



## UNITED TO GROW FAMILY AGRICULTURE

### **Testimony from New England Farmers Union on H 778**

February 24, 2016

Madame Chairwoman, members of the committee, thank you for the opportunity to present testimony on H 778.

My name is Roger Noonan and I serve as the President of the New England Farmers Union, a membership organization representing the interests of several thousand farmers, cooperative enterprises, allied organizations, businesses, and consumer across New England. I also own and operate an organic produce and hay farm with my family in New Boston, NH.

New England Farmers Union has vigorously engaged with the Food and Drug Administration's (FDA) Food Safety Modernization Act (FSMA) since the promulgation of the draft rule in January of 2013. The FDA concluded that the cost of compliance with the produce rule for farms not currently engaged in food safety compliance programs, and with higher than average operating costs, may drive those farms to grow produce not covered by the rule — or quit farming. We all understand that New England's small farms have higher operating costs given our short seasons, high land values, and labor challenges.

We led regional and national efforts to alert FDA and the region's producers about the deficiencies of the initial draft rule. We rallied New England's congressional delegation to the concerns surrounding FSMA's impact on New England's robust diversified, local and regional agricultural sector. This led to FDA to hold three listening sessions in New England during the summer of 2013. Additionally, we successfully advocated for and secured several extensions to the comment deadline, ensuring farmers and other stakeholders had adequate time to provide the FDA with informed and substantive comments. This led to the nearly unprecedented re-proposal of parts of the Produce and Preventive Controls rules. Concurrently we have and continue to work with the United States Department of Agriculture (USDA) to mitigate the impacts of the final rule on our burgeoning local and regional food system.

We will continue to have an active role in assuring the implementation of FSMA does not unduly burden farmers.

Required inspection of covered farms represents a significant challenge for the regulated and the regulator. We have consistently supported the concept that state departments of agriculture should conduct required inspections.

We are appreciative of the leadership Secretary Ross has provided throughout the comment period and moving forward to implementation. We are also thankful for the leadership of this committee in moving forward with enabling legislation that may well serve as the model regionally, if not nationally.

While we agree with the intent of the bill to authorize the Agency of Agriculture to conduct inspections mandated by FSMA, we are concerned that the definition of produce farm under 21 CFR 112.3 is overly broad and captures all farms growing produce, whether exempt by type of crop grown, produce subject to a kill step, exempt, or qualified exempt.

The FDA has estimated the annual costs of compliance with the produce rule to range from \$4,477 for "very small farms" (\$25,000 to \$250,000 in annual sales), \$12,384 for "small farms" (\$250,001 to \$500,000 in annual sales) and \$29,545 for large farms (over \$500,000 in annual sales). The estimated costs of compliance with the produce rule imposes an unreasonable burden on farms not required by statute or regulation to comply with FSMA.

The FDA did not provide a clear inspection mandate for produce farms covered by FSMA as they did in the Preventive Controls Rule, stating a proposed 5 to 7 year inspection frequency depending on the facilities risk. FDA has yet to finalize its high-risk foods methodology, which may inform inspection frequency of covered farms.

Farms not covered by FSMA will continue to be subject to the Food, Drug and Cosmetic Act, and are legally obligated to provide the public with a safe and unadulterated product.

We have the following concerns with the bill as introduced:

#### 850 DEFINITIONS

(2) "Farm" definition does not take into consideration secondary farms (food hubs, cooperatives) that may have individual farms outside of Vermont, or even federal, jurisdiction.

(3) "'Produce' shall have the same meaning as used in 21 C.F.R. 112.3." As previously stated produce as defined in 112.3 includes produce not covered by regulation or exempt by gross sales and qualified exemption.

(4) "'Produce Farm' means any farm engaged in the growing, harvesting, packing or holding of produce." This definition should include "and sold." As currently worded, would this apply to produce grown and consumed for personal or on farm use? FSMA explicitly exempts produce grown for on-farm use.

#### 851 AUTHORITY: ENFORCEMENT

(a) "...may enforce the requirements of the rules..." This section referring to 80 Fed. Reg. No 228, 74354-74568 would lead one to believe that only those farms covered under the rule would be subject to inspection, yet the definition implies broader authority.

Respectfully submitted,  
Roger Noonan, President  
New England Farmers Union