

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, amendments to Title 25, Texas Administrative Code, §133.41, concerning Hospital Functions and Services, and §133.163, concerning Spatial Requirements for New Construction. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, rules in Title 25, Chapter 133 (relating to Hospital Licensing) that incorporated the old rules by reference were not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by licensed hospitals. This lack of authority to enforce food safety rule violations by licensed hospitals presents an imminent peril to the health, safety, and welfare of the public and therefore requires immediate action.

The purpose of these emergency rule amendments is to update references to the current food safety rules in the hospital licensing rules, thereby allowing DSHS to enforce the hospital licensing rules relating to food safety in order to protect the health, safety, and welfare of the public.

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.41

STATUTORY AUTHORITY

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §241.026 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on

fewer than 30 days' notice. Health and Safety Code, §241.026, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§133.41. *Hospital Functions and Services.*

(a) - (c) (No change.)

(d) Dietary services. The hospital shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company or an arrangement with another hospital may meet this requirement if the company or other hospital has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company or other hospital maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the hospital medical staff for recommendations of dietetic policies affecting patient treatment. The hospital shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) (No change.)

(2) Director. The director shall:

(A) - (D) (No change.)

(E) maintain authority and responsibility for the following, but not be limited to:

(i) - (vii) (No change.)

(viii) ensuring compliance with Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 of this title (relating to Texas Food Establishments)].

(3) (No change.)

(e) - (y) (No change.)

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER I. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

25 TAC §133.163

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §241.026 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §241.026, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§133.163. *Spatial Requirements for New Construction.*

(a) - (d) (No change.)

(e) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 of this title (relating to Texas Food Establishments)].

(B) - (E) (No change.)

(2) - (5) (No change.)

(f) - (ff) (No change.)

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CHAPTER 134. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, amendments to Title 25, Texas Administrative Code, §134.41, concerning Facility Functions and Services, and §134.123, concerning Spatial Requirements for New Construction. As authorized by Government Code, §2001.034, the Executive Commissioner may

adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, rules in Title 25, Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) that incorporated the old rules by reference were not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by private psychiatric hospitals. This lack of authority to enforce food safety rule violations by private psychiatric hospitals presents an imminent peril to the health, safety, and welfare of the public and therefore requires immediate action.

The purpose of these emergency rule amendments is to update references to the current food safety rules in the private psychiatric hospital rules, thereby allowing DSHS to enforce the private psychiatric hospital rules relating to food safety in order to protect the health, safety, and welfare of the public.

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §134.41

STATUTORY AUTHORITY

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §577.010 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §577.010, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of private mental hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§134.41. *Facility Functions and Services.*

(a) (No change.)

(b) Dietary services. The facility shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a facility that has a contract with an outside food management company or an arrangement with another facility may meet this requirement if the company or other facility has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company or other facility maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the facility medical staff for recommendations of dietetic policies affecting patient treatment. The facility shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) (No change.)

(2) Director. The director shall:

(A) - (D) (No change.)

(E) maintain authority and responsibility for the following, but not be limited to:

(i) - (vi) (No change.)

(vii) ensuring compliance with Chapter 228 of this title (relating to Retail Food) [~~§§229.161 - 229.171 of this title (relating to Texas Food Establishments)~~].

(3) (No change.)

(c) - (p) (No change.)

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SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

25 TAC §134.123

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §577.010 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §577.010, requires DSHS to develop, establish, and enforce standards for the construction, maintenance, and operation of private mental hospitals. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§134.123. Spatial Requirements for New Construction.

(a) - (c) (No change.)

(d) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with the standards specified in Chapter 228 of this title (relating to Retail Food) [~~§§229.161-229.171 of this title (relating to Rules on Food Service Sanitation)~~].

(B) - (E) (No change.)

(2) - (5) (No change.)

(e) - (p) (No change.)

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CHAPTER 137. BIRTHING CENTERS SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

25 TAC §137.36

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §137.36, concerning Physical and Environmental Requirements For Centers. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.173 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, the rule in Title 25, Chapter 137 (relating to Birthing Centers) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by birthing centers. This lack of authority to enforce food safety rule violations by birthing centers presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the birthing center rule, thereby allowing DSHS to enforce the birthing center rule relating to food safety in order to protect the health, safety, and welfare of the public.

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §244.010, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that

an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §244.010, requires DSHS to develop, establish, and enforce standards for birthing centers. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§137.36. *Physical and Environmental Requirements for Centers.*

The physical and environmental requirements for a center are as follows.

(1) (No change.)

(2) The center must have the capacity to provide clients with liquid nourishment. The center may provide commercially packaged food to clients in individual servings. If other food is provided by the center, it will be subject to the requirements of Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.173 of this title (relating to Texas Food Establishments)].

(3) - (7) (No change.)

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CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

SUBCHAPTER D. MINIMUM STANDARDS FOR LICENSED ABORTION FACILITIES

25 TAC §139.48

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §139.48, concerning Physical and Environmental Requirements. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food).

When these rules were repealed and replaced, the rule in Title 25, Chapter 139 (relating to Abortion Facility Reporting and Licensing) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by abortion facilities. This lack of authority to enforce food safety rule violations by abortion facilities presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the abortion facility rule, thereby allowing DSHS to enforce the abortion facility rule relating to food safety in order to protect the health, safety, and welfare of the public.

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §245.010 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §245.010, requires DSHS to develop, establish, and enforce standards for abortion facilities. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§139.48. *Physical and Environmental Requirements.*

The physical and environmental requirements for a licensed abortion facility are as follows.

(1) A facility shall:

(A) - (E) (No change.)

(F) have the capacity to provide patients with liquids.

The facility may provide commercially packaged food to patients in individual servings. If other food is provided by the facility, it shall be subject to the requirements of Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 of this title (relating to Texas Food Establishments)];

(G) - (I) (No change.)

(2) - (3) (No change.)

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CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS) adopts, on an emergency basis, amendments to Title 25, Texas Administrative Code, §§229.177 and §229.178, concerning Texas Food Establishments; §§229.371 - 229.373, concerning Permitting Retail Food Establishments; §§229.471, 229.473, and 229.474, concerning Inspection Fees for Retail Food Establishments; §229.661, concerning Cottage Food Production Operation; and §229.702 and §229.704, concerning Farmers' Markets. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 and §§229.173 - 229.175 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, rules elsewhere in Title 25, Chapter 229 (relating to Food and Drug) that incorporated the old rules by reference were not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by food establishments, cottage food production operations, and farmers' markets. This lack of authority to enforce food safety rule violations by food establishments, cottage food production operations, and farmers' markets presents an imminent peril to the health, safety, and welfare of the public and therefore requires immediate action.

The purpose of these emergency rule amendments is to update references to the current food safety rules in the food establishment, cottage food production operations, and farmers' markets rules, thereby allowing DSHS to enforce the food establishment, cottage food production operations, and farmers' markets rules relating to food safety in order to protect the health, safety, and welfare of the public.

SUBCHAPTER K. TEXAS FOOD ESTABLISHMENTS

25 TAC §229.177, §229.178

STATUTORY AUTHORITY

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§229.177. Certification of Food Managers in Areas Under the Department of State Health Services Permitting Jurisdiction.

(a) - (b) (No change.)

(c) Food manager certification exemptions. The following food establishments are exempt from the requirements in subsection (b) of this section:

(1) - (2) (No change.)

(3) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS) food--(formerly Potentially Hazardous Food (PHF)), [potentially hazardous foods] as defined in §228.2 [§229.162(74)] of this title (relating to Definitions); or

(4) (No change.)

(d) - (f) (No change.)

§229.178. Accreditation of Food Handler Education or Training Programs.

(a) - (b) (No change.)

(c) Food handler education and training program. The department may accredit an education or training program for basic food safety. The program shall include employee knowledge, responsibilities and training as required in the Texas Food Establishment Rules (TFER).

(1) Education or training course curriculum. A food handler training or education course shall include the following basic food safety principles.

(A) Foodborne disease outbreak. Instruction on foodborne disease outbreak shall include the definition of foodborne disease outbreak, the causes and preventive measures, including employee reporting requirements as defined in Chapter 228, Subchapter B [§229.163] of this title (relating to Management and Personnel).

(B) Good hygienic practices. Instruction on good hygienic practices shall include the procedures as required in Chapter 228, Subchapter B [§229.163] of this title.

(C) Preventing contamination by employees. Instruction shall include the training as required in Chapter 228, Subchapter C [§229.164(e)(1)(D)] of this title (relating to Food), regarding the training requirements for contact with ready to eat food with their bare hands.

(D) Cross Contamination. Instruction on cross contamination shall include procedures on the prevention of cross-contamination of foods, sanitization methods and corrective actions as required in Chapter 228, Subchapter C of this title and Chapter 228, Subchapter D [§229.164 of this title and §229.165] of this title (relating to Equipment, Utensils, and Linens).

(E) Time and temperature. Instruction shall include time and temperature control of foods to limit pathogen growth or toxin production as required in Chapter 228, Subchapter C [§229.164] of this title.

(2) - (4) (No change.)

(d) - (l) (No change.)

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SUBCHAPTER U. PERMITTING RETAIL FOOD ESTABLISHMENTS

25 TAC §§229.371 - 229.373

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, §437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§229.371. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Food establishment--An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption such as: a food service establishment; 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; remote catered operations; conveyance used to transport people, institution; or food bank; and that 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.

(A) - (B) (No change.)

(C) All definitions found in §228.2 [§229.162] of this title (relating to Definitions) under the Retail Food rules [Texas Food Establishment Rules] are applicable to these sections except that, for purposes of obtaining a permit and payment of fees only, the term "food establishment" does not include:

(i) - (xi) (No change.)

(7) - (18) (No change.)

§229.372. Permitting Fees and Procedures.

(a) Permitting fees.

(1) - (2) (No change.)

(3) A person who operates a mobile food unit shall obtain a permit from the department for each mobile food unit operated.

(A) Each mobile food unit shall be inspected and be in compliance with §228.221 of this title (relating to Mobile Food Units) [§229.169 of this title (relating to Mobile Food Establishments)], and pay a nonrefundable permit fee before a permit is issued. If a request for inspection is not received or if the mobile food unit does not meet the minimum standards contained in §228.221 of this title [§229.169 of this title (relating to Mobile Food Establishments)] within one year of paying the permit fee, a new fee shall be paid.

(B) (No change.)

(4) - (8) (No change.)

(b) - (h) (No change.)

(i) Issuance of a permit. The department may issue a permit or a renewal permit for an establishment based on compliance specified in Chapter 228 of this title (relating to Retail Food) [§§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments)], and payment of all fees. Copies of the permit application may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182 or online at <http://www.dshs.state.tx.us/license.shtm>.

(1) - (3) (No change.)

(j) Renewal of a permit.

(1) (No change.)

(2) The department may renew a permit if the applicant is in compliance with Chapter 228 of this title [§§229.161 - 229.171, and §§229.173 - 229.175 of this title], and all fees are paid.

(3) (No change.)

(k) - (1) (No change.)

§229.373. Minimum Standards for Permitting and Operation.

All food establishments shall be operated in accordance with the requirements specified in Chapter 228 of this title (relating to Retail Food). [§§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments).] Copies may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be downloaded from the following website: <http://www.dshs.state.tx.us/license.shtm>.

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SUBCHAPTER Z. INSPECTION FEES FOR RETAIL FOOD ESTABLISHMENTS

25 TAC §§229.471, 229.473, 229.474

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§229.471. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Food establishment--

(A) - (B) (No change.)

(C) Food establishment does not include:

(i) - (v) (No change.)

(vi) a Bed and Breakfast Limited facility as defined in §228.2 [~~§229.162~~] of this title (relating to Definitions); or

(vii) (No change.)

(D) All definitions found in Chapter 228 of this title (relating to Retail Food) [~~§229.162 of this title under the Texas Food Establishment Rules~~] are applicable to these sections except that, for purposes of inspection or payment of inspection fees only, the term "food establishment" does not include:

(i) - (vi) (No change.)

(6) - (15) (No change.)

§229.473. Minimum Standards for Permitting and Operation.

All food establishments shall be operated in accordance with the requirements specified in Chapter 228 of this title (relating to Retail Food). [~~§§229.161 - 229.171 and §§229.173 - 229.175 of this title (relating to Texas Food Establishments).~~] Copies may be obtained from the department, 1100 West 49th Street, Austin, Texas 78756-3182, or may be downloaded from the following website: www.dshs.state.tx.us/foodestablishments.shtm.

§229.474. Refusal of Inspection Request; Administrative Penalties.

(a) - (b) (No change.)

(c) Administrative penalties. Administrative penalties, as provided in the Health and Safety Code, §437.018, and in §229.261 of this title (relating to Assessment of Administrative Penalties), may be assessed for violation of these sections or requirements specified in Chapter 228 of this title (relating to Retail Food). [~~§§229.161 - 229.171, and §§229.173 - 229.175 of this title (relating to Texas Food Establishments).~~]

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATION

25 TAC §229.661

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§229.661. Cottage Food Production Operations.

(a) (No change.)

(b) Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Food establishment--

(A) - (B) (No change.)

(C) Food establishment does not include:

(i) - (v) (No change.)

(vi) a Bed and Breakfast Limited establishment as defined in §228.2 [~~§229.162~~] of this title (relating to Definitions) concerning food establishments;

(vii) - (viii) (No change.)

(8) - (11) (No change.)

(c) - (h) (No change.)

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SUBCHAPTER FF. FARMERS' MARKETS

25 TAC §229.702, §229.704

The emergency rules are adopted under Government Code, §2001.034, and Health and Safety Code, §§437.0056, 437.0193, 437.0202, and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §437.0056, requires DSHS to establish a permitting system for the regulation of food establishments and to ensure uniform requirements for retail food operations. Health and Safety Code, §437.0193, requires DSHS to adopt rules for labeling of foods produced by cottage food production operations. Health and Safety Code, §437.0202, authorizes DSHS to implement rules relating to food temperature requirements and permits at farmers' markets. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§229.702. Definitions.

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

(1) - (2) (No change.)

(3) Fish--As defined in §228.2 [~~§229.162~~] of this title (relating to Definitions).

(4) - (9) (No change.)

(10) Time/Temperature Control for Safety (TCS) food--(formerly Potentially Hazardous Food) [Potentially hazardous food (time/temperature control for safety food)]--As defined in §228.2 [~~§229.162~~] of this title.

§229.704. Temperature Requirements.

(a) - (c) (No change.)

(d) Cooking of raw animal foods. Raw animal foods shall be cooked to heat all parts of the food to the following temperatures:

(1) - (4) (No change.)

(5) a raw or undercooked whole-muscle, intact beef steak may be served if:

(A) the steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as defined in §228.2 [~~§229.162(115)~~] of this title (relating to Definitions); or

(B) (No change.)

(6) (No change.)

(e) (No change.)

(f) Eggs. A farmer or egg producer that sells eggs directly to the consumer at a farm or farmers' market shall maintain the eggs at an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) as specified in §228.63 [~~§229.164(e)(1)(C)~~] of this title (relating to Specifications for Receiving Food).

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CHAPTER 265. GENERAL SANITATION SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

25 TAC §265.13

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §265.13, concerning Site and Physical Facilities. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 *et seq.*, (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, the rule in Title 25, Chapter 265, Subchapter B (relating to Texas Youth Camps Safety and Health) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by youth camps. This lack of authority to enforce food safety rule violations by youth camps presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the youth camp rule, thereby allowing DSHS to enforce the youth camp rule relating

to food safety in order to protect the health, safety, and welfare of the public.

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §141.009 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §141.009, requires the Health and Human Services Commission to establish health and safety standards for youth camps. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§265.13. *Site and Physical Facilities.*

(a) - (s) (No change.)

(t) Permanent food preparation, storage and service areas. Permanent food preparation, storage and service areas shall be maintained in compliance with Chapter 228 of this title (relating to Retail Food) [229, Subchapter K, §§229.161 *et seq.*, of this title (relating to Texas Food Establishments); as amended]. Items inspected may include, but are not limited to:

(1) - (26) (No change.)

(u) (No change.)

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER G. SANITATION AT TEMPORARY PLACES OF EMPLOYMENT

25 TAC §295.169

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts, on an emergency basis, an amendment to Title 25, Texas Administrative Code, §295.169, concerning Standards for Food Service. As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if a state or federal law requires adoption on fewer than 30 days' notice. Emergency rules adopted under

Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

In October 2015, DSHS updated retail food safety rules by repealing Title 25, Texas Administrative Code, §§229.161 - 229.171 (relating to Texas Food Establishments) and replacing them with Title 25, Chapter 228 (relating to Retail Food). When these rules were repealed and replaced, the rule in Title 25, Chapter 295, Subchapter G (relating to Sanitation at Temporary Places of Employment) that incorporated the old rules by reference was not updated to refer to the new rules in Chapter 228. Consequently, DSHS is unable to enforce violations of food safety rules by temporary places of employment. This lack of authority to enforce food safety rule violations by temporary places of employment presents an imminent peril to the health, safety, and welfare of the public and, therefore, requires immediate action.

The purpose of this emergency rule amendment is to update references to the current food safety rules in the temporary places of employment rule, thereby allowing DSHS to enforce the temporary places of employment rule relating to food safety in order to protect the health, safety, and welfare of the public.

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, and Health and Safety Code, §341.002 and §1001.075. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code, §341.002, authorizes the Health and Human Services Commission to establish standards and procedures for the management and control of sanitation and for health protection measures. Government Code, §531.0055, and Health and Safety Code, §1001.075, 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 DSHS and for the administration of Health and Safety Code, Chapter 1001.

§295.169. *Standards for Food Service.*

The preparation, storage, and dispensing of food at any temporary place of employment shall be accomplished according to Chapter 228 of this title (relating to Retail Food) [§§229.161-229.171 of this title (relating to Food Service Sanitation)] as administered by the health authority having local jurisdiction.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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