

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 229. Food and Drug  
Subchapter Z. Inspection Fees for Retail Food Establishments  
New §§229.470 - 229.474

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §§229.470 - 229.474, concerning inspection fees for retail food establishments.

BACKGROUND AND PURPOSE

The purpose of these new rules is to implement Texas Health and Safety Code, §437.0125(c), which authorizes the department to collect fees for inspecting a facility. Facilities that are exempt from obtaining a Food Establishment Permit under 25 Texas Administrative Code (TAC), §229.371, but must comply with 25 TAC, §§229.161 - 229.171, and §§229.173 - 229.175, require inspections for various reasons such as other agency licensing requirements, federal mandates, governmental entities that do not have inspection staff, and requirements to receive federal grants or subsidies. As the department is unable to recover the costs for these inspections, these new rules provide a process for such entities to request an inspection and pay an inspection fee prior to the state conducting the inspection.

SECTION-BY-SECTION SUMMARY

New §229.470 defines the purpose of these rules. New §229.471 provides definitions to clarify terminology. New §229.472 outlines the fees, applications procedures for requesting an inspection, and clarifies facilities subject to this rule. New §229.473 describes the minimum standards that facilities must follow when engaging in food service activities. New §229.474 explains the department's ability to refuse an inspection request, conduct hearings, and assess administrative penalties.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$652,100 the first calendar year and \$652,100 each year for calendar years two through five due to the implementation of new inspection fees. Implementation of the proposed sections will not result in any fiscal implications for local governments.

## SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be a new inspection fee for businesses or persons who are not required to obtain a Food Establishment Permit under 25 TAC, §229.371, but that require an inspection for various reasons such as other agency licensing requirements, federal mandates, and/or requirements to receive federal grants or subsidies. The probable economic cost to persons requesting these inspections is \$150 per inspection requested. There is no anticipated negative impact on local employment.

## PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to provide food service inspections to entities that perform food service and require the inspections to continue the operation for various reasons. As these facilities are exempt from permitting under the Texas Food Establishment Rules, these new rules would provide a mechanism for these facilities to obtain inspection services to ensure their facilities are operated in a manner to protect health.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Deborah Marlow, Food Establishments Group, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6753 or by email to Deborah.Marlow@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## PUBLIC HEARING

A public hearing will be held on Friday July 13<sup>th</sup> from 8:30 am – 12:00 noon at the Texas Department of State Health Services, Room K-100, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756. Further information may be obtained from Deborah Marlow, Food Establishments Group, Division for Regulatory Services, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756, 512/834-6753.

## LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, Chapter 437, which authorizes the department to collect fees for inspecting facilities, Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect the Health and Safety Code, Chapters 437 and 1001.