

**Department of State Health Services
Council Agenda Memo for State Health Services Council
August 14, 2014**

Agenda Item Title: Repeal of rules and new rules concerning the Texas food establishments

Agenda Number: 5.a

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Public Sanitation and Retail Foods Safety Group, which has staff in the Division for Regulatory Services and the Division for Regional and Local Health Services, inspects retail food establishments, youth camps, and school cafeterias and conducts nuisance complaint investigations in Texas that are not covered by local health jurisdictions. The program includes licensing, inspections, complaint investigations, enforcement, technical guidance, and emergency response for the retail sale of food and the youth camp programs. The Group also provides accreditation for food handler education programs and conducts training for state and local inspectors.

Approximately 11,000 retail food establishments, 560 school cafeterias, and 596 youth camps are inspected using the Texas food establishment rules, which do not count retail establishments permitted and inspected under local ordinances.

The Group is funded from dedicated fees charged for licenses issued to retail food establishments.

Summary:

The purpose of the repeals and new rules is to update the rules based on the United States Food and Drug Administration (FDA) Model Food Code. The present rules, based on a dated Model Food Code, do not reflect the latest science and knowledge regarding best practices, emerging pathogens, and new retail food technologies. The FDA partners with numerous scientific and academic organizations and is able to identify the best food safety practices and determine the best methods to prevent foodborne illness. The results of the scientific studies are reflected in the current Food Code. The new rules will be based on the current 2013 FDA Model Food Code and will bring the Texas food rules into conformity with the rest of the country.

The rules will be placed in a new chapter and add rule citation references; update terminology that is consistent with current industry language; add definitions to clarify new industry language and practices; and require food labeling for major food allergens. The new rules also allow take-home food establishment containers to be re-used; allow for non-continuous cooking of re-heated product not requiring a temperature of 165 degrees Fahrenheit; and allow for cold foods to be held without temperature control for up to 6 hours or 70 degrees Fahrenheit. The new rules will add provisions to Reduced Oxygen Packaging, which now has three categories; require first aid kits in a food establishments; add a new concept for food retailing called self-service food markets; allow a risk-based inspection interval other than every six months, as long as specific provisions are met; and eliminate the Heimlich Maneuver section.

The rules will provide guidance to the regulated industry and the regulatory agencies on the food safety operations of food service establishments, including new practices and language, such as “potentially hazardous food” being replaced by “time/temperature control for safety food.”

There will be an anticipated fiscal impact to persons or small and micro-businesses in adapting to the new rules, as each temporary establishment is required to have at least one person on-site who has an accredited food handler certification. Certain bed and breakfast establishments will require a certified food manager, outfitter operations will require a certified food manager, and there are new requirements for monthly bacteriological testing for (non-public) private water systems at retail food establishments. The Group is working closely with stakeholders concerning these changes.

Key Health Measures:

The proposed rules will increase standardization of inspections across the state as multiple jurisdictions currently use a variety of food rules and will now adopt these new standards. The effectiveness of the proposed rule revisions will be indicated by an increase in the number of food service establishments in compliance with the rules and a decrease in the number of food service establishments referred for enforcement action.

The program will use the quality assurance and enforcement action process to confirm the satisfactory resolution of complaints received and food service establishments that have been found to be out of compliance. There may be a temporary increase in violations to the rules due to the transition from the current food rules.

The Group will collect and analyze data on violations issued related to food service operations from the various databases, as well as monitor and investigate food-borne illness outbreaks.

Summary of Input from Stakeholder Groups:

The following stakeholders have been involved in the rule development process:

- Representatives of city, county, and public health districts—City of Houston, Tarrant County Public Health District, Northeast Texas Public Health District, City of El Paso, Harris County Health Department, Austin/Travis County Health Department, Williamson County Health Department, City of Lubbock, City of San Antonio, Texas Environmental Health Association, Waco-McLennan County Health Department, City of Plano, City of Garland
- Representatives of farmers' markets producers of agricultural products —Farm and Ranch Freedom Alliance
- Representatives of academia—Texas A&M AgriLife Extension
- Representative from industry—Twin Creeks Club, HEB, Wendy's, In and Out Burger, Walmart, Brinker International, Yum Brands, Inc., Bureau Veritas North America, Inc., United Supermarkets, Brookshire Brothers
- Representatives of consumer groups—Texas Retailer Association, Texas Food and Fuel Association

A workgroup formed in December 2013 has had face-to-face meetings, telephone conferences, and e-mail distributions of the proposed language. Draft rule language was developed in April 2014, and two sessions were held to give stakeholders an opportunity to offer suggestions. A regulatory stakeholders group session was held in May 2014, and an industry, academia, and consumer group session was held in June 2014. A final proposed draft will be issued in August 2014. Additional stakeholder input was solicited by posting the rules on the program's website, making notification of the availability by using email list servers, and distributing the rules to DSHS staff.

The stakeholders provided changes that were incorporated into the new rules. The changes included:

- Ensuring the term mobile food unit is used instead of mobile food establishment;
- Adding definitions for major food allergen and private water system;
- Eliminating a requirement to provide written approval from the regulatory authority for the approval of bare hand contact, as approval can be in any form;
- Adding the different types of hard, closed-grain wood for cutting boards as examples;
- Changing language to allow chemically treated towelettes for hand washing when no exposure of food is taking place and hand sinks are not conveniently available;
- Allowing the regulatory authority to test a mobile food unit holding tank for contamination;
- Reorganizing the rules so that language dealing with temporary food establishments is located in the temporary food establishment section; and
- Changing the language for priority item corrections from 72 hours to 3 days.

Approved by Assistant Commissioner/Director: Kathy C. Perkins, R.N., M.B.A. **Date:** 7/30/2014

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Approved by CCEA: Carolyn Bivens **Date:** 8/1/2014