Texas **F**ood **E**stablishment **R**ules

Texas Department of State Health Services
Consumer Protection Division
Policy, Standards, and Quality Assurance Section
Public Sanitation and Retail Food Safety Unit

August 2021

Texas Food Establishment Rules

Texas Administrative Code

Title 25	Health Services
Part 1	Department of State Health Services
Chapter 228	Retail Food Establishment

This guidance document is meant to consolidate the current Texas Administrative Code, Title 25 Health Services, Part 1 Department of State Health Services, Chapter 228 Retail Food Establishment, known as the Texas Food Establishment Rules (TFER) into a consolidated PDF for ease of use. To access the original text please visit the Texas Secretary of State, Texas Administrative Code.

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Table of Contents

Subchapter A. General Provisions 1

§228.1. Purpose and Regulations 1
§228.2. Definitions 1

Subchapter B. Management and Personnel 7

§228.31. Certified Food Protection Manager and Food Handler Requirements 7
§228.32. Reporting Symptoms and Diagnosis Signage 7

Subchapter C. Food 8

§228.61. Approved Sources for Exotic Game Animals 8
§228.62. Specifications for Receiving 8
§228.63. Buffet Notification 9
§228.64. Donation of Foods 9

Subchapter E. Water, Plumbing, And Waste 11

§228.141. Source 11
§228.142. Water Quality Standards 11
§228.143. Water Distribution, Delivery, and Retention Systems 11

Subchapter F. Physical Facilities 12

§228.171. Wall and Ceiling Coverings and Coatings 12
§228.172. Dogs in Outdoor Dining Areas of a Food Establishment 12

Subchapter G. Poisonous or Toxic Materials 13

§228.211. First Aid Supplies, Availability 13

Subchapter H. Requirements Applicable to Certain Establishments 14

§228.221. Mobile Food Units 14
§228.222. Temporary Food Establishments 17
§228.223. Bed and Breakfast 19
§228.224. Outfitter Operations 21
§228.225. Self-Service Food Market 23

Subchapter I. Compliance 26

§228.241. Facility and Operating Plans 26
§228.242. Confidentiality, Trade Secrets 26
§228.243. Construction Inspection and Approval, Preoperational Inspections 26
§228.244. Performance and Risk Based Inspection 26
§228.245. Competency of Inspectors and Access 27
§228.246. Investigation and Control 27

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228 RETAIL FOOD ESTABLISHMENTS
SUBCHAPTER A GENERAL PROVISIONS

§228.1. Purpose and Regulations.

(a) The purpose of this chapter is to implement Texas Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors.

(b) The department adopts by reference the U.S. Food and Drug Administration (FDA) Food Code 2017 (Food Code) and the Supplement to the 2017 Food Code.

(c) The department does not adopt by reference the following sections, paragraphs, and subparagraph of the FDA Food Code, 3-202.13, 3-202.14(C), 3-202.18(A), 5-102.11, 5-102.13, 5-102.14, 5-104.11(B)(1), 6-101.11(B), 6-202.18, 8-201.11, 8-202.10, 8-203.10, 8-302.11–14, 8-303.10–30, 8-304.10, 8-304.20, 8-401.10, 8-401.20, 8-402.10, 8-402.20-40, 8-403.40, and 8-501.10-40, and the definitions for "accredited program," "drinking water," "food establishment," "game animal," "general use pesticide," "public water system," "regulatory authority," "safe material," "service animal," and "vending machine location."

(d) In the event of a conflict, Texas law and rules in this chapter prevail over the adopted Food Code.

§228.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accredited program--Food manager certification program that has been evaluated and listed by the department and conforms to standards set by the department in §229.172 of this title (relating to Accreditation of Certified Food Management Programs).

(2) Adulterated food--A food deemed to be adulterated as specified in the Texas Health and Safety Code, §431.081.

(3) Bed and breakfast extended--An establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests.

(4) Bed and breakfast food establishment--A bed and breakfast that provides food service to customers in addition to its overnight guests.

(5) Bed and breakfast limited--An establishment that has seven or fewer rooms for rent, serves breakfast to overnight guests, and is not a retail food establishment.

(6) Central preparation facility--An approved and permitted facility or space

where food is prepared, stored, and packaged.

(7) Code of Federal Regulations (CFR)--Citations to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

(8) Common carrier--An individual or business that advertises to the public that it is available for hire to transport people or property, including food, in exchange for a fee.

(9) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a time and temperature control for safety food (TCS food), as defined in §229.661(b)(13) of this title (relating to Cottage Food Production Operations);

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

(xiv) mustard;

(xv) roasted coffee or dry tea;

(xvi) a dried herb or dried-herb mix;

(xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are

refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or

(xx) any other food that is not a TCS food, as defined in §229.661(b)(13) of this title.

(B) has an annual gross income of $50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(10) Department--The Texas Department of State Health Services.

(11) Drinking water--Traditionally known as "potable water" and that meets the standards set forth in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking water."

(12) Event--A unique public gathering at which food products are served and for which an appropriate regulatory authority grants permission, whether by permit, license, or another official written document.

(13) Exotic animal--Member of a species of game animals not indigenous to this state, including axis deer, nilgai antelope, red sheep, or other cloven-hoofed ruminant animals.

(14) Food establishment--

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding

location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not TCS foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in this section; or

(vi) a private home that receives catered or home-delivered food.

(15) Game animals--Wild animals that are indigenous to this state and not amenable to the Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433, for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before hunting animals, such as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(16) General use pesticide--A pesticide that is not classified by the United States Environmental Protection Agency for restricted use as specified in 40 CFR §152.175 or is not limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(17) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons, such as a retirement home, correctional facility, or a long-term care facility.

(18) Livestock--Cattle, bison, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, or domesticated game birds.

(19) Mobile food unit (MFU)--A vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. An MFU must completely retain its mobility at all times. An MFU does not include a stand or a booth. A roadside food vendor is classified as an MFU.

(20) Outfitter operation--Any operation, such as trail rides, bus tours, harbor cruises, or river raft trips, in which food is offered to patrons and which operates out of a central preparation location or food establishment.

(21) Plumbing Code--The International Plumbing Code, as amended, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101 (relating to Amendments to Mandatory Building Code), the Uniform Plumbing Code, as amended, including appendices required by the regulatory authority, as published by the International Association of Plumbing and Mechanical Officials as referenced in Occupations Code, Title 8, Chapter 1301, §255 (relating to Adoption of Plumbing Codes), or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.

(22) Private water system--A drinking water system that is not connected to a public water system and not regulated by the Texas Commission on Environmental Quality.

(23) Public water system--A drinking water system that complies with 30 TAC §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(24) Pushcart--A non-self-propelled MFU limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and readily movable by one or two persons. A pushcart is classified as an MFU. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of MFU requires the support of a central preparation facility.

(25) Regulatory authority--The department, the local (municipality, county, or public health district), federal enforcement body, or authorized representative having jurisdiction over the food establishment.

(26) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as an MFU.

(27) Safe material--An article manufactured from or composed of materials that may not reasonably be expected to result either directly or indirectly in the article becoming a component of or otherwise affecting the characteristics of any food. An additive that is used as specified in the Texas Health and Safety Code, Chapter 431, or other materials that are not additives and that are used in conformity with applicable regulations of the U.S. Food and Drug Administration.

(28) Self-service food market--A market that is unstaffed and offers prepackaged non-TCS food and prepackaged refrigerated or frozen TCS food that is stored in equipment that complies with §228.225 of this chapter (relating to Self-Service Food Market).

(29) Service animal--A canine that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory,

psychiatric, intellectual or other mental disability as specified in Texas Health and Safety Code, §437.023.

(30) Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and that includes the storage areas and areas on the premises that are used to service and maintain the vending machines. This does not include self-service food markets.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228 RETAIL FOOD
SUBCHAPTER B MANAGEMENT AND PERSONNEL

§228.31. Certified Food Protection Manager and Food Handler Requirements.

(a) The original food manager certificate shall be posted in the food establishment in a location that is conspicuous to consumers.

(b) Except as specified in subsection (c) of this section, a certified food protection manager shall be present at the food establishment during all hours of operation as required in Food Code, §2-101.11 and §2-102.12.

(c) Food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation, such as but not limited to:

(A) establishments that handle only prepackaged food and do not package food;

(B) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS); or

(C) temporary food establishments are exempt from the requirements in subsection (b) of this section.

(d) All food employees, except for the certified food protection manager, shall successfully complete an accredited food handler training course, within 30 days of employment. This requirement does not apply to temporary food establishments.

(e) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee.

§228.32. Reporting Symptoms and Diagnosis Signage.

A food establishment shall post a sign or poster, clearly visible to food employees, by all handwashing sinks. The sign or poster shall notify food employees to report symptoms and diagnosis information about their health as it relates to diseases that are transmissible through food.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228 RETAIL FOOD
SUBCHAPTER C FOOD

§228.61. Approved Sources for Exotic Game Animals.

(a) Exotic animals. If exotic animals are received for sale or service, they shall:

(1) be commercially raised for food; and

(A) raised, slaughtered, processed, and deemed to be "inspected and approved" under an inspection program administered by United States Department of Agriculture (USDA) in accordance with 9 CFR 352, Exotic Animals; Voluntary Inspection; or

(B) raised, slaughtered, processed, and deemed to be "inspected and passed" under a meat and poultry inspection program administered by the department or any other state meat inspection program deemed equal to USDA inspection;

(2) as allowed by law, for exotic animals that are live caught, be slaughtered and processed as required in paragraph (1)(A) or (B) of this subsection; and

(3) as allowed by law, for exotic animals that are field dressed:

(A) receive an antemortem and postmortem examination by the appropriate inspection personnel as described in paragraph (1)(A) or (B) of this subsection; and

(B) be transported and processed according to the requirements specified by the appropriate regulatory authority as described in paragraph (1)(A) or (B) of this subsection.

(b) Cooking. Exotic animals shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the methods for cooking game animals according to Food Code, §3-401.11, and under a voluntary inspection program as specified in subsection(a) of this section.

§228.62. Specifications for Receiving.

(a) Temperature.

(1) Grade A pasteurized milk shall be received in refrigerated equipment that maintains an ambient air temperature of seven degrees Celsius (45 degrees Fahrenheit) or less.

(2) Molluscan shellfish shall be received in refrigerated equipment or on ice that maintains a temperature of seven degrees Celsius (45 degrees Fahrenheit) or less, as required in the Texas Molluscan Shellfish Rules, §241.61(a) of this title (relating to Molluscan Shell Stock Temperature Control).

(b) Chicken Eggs. Chicken eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR 56, Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs, and 9 CFR 590, Inspection of Eggs and Egg Products.

(c) Frozen milk products. Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with the Frozen Desserts Manufacturer Licensing Act, Texas Health and Safety Code, Chapter 440, and 21 CFR 135, Frozen Desserts.

(d) Shell stock identification. Shell stock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shell stock, as specified in §§241.50 - 241.71 of this title (relating to Molluscan Shellfish).

§228.63. Buffet Notification.

A card, sign, or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas, such as salad bars and buffets as specified in Food Code, §3-304.16.

§228.64. Donation of Foods.

(a) Previous service. Except as specified in paragraphs (1) and (2) of this subsection, foods which have been previously served to a consumer may not be donated.

(1) Packaged time and temperature control for safety foods (TCS foods), such as unopened milk, may be re-served or donated if immediately stored in a cooling bin maintained at five degrees Celsius (41 degrees Fahrenheit) or below.

(2) The following food products may be re-served or donated.

(A) Packaged non-TCS foods.

(B) Whole fruit, such as apples or bananas.

(b) Unpackaged and unserved foods. Unpackaged and unserved TCS foods may be donated if:

(1) the temperature of the food is at or below five degrees Celsius (41 degrees Fahrenheit), or an ambient temperature of seven degrees Celsius (45 degrees Fahrenheit) for raw shell eggs, at the time of donation, and is protected from contamination;

(2) the food has been at or above 57 degrees Celsius (135 degrees Fahrenheit) during hot holding and service, and subsequently refrigerated to meet the time and temperature requirements in Food Code, §3-501.14 and §3-501.15, or maintained at proper holding temperatures required in Food Code, §3-501.16;

(3) the donor can substantiate that the food recipient has the facilities to meet

the transportation, storage, and reheating requirements of this chapter; and

(4) the food is to be transported by the food recipient directly to a consumer, the recipient only needs to meet the transportation requirements in this chapter, including holding temperatures.

(c) Labeling. Donated foods transported offsite shall be labeled with the name of the food, the source of the food, and the date of preparation.

(d) Shelf life. Donated TCS foods may not exceed the shelf life for leftover foods outlined in this chapter.

(e) Damaged foods. Heavily rim or seam-dented canned foods, or packaged foods without the manufacturer's complete labeling shall not be donated.

(f) Distressed foods.

(1) Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation, other environmental contamination, or prolonged storage shall not be directly donated for consumption by the consumer.

(2) Such foods in paragraph (1) of this subsection may be sold or donated to a licensed food salvage establishment if permitted under the provisions of the Texas Health and Safety Code, Chapter 432.

§228.141. Source.

A water source obtained from other than a community public water system shall be sampled and analyzed in accordance with the requirements found in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

§228.142. Water Quality Standards.

(a) Public and private water systems.

(1) Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations, state drinking water quality standards in accordance with 30 TAC §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems); and

(2) Water from a nonpublic water system shall meet the requirements of 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), pertaining to transient noncommunity water systems.

(b) Sampling. Water from a nonpublic water system shall be sampled and tested according to 30 TAC Chapter 290, Subchapter F, concerning transient noncommunity water systems, except nondrinking water.

(c) Sample report. The most recent sample report for the nonpublic water system shall be retained on file in the food establishment, or the report shall be maintained as specified in 30 TAC Chapter 290, Subchapter F, concerning transient noncommunity water systems.

§228.143. Water Distribution, Delivery, and Retention Systems.

Nonpublic water mains, water pumps, pipes, hoses, connections, and other appurtenances shall meet the requirements of 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

§228.171. Wall and Ceiling Coverings and Coatings.

(a) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment and utensil washing areas, toilet rooms and vestibules should be light in color or meet the requirements and approval of the regulatory authority.

(b) Darker-colored coverings for the items listed in subsection (a) of this section may require additional lighting, as specified in Food Code, §6-303.11, or meet the requirements set by the regulatory authority, to allow cleaning of the surface.

§228.172. Dogs in Outdoor Dining Areas of a Food Establishment.

Dogs may be allowed in outdoor dining areas of a food establishment if:

(1) the establishment posts a sign in a conspicuous location in the area stating that dogs are allowed;

(2) the customer and dog access the area directly from the exterior of the establishment;

(3) the dog does not enter the interior of the establishment;

(4) the customer keeps the dog on a leash and controls the dog;

(5) the customer does not allow the dog on a seat, table, countertop, or similar surface; and

(6) in the area, the establishment does not:

(A) prepare food; or

(B) permit open food other than food that is being served to a customer; and

(7) the requirements specified in this section do not apply to service animals or service animals in training.

TITLE 25	HEALTH SERVICES
PART 1	DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228	RETAIL FOOD
SUBCHAPTER G	POISONOUS OR TOXIC MATERIALS

§228.211. First Aid Supplies, Availability.

A first aid kit shall be provided in all food establishments.

TITLE 25 HEALTH SERVICES
PART 1 DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 228 RETAIL FOOD
SUBCHAPTER H REQUIREMENTS APPLICABLE TO CERTAIN ESTABLISHMENTS

§228.221. Mobile Food Units.

(a) Mobile food unit provisions.

(1) General. Except as otherwise provided in this paragraph and in paragraph (2) of this subsection, the regulatory authority:

(A) may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation;

(B) may prohibit the sale of some or all time and temperature control for safety foods (TCS foods); and

(C) when no health hazard will result, may waive or modify requirements of this section relating to physical facilities, except those requirements as specified in paragraphs (7) – (9) of this subsection, subsection (c)(1)(A) - (E) of this section, and Food Code, Subparts 3-401, 3-402, 3-403, 3-404, and 3-501.

(2) Restricted operation. A mobile food unit (MFU) that serves only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are non-time and temperature control for safety food and are dispensed from covered urns or other protected equipment, need not comply with the requirements of this chapter, relating to the necessity of water and sewage systems nor to those requirements, relating to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its central preparation facility.

(3) Readily movable.

(A) The regulatory authority prohibits alteration, removal, attachments, additions, placement, or change in, under, or upon the MFU that prevents or otherwise reduces ready mobility.

(B) A regulatory authority may require an MFU to come, on an annual basis or as often as required, to a location designated by the regulatory authority as proof that the MFU is readily moveable.

(4) Initial Permitting Inspection. The regulatory authority requires an MFU to come to a location designated by the regulatory authority. The mobile unit must be totally operable at time of inspection, including handwash facilities, warewash facilities, refrigeration, and wastewater disposal. Required documentation to have available includes:

(A) Certified Food Protection Manager Certification.

(B) Central Preparation Facility Authorization (if required). A signed letter of authorization is required, to verify facility use, if the central preparation facility is not owned by the mobile unit operator.

(C) Central Preparation Facility Inspection Report. A copy of the most current health inspection of the central preparation facility must be maintained on the mobile unit at all times.

(D) Servicing Area Authorization. A signed letter of authorization may be required by the regulatory authority to verify service area use, if the servicing area is not owned by the mobile unit operator.

(E) Menu. A menu of all food items to be sold.

(5) Single-service articles. An MFU shall provide only single service articles for use by the consumer.

(6) Equipment, numbers, and capacities.

(A) Cooling, heating, and holding capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Food Code, Chapter 3 - Food.

(B) Manual warewashing, sink compartment requirements.

(i) A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils as specified in Food Code, Paragraph 4-301.12(A).

(ii) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils as specified in Food Code, Paragraph 4-301.12(B).

(C) At least one handwashing sink shall be available for convenient use by employees and properly provisioned in accordance with Food Code, §6-301.11-12.

(7) Mobile water system materials, design, and operation. MFU water systems shall meet the requirements of Food Code, Part 5-3.

(8) MFU drinking water tank shall meet the requirements of Food Code, §5-303.13.

(A) Fill hose and water holding tank shall be labeled as "Potable Water."

(B) Drinking water in an MFU holding tank shall be tested for contamination by sampling upon request by the regulatory authority.

(9) Sewage and other liquid waste.

(A) If liquid waste results from operation of an MFU, the waste shall be stored in a permanently installed retention tank for waste retention.

(B) A leak-proof sewage holding tank in an MFU shall meet the requirements of Food Code, §5-401.11 for capacity and drainage.

(C) All connections on the vehicle for servicing the MFU waste disposal facilities shall be of a different size or type than those used for supplying potable water to the MFU.

(D) Discharge liquid waste shall not be discharged from the retention tank while the MFU is in motion.

(E) Flushing a waste retention tank shall meet the requirements of Food Code, §5-402.15.

(F) Removing MFU wastes shall meet the requirements of Food Code, §5-402.14.

(G) Liquid waste holding tank shall be labeled as "waste water."

(10) MFU water and wastewater exemption.

(A) A roadside vendor that sells only prepackaged food is exempt from the requirements of this chapter relating to water and wastewater.

(B) An MFU that prepares food requiring no water for operations and no hand contact with food is exempt from the requirements of this chapter relating to water and wastewater if the required cleaning and sanitization equipment exists at its central preparation facility. Chemically treated towelettes for handwashing may be used as specified in Food Code, Paragraph 5-203.11(C).

(11) Toilet rooms, convenience and accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

(b) Central preparation facility.

(1) Supplies, cleaning, and servicing operations. An MFU shall operate from a central preparation facility or other fixed food establishment and shall report to such location daily for supplies, cleaning, and servicing operations.

(2) Construction. The central preparation facility or other fixed food establishment, used as a base of operation for an MFU, shall be constructed and operated in compliance with the requirements of Food Code, Chapter 6 – Physical Facilities.

(c) Outdoor servicing area and operations.

(1) Protection.

(A) An MFU servicing area shall include at least overhead protection for any supplying, cleaning, or servicing operation. Those areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.

(B) Within the servicing area, the location provided for the flushing and drainage of liquid wastes shall be separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies.

(C) A servicing area will not be required where only packaged food is placed on the MFU or where an MFU does not contain waste retention tanks.

(D) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

(E) Potable water servicing equipment shall be installed in the servicing area according to the Plumbing Code and shall be stored and handled in a way that protects the water and equipment from contamination.

(2) Construction exemption. The construction of the walls and ceilings of the servicing area is exempted from the provisions of Food Code, §6-201.11.

§228.222. Temporary Food Establishments.

(a) General. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time and temperature control for safety foods (TCS foods), and when no health hazard will result, such as children's neighborhood beverage stands, may waive or modify requirements of this chapter.

(1) Foods that are not prepared on-site or that require extensive preparation or cooking must be prepared at a licensed food establishment.

(2) Each temporary establishment may be required by the regulatory authority to have at least one person on-site who has a minimum of an accredited food handler certification.

(b) Food temperatures. All food temperature requirements shall be met as contained in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter (relating to Specifications for Receiving), and §228.64 of this chapter (relating to Donation of Foods).

(c) Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of Food Code, Chapter 3 - Food. The ice shall be obtained only in blocked, chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice for consumption shall be held in the bags until it is dispensed and be dispensed in a way that protects it from contamination.

(d) Equipment and utensils.

(1) Design and construction. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(2) Location and installation. Equipment shall be located and installed and cleaned in a way that prevents food contamination and that also facilitates cleaning of the temporary food establishment.

(3) Hot and cold holding equipment. Equipment for cooling or heating food and holding cold or hot food shall be adequate in number and capacity to provide food temperatures as specified in Food Code, Subparts 3-401-403 and 3-501.

(4) Protection from contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Alternative manual warewashing. Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a three-compartment sink, may be used when there are special cleaning needs or constraints and the regulatory authority has approved the use of alternative equipment. Each compartment shall be large enough to immerse the largest piece of equipment that will be used. A means to heat water must also be provided.

(e) Single-service articles. A temporary food establishment shall provide only single-service articles for use by the consumer.

(f) Water.

(1) Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment.

(2) Water does not need to be under pressure but shall come from approved sources which include:

(A) commercially bottled drinking water;

(B) closed portable water containers;

(C) enclosed vehicular water tanks;

(D) on-premise water storage tanks; or

(E) piping, tubing or hoses connected to an approved source.

(g) Wet storage. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(h) Sewage. All waste water and sewage generated from the temporary food establishment shall be disposed of through an approved sanitary sewage system that is:

(1) a public sewage system; or

(2) an individual sewage disposal system that is sized, constructed, maintained,

and operated according to 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(i) Handwashing. Handwashing facilities shall include a container with a spigot that provides potable, clean, warm water; a wastewater container; soap; disposable towels; and a waste receptacle. Handwashing facilities are not required if the only food items offered are commercially pre-packaged foods that are dispensed in their original containers.

(j) Floors. If graded to drain, a floor may be concrete, machine-laid asphalt, dirt, or gravel covered with mats, ply-wood, removable platforms, duckboards if covered with mats, or other suitable materials approved by the regulatory authority, such as tarps, that effectively control dust and mud.

(k) Ceilings and outer openings of food preparation areas.

(1) Walls and Ceilings. Walls and ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather, windblown dust, birds, and debris.

(2) Outer openings. The outer openings shall be protected against entry of insects and rodents by:

(A) 16 mesh to 25.4 millimeters (16 mesh to 1 inch) screens;

(B) properly designed and installed air curtains; or

(C) other effective means.

(3) Exclusion provision. Paragraph (2) of this subsection does not apply if flying insects and other pests are absent due to the location of the temporary food establishment or other limiting conditions.

§228.223. Bed and Breakfast.

(a) General.

(1) A bed and breakfast extended, in addition to licensing with the applicable regulatory authority, shall comply with the minimum requirements of this section if the establishment:

(A) has more than seven rooms for rent; or

(B) provides food service other than breakfast to overnight guests.

(2) A bed and breakfast food establishment that provides food service to customers in addition to its overnight guests must comply with the rules and regulations applicable to retail food establishments, including licensing with the applicable regulatory authority.

(3) A bed and breakfast limited:

(A) has seven or fewer rooms for rent;

(B) serves only breakfast to overnight guests;

(C) is not a retail food establishment; and

(D) complies with subsection (b) of this section.

(b) Certified food protection manager. The owner or manager shall successfully complete a food manager's certification course accredited by this department.

(c) Food supplies. Food shall be obtained from approved sources in accordance with Food Code, Subpart 3-201, §228.61 of this chapter (relating to Approved Sources for Exotic Game Animals), and §228.62 of this chapter (relating to Specifications for Receiving) and shall be in sound condition and be safe for human consumption.

(d) Food preparation and protection.

(1) Food preparation and protection. Food shall be prepared and protected in accordance with Food Code, Chapter 3 - Food.

(2) Temperature requirements. All food temperature requirements shall be met as contained in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter, and §228.64 of this chapter (relating to Donation of Foods).

(e) Cleaning and sanitizing.

(1) Manual. A three-compartment sink shall be used if washing, rinsing, and sanitizing of utensils and equipment is done manually; or a two-compartment sink may be utilized if single service tableware is provided, and if an approved detergent sanitizer is used.

(2) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.

(f) Personal hygiene. Employees shall conform to good hygienic practices as required in in Food Code, Subparts 2-301-304 and 2-401-402.

(g) Employee restrooms. A restroom shall be available for use by employees.

(h) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(i) Handwash sinks.

(1) Location. An accessible and conveniently located handwash sink shall be provided in or immediately adjacent to food preparation areas and restrooms.

(2) Intended use. Handwash sinks shall be used for no other purpose other than handwashing.

(j) Food-contact surfaces. All food contact surfaces, counters, or work surfaces in the bed and breakfast establishment shall be smooth, non-absorbent and easily cleanable.

(k) Insect proof/rodent proof.

(1) Construction. Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

(2) Chemical control. Pesticides and rodenticides shall be applied in accordance with Food Code, Subpart 7-206.

(l) Equipment. Equipment shall be provided to maintain time and temperature control for safety foods (TCS foods) at the temperatures required in accordance with Food Code, Chapter 3 - Food.

(m) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(n) Sewage. Sewage shall be disposed through an approved facility that is:

(1) a public sewage system; or

(2) an individual sewage disposal system that is sized, constructed, maintained, and operated according to law in 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(o) Water supply. Hot and cold water under pressure shall be provided and shall be from an approved source that meets the standards in accordance with:

(1) state drinking water quality standards in accordance with 30 TAC §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems), and 30 TAC §§290.101 - 290.114, 290.117 - 290.119, 290.121, and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems); or

(2) private water system standards as provided in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), concerning transient noncommunity water systems.

§228.224. Outfitter Operations.

(a) General. Requirements in this section are specific for outfitter operations. The regulatory authority may impose additional requirements to protect against health hazards that may be specific to these operations.

(b) Food supplies. Food supplies, including ice, shall be obtained from approved sources described in Food Code, §3-201.11-17 (relating to Sources), §228.61 of this chapter (relating to Approved Sources for Exotic Game Animals), and §228.62 of this chapter (relating to Specifications for Receiving). No home-prepared

products shall be offered.

(c) Food temperatures. All food temperature requirements shall be met as contained in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter, and §228.64 of this chapter (relating to Donation of Foods).

(d) Food preparation and protection for excursions.

(1) Except for paragraphs (2) - (4) of this subsection, all food shall be prepared and protected in central preparation facility and meet requirements contained in Food Code, Chapter 3 - Food.

(2) Only commercially prepackaged ready-to-eat foods or ready-to-eat foods that have been prepared and packaged with no cooking at a central preparation facility may be served.

(3) Raw time and temperature control for safety foods (TCS foods) may be cooked on-site if cooked and immediately served.

(4) All food must be stored to protect from contamination in accordance with Food Code, Chapter 3 - Food.

(5) TCS foods that require complex preparation must be served within the first 24 hours of the excursion departure time.

(6) Leftovers. Leftover food shall not be re-heated or re-served.

(e) Warewashing.

(1) Alternative manual warewashing equipment, such as receptacles that substitute for the compartments of a multi-compartment sink, may be used for washing and sanitizing utensils when approved by the regulatory authority.

(2) An outfitter operation without effective facilities for cleaning and sanitizing tableware shall only provide single-service articles for use by food employees and consumers.

(f) Ice usage.

(1) Ice that is used for cooling food may not be used for human consumption.

(2) Ice used for human consumption must be stored in a clean sanitized container that is properly constructed and maintained in good repair.

(g) Potable water.

(1) Potable water shall be used on excursions for human consumption, food preparation, handwashing, and for cleaning and sanitizing utensils and equipment.

(2) Potable water must be stored in a clean sanitized container that is easily cleanable and good condition.

(h) Handwashing.

(1) Handwashing facilities shall include:

(A) a container with a spigot that can be turned on to allow potable, clean, water;

(B) a wastewater container;

(C) soap;

(D) disposable towels; and

(E) a waste receptacle.

(2) Handwashing facilities are not required if the only food items offered are commercially prepackaged foods that are dispensed in their original containers.

(i) Equipment. All equipment and utensils intended for food contact shall be approved for food use.

(j) Thermometers. Thermometers shall be provided, accurate, and accessible during excursions.

(k) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(l) Certified food protection manager. If food other than pre-packaged ready-to-eat food is being served, at least one guide or instructor of the outfitter operation, who is on the excursion, shall successfully complete a food manager's certification course accredited by this department.

(m) Central preparation facility. An outfitter operation must have a central preparation facility as specified in §228.2(20) of this chapter (relating to Definitions).

§228.225. Self-Service Food Market.

(a) Self-service food markets shall comply with the minimum standards of this section.

(b) Self-service food markets shall:

(1) be equipped with 24/7 video surveillance records of consumers viewing, selecting, handling, and purchasing products that identify these consumers. Video surveillance records must be maintained and available for the regulatory authority for a period of 14 calendar days from the date of the video; and

(2) provide information to the regulatory authority as to the responsible party that will be available for routine inspections.

(c) Pre-packaged food sold at a self-service food market shall:

(1) meet the labeling requirements as specified in Food Code, Paragraph 3-201.11(C); and

(2) be tamper evident.

(d) A food specified in Food Code, Paragraphs 3-501.17(A) or (B) or §3-501.18 shall be discarded if it:

(1) exceeds the temperature or time specified in Food Code, Paragraphs 3-501.17(A) and (B), except time that the product is frozen;

(2) is in a container or package that does not bear an expiration date or day; or

(3) is not appropriately marked with a date or day that exceeds the temperature and time combination as specified in Food Code, Paragraphs 3-501.17(A) and (B).

(e) All self-service food market display-units offering refrigerated, time and temperature control for safety foods (TCS foods) shall have an automatic shut-off control or a plan approved by the regulatory authority that prevents the market or market equipment from dispensing food if:

(1) there is a power failure, mechanical failure, or other condition that results in failure of the equipment to maintain food temperatures as specified under Food Code, Chapter 4 – Equipment, Utensils, and Linens; and

(2) where a condition specified in paragraph (1) of this subsection occurs, until the equipment is serviced and restocked with food that has been maintained at temperatures specified in Food Code, Subparts 3-202, 3-401-403, and 3-501, §228.62 of this chapter (relating to Specifications for Receiving), and §228.64 of this chapter (relating to Donation of Foods).

(f) When a condition specified in subsection (e)(1) of this section occurs, the ambient temperature may not exceed five degrees Celsius (41 degrees Fahrenheit), or seven degrees Celsius (45 degrees Fahrenheit) for a unit holding raw shell eggs only, for more than 30 minutes immediately after the display is filled, serviced, or restocked.

(g) All self-service food market display-units offering TCS food, shall be:

(1) equipped with a self-closing door; or

(2) maintained at five degrees Celsius (41 degrees Fahrenheit), or seven degrees Celsius (45 degrees Fahrenheit) for raw shell eggs, if it is an open display unit.

(h) Self-service food markets shall have a sign readily visible from the automated payment kiosk stating:

(1) the name of the business to whom complaints or comments shall be addressed;

(2) the address of the business responsible for the market; and

(3) the responsible business's telephone number and email or web information,

when applicable.

(i) When a retail food establishment operating as a self-service food market incorporates the provision in this section, it will not be required to maintain a person in charge onsite as specified in Food Code, Paragraph 2-101.11(A).

§228.241. Facility and Operating Plans.

Plans may be required by the regulatory authority for:

(1) the construction of a food establishment;

(2) the conversion of an existing structure for use as a food establishment; or

(3) the remodeling of a food establishment or a change of type of food establishment or food operation, or under the conditions set by the regulatory authority, if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this section.

§228.242. Confidentiality, Trade Secrets.

In accordance with the requirements of the Public Information Act, Texas Government Code, Chapter 552, the regulatory authority shall treat as confidential the information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in Food Code, §8-201.12 and §8-201.14.

§228.243. Construction Inspection and Approval, Preoperational Inspections.

The regulatory authority may conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified in Food Code, Paragraph 8-201.12(E), and is in compliance with this chapter.

§228.244. Performance and Risk Based Inspection.

The regulatory authority shall inspect each food establishment based upon an assessment of the food establishment's history of compliance with this chapter and the potential for causing foodborne illness by evaluating:

(1) past performance, for nonconformance with Food Code or Hazard Analysis Critical Control Point (HACCP) plan requirements that are priority items or priority foundation items;

(2) past performance, for numerous or repeat violations of code or HACCP plan requirements that are core items;

(3) past performance, for complaints investigated and found to be valid;

(4) the hazards associated with the particular foods that are prepared, stored, or served;

(5) the type of operation including the methods and extent of food storage, preparation, and service;

(6) the number of people served;

(7) whether the population served is a highly susceptible population; and

(8) any other risk factors deemed relevant to the operation by the regulatory authority.

§228.245. Competency of Inspectors and Access.

(a) Competency of inspectors. An individual conducting inspections of retail food establishments should be a Registered Professional Sanitarian in Texas or a Sanitarian-in-Training in Texas, as defined in 16 TAC Chapter 119, or should meet the U.S. Food and Drug Administration Voluntary National Retail Food Regulatory Program Standards basic curriculum and field training elements in order to:

(1) assure application of basic scientific principles, including Hazard Analysis Critical Control Point principles of food safety, during inspections;

(2) properly conduct foodborne illness investigations;

(3) assure uniformity in the interpretations of this chapter; and

(4) assure fair and uniform enforcement of this chapter.

(b) Verification and documentation of correction. In the case of temporary food establishments, all priority and priority foundation items must be corrected immediately, and other violations must be corrected within 24 hours or sooner if required by the regulatory authority. If violations are not corrected, the establishment shall immediately cease food operations upon execution of an Emergency Suspension or Closing Order until authorized to resume by the regulatory authority.

§228.246. Investigation and Control.

Removal of restriction or exclusion. The regulatory authority shall release a food employee or conditional employee from restriction or exclusion according to Texas Health and Safety Code, §438.033, and the conditions specified under Food Code, §2-201.13.

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