive, and subjective provisions.**

The same bill last session (HB 2397/ SB 1376) was supported by the Farm and Ranch Freedom Alliance, the Texas Farm Bureau, Texas Organic Farmers and Gardeners Association, Sustainable Food Center, GROW North Texas, Grow Local South Texas, Food Policy Council of San Antonio, New Farm Institute, and the Central Texas Young Farmers Coalition.

For more information, contact Judith McGeary, Executive Director, Farm and Ranch Freedom Alliance, Judith@FarmAndRanchFreedom.org, 512-484-8821 (cell)

1. 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)."
2. The FDA has a flow chart with the exemptions to the Produce Safety Rule at <https://www.fda.gov/media/94332/download> . The Produce Safety Alliance, a collaborative project between Cornell University, USDA, and FDA, has an excellent webinar explaining the exemptions at <https://www.youtube.com/watch?v=fRt4jhdpo48>; see the portions starting at 27 minutes (for not covered farms) and 32 minutes (for qualified exempt farms).
3. 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.
4. 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.
5. The Produce Safety Alliance has a template for the documentation at <https://producesafetyalliance.cornell.edu/sites/producesafetyalliance.cornell.edu/files/shared/documents/Records-Required-by-the-FSMA-PSR.pdf> -- see page 5 for the documentation required for qualified exempt farms.