



Lewis Ressler  
Foods Group, Policy, Standards and Quality Assurance Unit  
Department of State Health Services  
P.O. Box 149347, Mail Code 1987  
Austin, Texas 78714-9347  
*Via email:* lewis.ressler@dshs.state.tx.us

January 28, 2014

Re: 25 TAC §§231.1 - 231.4

Dear Mr. Ressler:

The Farm and Ranch Freedom Alliance (FARFA) is a national nonprofit organization based in Texas 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.

In 2012, FARFA conducted several meetings with Texas farmers, as well as a survey of farmers' market organizers across the state, asking participants to identify the major barriers to local food production and sales. The most common answer was an inability to determine what was legally required for their situation.

Individuals who try in good faith to comply with the law are often unable to because of the complexity and ambiguity of the regulations regarding food production and sales. Farmers and small-scale food producers face significant barriers due to the inability to determine what is required by state regulations. When asked, DSHS typically provides little guidance, leaving the farmers and producers to decide whether to invest anywhere from several hundred to tens of thousands of dollars in an attempt to comply with their understanding of the regulations, and potentially still face fines depending on the department's discretion.

HB 1392 by Representative Susan King provided desperately needed clarity for farmers and food producers in Texas. FARFA has concerns, however, about the DSHS's proposed regulation to implement HB 1392, as explained below.

Most of the proposed rule tracks the language of HB 1392. However, there are two additions:

**For “requests for information,” the proposed rule states: (b) A request for information may be submitted on a form available from the department’s website at <http://www.dshs.state.tx.us/>.**

**For “requests for determination,” the proposed rule states: (c)**  
In order to ensure the accuracy and applicability of the determination, all written requests for official determination should be submitted on a form available from the department and should be completed in its entirety. The form is available from the department's website at <http://www.dshs.state.tx.us/>.

FARFA has several concerns with these provisions:

1) Is the form mandatory?

The proposed language stating that an individual “should” submit a request for determination on the designated form is unclear. Does “should” mean “shall” or “must” in this context? Or does it mean “ought to”?

FARFA objects to any requirement that individuals **must** use the designated form in order to obtain a response from the agency consistent with HB 1392. Such a requirement would be inconsistent with both the language and intent of HB 1392. As set out in the next two points, such a requirement could pose substantive problems for farmers and food producers seeking to comply with the law in good faith.

2) The barrier created by requiring a form.

The first problem is simple: requiring a specific form means that the producer must first know that it is a requirement and locate the form. The link provided in the proposed rule is to DSHS’ home page, with no direct link to the form referenced. So even if the farmer or producer is aware of the requirement, he or she would also have to know to go to the Food Group page in order to find a link to the form, or do an online search using the precise regulatory terms.

3) The information required in the form.

The form is relatively simple, but it includes one provision that could pose a major problem for farmers and producers trying to navigate the complex maze of state regulations.

On the form, it states that the requestor should specify which rule or regulation the question refers to. But in many cases, the problem is that the individual does not know which rule or rules apply. For example, a common question is “What permit is required?”

In response to our inquiry on this topic, we were told by DSHS that they “respond to such inquiries by providing the stakeholder with the answer to their question and also supply links to the regulations that address or impact their concern(s).” While we appreciate that some of the DSHS staff may indeed provide such prompt and clear answers, the experience of farmers and producers throughout Texas indicate that this is **not** always the case.

For example, at the hearing on HB 1392, there was testimony from a farmer who had spent over a year trying to get an answer from DSHS staff as to what permit she needed in order to sell meat on her farm. Her story is similar to many that producers have shared with FARFA.

For these reasons, FARFA urges DSHS to modify the proposed regulation so that the form is optional both for requests for information and requests for determination. This would respect the language and intent of HB 1392 by allowing farmers and food producers to obtain the necessary information without the barriers of finding a form online or having to identify the specific regulation at issue, when that itself may be the question.

We look forward to the opportunity to work with DSHS to ensure that the full potential of HB 1392 is realized.

Respectfully,

*Judith McGeary*

Judith McGeary  
Executive Director  
Farm and Ranch Freedom Alliance