

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 226. MOBILE FOOD VENDORS

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §226.1, concerning Purpose, Local Preemption, and Applicability; §226.2, concerning Definitions; §226.3, concerning Management and Personnel; §226.4, concerning Mobile Food Vendor Licensing; §226.6, concerning Mobile Food Vendor Requirements; and §226.8, concerning Mobile Food Vendor Inspections.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (HB) 2844, 89th Legislature, Regular Session, 2025, which created Texas Health and Safety Code (HSC) Chapter 437B, concerning Mobile Food Vendors (MFVs). HB 2844 made significant changes to how MFVs are regulated, licensed, and inspected in Texas. The statute tasks DSHS with implementing a statewide licensing and inspection program for MFVs that includes creation of a contract structure by which Local Health Departments (LHDs) may conduct MFV inspections within their jurisdictions and be reimbursed by DSHS, as included in the new rules.

SECTION-BY-SECTION SUMMARY

Proposed new §226.1 describes the statutory authority for adopting the rules, the regulatory preemption of local authority, and applicability of other appropriate statutes, rules, and regulations.

Proposed new §226.2 defines terms used throughout the proposed rules.

Proposed new §226.3 sets general requirements regarding food safety education, employee health posters, and driver requirements for management and personnel.

Proposed new §226.4 establishes application, licensing, and fee requirements for MFVs that operate in Texas.

Proposed new §226.6 sets general requirements for all MFVs, including the responsibility to comply with all other state and local laws not conflicting with HSC 437B, the requirement for MFVs to be readily moveable, requirements for the potable water tank, and requirements to utilize a central preparation facility and servicing area unless properly exempted.

Proposed new §226.8 establishes categories for MFVs, criteria for reclassification, and parameters for inspections.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue or additional cost to state government and a loss of revenue to local government as a result of enforcing and administering the rules as proposed. Enforcing or administering the rules has the following foreseeable implications relating to costs and revenues of state government.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$3,996,653.50 in fiscal year (FY) 2026, \$6,814,085 in FY 2027, \$6,814,085 in FY 2028, \$6,814,085 in FY 2029, and \$6,814,085 in FY 2030 and an estimated increase in revenue of \$1,764,090 in FY 2026, \$17,829,000 in FY 2027, \$17,829,000 in FY 2028, \$17,829,000 in FY 2029, and \$17,829,000 in FY 2030.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will create new DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to DSHS, but a decrease in fees paid to local government;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will limit existing regulations; and
- (7) the proposed rules will increase the number of individuals subject to the rules.
- (8) DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton has also determined there will be an adverse economic effect on small businesses, micro-businesses, or rural communities. There are some MFVs not previously required to obtain a license in some jurisdictions due to low-risk foods that will now be required to obtain a license as Category I MFVs. In addition, some MFVs may have to pay higher application and inspection fees under the new statewide licensing program. Any potential negative effect, due to higher fees, on microbusinesses or rural communities should be outweighed by the ability of MFVs to move freely across jurisdictional lines under a single statewide license.

DSHS estimates that the number of small businesses subject to the proposed rules is approximately 19,000. The projected economic impact for a small business is \$300-\$1,350 for the initial application and pre-licensing inspection and \$300-\$850 per year for license renewal. For Category II and III MFVs there will also be inspection costs of \$400-\$500 per inspection.

DSHS determined that alternative methods to achieve the purpose of the proposed rules for small businesses would not be consistent with ensuring the health and safety of consumers of food products prepared and sold from the regulated MFVs.

LOCAL EMPLOYMENT IMPACT

DSHS does not foresee a negative impact by the rules or statute on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Deputy Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be more streamlined licensing and consistent inspections for all operators of MFVs to ensure food safety compliance for consumers.

Christy Havel Burton has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because some MFVs that were not previously required to obtain a license will now be required, and some MFVs may have to pay higher application and inspection fees under the new statewide licensing program.

REGULATORY ANALYSIS

DSHS 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

DSHS has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R051" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §226.1, §226.2

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

The new sections implement Texas Government Code §524.0151, Texas Health and Safety Code §1001.075, and Texas Health and Safety Code Chapters 437 and 437B.

§226.1. Purpose, Local Preemption, and Applicability.

(a) Purpose. The purpose of this chapter is to implement Texas Health and Safety Code (HSC) Chapter 437B, Mobile Food Vendors (MFVs).

(b) Local preemption. A local authority may not adopt a rule or enforce requirements that conflict with this chapter.

(c) Applicability of other statutes, rules, and regulations.

(1) MFVs must comply with all relevant laws and rules applicable to the preparation, holding, and service of food products in and from food vending vehicles, including:

(A) Texas HSC Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(B) Texas HSC Chapter 437 (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors);

(C) Texas HSC Chapter 437B (Mobile Food Vendors);

(D) Chapter 228 of this title (relating to Retail Food Establishments); and

(E) the United States Food and Drug Administration (FDA) 2022 Food Code (Food Code).

(2) MFVs must comply with all laws, ordinances, or orders passed by a municipality, county, or public health district in which the MFV operates, as long as the laws, ordinances, and orders do not conflict with Texas HSC Chapter 437B.

§226.2. Definitions.

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

(1) Applicant--A person who sends an application to the department for a license to operate as a mobile food vendor (MFV) under this chapter.

(2) Central preparation facility (CPF)--A facility approved by the regulatory authority for preparing, storing, serving, vending, or packaging food and for servicing the MFV, or other retail food establishments, such as outfitter operations. A commissary is a central preparation facility.

(3) Department--Texas Department of State Health Services.

(4) Fire Code--The National Fire Protection Association (NFPA) standards, including NFPA 1, NFPA 58 (Chapter 16), NFPA 96 (Chapter 17), or a Fire Code adopted by a local regulatory authority, whichever is more stringent.

(5) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(6) Food Code--United States Food and Drug Administration (FDA) 2022 Food Code.

(7) Food service establishment--A food establishment as defined in §228.2 of this title (relating to Definitions).

(8) Food vending vehicle--Any vehicle that is a self-enclosed food service establishment (including catering trucks, trailers, push carts, and roadside vendors) that operates to store, prepare, display, serve, or sell food as a food service establishment and is designed to be readily movable. A food vending vehicle may be self- or otherwise-propelled or be vehicle-mounted. A food vending vehicle does not include a stand or a booth.

(9) License holder--A person who holds an MFV license issued under this chapter.

(10) Local authority--A municipality, county, public health authority, special purpose district or authority, or any other political subdivision of this state.

(11) Mobile food vendor (MFV)--Any person who dispenses food or beverages from a food vending vehicle for immediate service or consumption. An MFV may cook, cool, hold, prepare, reheat, or conduct other activities allowed by the Food Code to fulfill food orders for immediate consumption. An MFV may not perform food manufacturer or food wholesaler activities under Texas Health and Safety Code (HSC) Chapter 431. An MFV does not include any operation that is not readily moveable. MFVs are divided into three categories:

(A) Type I--an MFV that dispenses only non-time and temperature control for safety (TCS) prepackaged food and does not sell TCS beverages, or an MFV that otherwise poses a low risk of harm to the public as determined by the department;

(B) Type II--an MFV that dispenses prepackaged TCS foods or food that requires limited handling and preparation, or TCS foods that are prepared to order and served for immediate consumption; processes may include preparing, cold holding, thawing, and/or reheating of commercially processed and/or packaged products for immediate consumption; and

(C) Type III--an MFV that prepares, cooks, holds, and serves food from a food vending vehicle; processes may include hot holding, cold holding, thawing, cooking, cooling, reheating, or conducting other activities allowed by the Food Code.

(12) Person--An individual, business, partnership, organization, corporation, or association.

(13) Prepackaged food--Commercially labeled and processed food that is already in a package to stop direct contact with the food during distribution by the manufacturer, food facility, or other approved source. Prepackaged does not include food only wrapped or placed in a carry-out container by a food employee, at the consumer's request.

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

(15) Readily moveable--Able to easily move without delay or difficulty; free of alterations, attachments, additions, placement, or change in, under, or upon the mobile food unit that prevent or otherwise reduce the ability to easily move without delay or difficulty. Readily moveable also includes any other requirements set forth by the regulatory authority.

(16) Regulatory authority--The department. The department may enter into a collaborative agreement to allow a local authority to inspect on the department's behalf. When such an agreement is in place, the local authority has full authority to conduct health inspections as the department's representative.

(17) Roadside food vendor--A person who operates a food vending vehicle 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 MFV.

(18) Servicing area--A location that an MFV visits to fill the potable water tank with potable water from an approved source and to empty grease, cooking waste, and sewage from the wastewater tank into a wastewater collection system as allowed by law and approved by the regulatory authority.

(19) TCS--Time/temperature control for safety.

(20) TCS food--Time and temperature control for safety food, as defined in Food Code §1-201.10.

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

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 834-6753

SUBCHAPTER B. MANAGEMENT AND PERSONNEL

25 TAC §226.3

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

The new section implements Texas Government Code §524.0151, Texas Health and Safety Code §1001.075, and Texas Health and Safety Code Chapters 437 and 437B.

§226.3. Management and Personnel.

(a) Except as specified in subsection (b) of this section, a certified food protection manager must be present at the food establishment during all hours of operation as required in the Food and Drug Administration (FDA) 2022 Food Code (Food Code) §2-101.11 and §2-102.12.

(b) 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 are exempt from the requirements in subsection (a) of this section. The exemption includes:

(1) a Type I mobile food vendor (MFV); or

(2) other MFVs that do not prepare, handle, or hold TCS food.

(c) All employees involved in the preparation and service of food products, except for certified food protection managers, must successfully complete an accredited food handler training course within 30 days of employment.

(d) MFVs must display a sign or poster notifying food employees to report any symptoms or medical diagnoses related to diseases that can be spread through food. The sign or poster must be displayed where all employees can easily see the sign or poster.

(e) Driver requirements.

(1) A person who drives a motorized food vending vehicle must possess a valid driver's license as required by Texas Transportation Code Chapter 521.

(2) A person who drives a motorized food vending vehicle must hold a current commercial driver's license if required by Texas Transportation Code Chapter 522.

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

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Cynthia Hernandez

General Counsel

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SUBCHAPTER C. LICENSING

25 TAC §226.4

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of

HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

The new section implements Texas Government Code §524.0151, Texas Health and Safety Code §1001.075, and Texas Health and Safety Code Chapters 437 and 437B.

§226.4. Mobile Food Vendor Licensing.

(a) A mobile food vendor (MFV) must have a current MFV license from the department to operate as an MFV in Texas. An MFV must have a separate license for each food vending vehicle operated by the MFV.

(b) An MFV license is valid for one year from the date of issuance and must be renewed annually. The license is non-transferable.

(c) Application requirements.

(1) An MFV must apply for a license from the department using the form the department prescribes. The application must include:

(A) the applicant's name, address, email address, and telephone number;

(B) the name, address, email address, and telephone number for any associated entity or organization represented by the applicant, along with copies of documents showing proof of that relationship;

(C) the primary residences and business addresses of the applicant for the 12 months before the application date;

(D) the following documentation:

(i) a description of the processes to be used in the operation (e.g., prepackaged, non-TCS foods only, cook-serve, cook-cool-reheat-serve, etc.); and

(ii) a copy of the menu or a list of all food and beverage products to be prepared, sold, or served;

(E) a statement regarding whether the applicant has ever been denied an MFV license, or had an MFV license suspended or revoked by any governmental entity, and the reason for any denial, suspension, or revocation;

(F) the following for each motorized food vending vehicle for which the applicant is applying:

(i) the vehicle: license number, description, identification number, and registration;

(ii) proof of vehicle insurance;

(iii) proof of vehicle weight as issued by Texas Department of Transportation; and

(iv) a copy or proof of any additional commercial vehicle licenses or permits required by this state; and

(G) a list of the locations at which the vendor intends to operate, to the best of the vendor's knowledge. The MFV may provide the department with a list of locations by providing a link to the MFV's social media page or website. If the vendor does not provide the list of operating locations on a social media page or website, the MFV shall submit the list of operating locations to the department in the form and manner the department prescribes.

(2) The applicant must provide a notarized written statement that all information provided under paragraph (1) of this subsection is true and correct.

(3) The applicant may submit one application for all food vending vehicles that require licensing under this subchapter. A separate licensing fee is required for each food vending vehicle.

(4) If an applicant does not submit a complete and accurate application, the license may be denied or delayed.

(5) Intentional submission of false information or omission of requested information on an application may result in denial, delay, or revocation of a license.

(d) Before a license is issued, each proposed food vending vehicle must be inspected by the regulatory authority. The inspection must confirm that:

(1) each food vending vehicle is safe for preparation, handling, and selling food; and

(2) each vendor complies with all applicable laws and rules.

(e) An applicant must pay fees for each food vending vehicle:

(1) a non-refundable application fee, as follows:

(A) \$300 for each Type I MFV;

(B) \$600 for each Type II MFV; and

(C) \$850 for each Type III MFV;

(2) a pre-licensing health inspection fee, as follows:

(A) \$400 for each Type II MFV; and

(B) \$500 for each Type III MFV;

(3) an inspection fee for health inspections, as follows:

(A) \$400 for each Type II MFV; and

(B) \$500 for each Type III MFV; and

(4) an inspection fee for compliance inspections and complaint investigations, as follows:

(A) \$300 for each Type I MFV;

(B) \$400 for each Type II MFV; and

(C) \$500 for each Type III MFV.

(f) A fee for randomized health inspections of Type II and Type III MFVs, per subsection (e)(3) of this section, must be paid at the time of initial or renewal application.

(g) Fees for complaint investigations and compliance inspections to determine corrective actions must be paid by the MFV at the time of the MFV's next license renewal application.

(h) If there are changes in the operation that require a licensing amendment as outlined in this chapter, an amendment fee is required. The amendment fee is half of the initial license application fee.

(i) For all initial and renewal license applications submitted through Texas.gov, the department is authorized to collect fees in amounts determined by the Texas Department of Information Resources to recover costs

associated with using Texas.gov.

(j) A person filing a renewal license application after the expiration date must pay an additional \$100 as a late fee. The license holder must submit a renewal application and license fees before the expiration date of the license.

(k) Renewal, transferability, and substitution of vehicle.

(1) MFV licenses must be renewed on an annual basis, within 12 months of the date of issuance.

(2) To renew a license, the MFV must submit a renewal application and all required fees, as outlined in subsections (c), (e), (f), and (g) of this section, to the department before the current license expires. A pre-licensing inspection and related fee is not required for a renewal application unless the application includes a change of category or the food vending vehicle has been replaced.

(3) An MFV license issued under this subchapter cannot be transferred to another person or business. Only the person or business named on the license is permitted to operate as the MFV.

(4) When a food vending vehicle is replaced with another vehicle, the license holder must provide the department all information required by subsection (c)(1)(E) of this section for a motorized vehicle. The replacement vehicle must be inspected as stated in subsection (d) of this section.

(5) Any person receiving MFV business assets must apply for a new MFV license before operating as an MFV. This includes situations such as change of ownership of food vending vehicle, change of ownership of MFV, or acquisition of a new food vending vehicle.

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

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Cynthia Hernandez

General Counsel

Department of State Health Services

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SUBCHAPTER D. REQUIREMENTS

25 TAC §226.6

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

The new section implements Texas Government Code §524.0151, Texas Health and Safety Code §1001.075, and Texas Health and Safety Code Chapters 437 and 437B.

§226.6. Mobile Food Vendor Requirements.

(a) Compliance with state and local laws. Mobile food vendors (MFVs) must comply with all state and local laws that do not conflict with this chapter or Texas Health and Safety Code (HSC) Chapter 437B. This includes fire codes, location rules, and zoning codes in the jurisdictions where the MFV operates.

(b) MFV provisions.

(1) Mobile food vendors must adhere to Food Code §8-304.11, Responsibilities of the Permit Holder.

(2) General. Except as otherwise provided in this paragraph and in paragraph (3) of this subsection, the regulatory authority may waive or change physical facility requirements in this section if a public health hazard is not likely to occur. The following requirements may not be waived:

(A) paragraphs (8) - (10) of this subsection;

(B) subsection (c)(3) of this section; and

(C) Food Code Subparts 3-401, 3-402, 3-403, 3-404, and 3-501.

(3) Restricted operation. An MFV that only serves food prepared and packaged in individual servings that is stored and transported as required by this chapter, or beverages that are non-TCS food and served from covered urns or other protected equipment, is not required to comply with:

(A) water and sewage system requirements; and

(B) cleaning and sanitizing equipment and utensil requirements if cleaning and sanitizing equipment is available at the central preparation facility.

(4) Readily movable.

(A) There shall be no alteration, removal, attachments, additions, placement, or change in, under, around, or on the food vending vehicle that prevents or otherwise reduces mobility.

(B) A food vending vehicle may connect to a utility only when filling the potable water tank, emptying the wastewater tank, or temporarily connecting to an electrical source. The vehicle must not remain connected to:

(i) a water supply hose during operation, except when filling the potable water tank;

(ii) an external sewage or water disposal system during operation, except when emptying the wastewater tank;

(iii) an external electrical source, if it is the only means for powering the food vending vehicle; or

(iv) an external gas source, except if it is self-contained and affixed to the food vending vehicle.

(C) The regulatory authority may require an MFV to move the food vending vehicle as often as required to a location designated by the regulatory authority to demonstrate the food vending vehicle is readily moveable. The food vending vehicle must be fully functional and free of any temporary utility connection, including electricity, water, and wastewater, at any location while operating or any location designated by the regulatory authority. A food vending vehicle must always be readily movable.

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

(6) Equipment, numbers, and capacities.

(A) Cooling, heating, and holding capacities. Equipment used for cooling and heating food, and holding cold and hot food, must be sufficient in number and capacity to provide food temperatures as specified under the Food Code Chapter 3 - Food. If capacity is insufficient for a process on a food vending vehicle or a central preparation facility (CPF), then that process may not occur on the food vending vehicle or a CPF.

(B) Manual warewashing and sink compartment requirements.

(i) A sink with at least three compartments must be available for manually washing, rinsing, and sanitizing equipment and utensils, as required by Food Code Paragraph 4-301.12(A).

(ii) Sink compartments must be large enough to completely cover the largest equipment and utensils with water, as required by Food Code Paragraph 4-301.12(B).

(C) Handwashing sinks. At least one handwashing sink must be present inside the MFV with employee access for easy use. The handwashing sink must have soap and drying devices, as required by Food Code §6-301.11 and §6-301.12. MFVs that only sell prepackaged food are not required to have an operational handwashing sink.

(7) Food vending vehicle water system requirements. The food vending vehicle water systems must meet all material, design, and operation requirements in Food Code Part 5-3.

(8) The drinking water tank. The food vending vehicle drinking water tank must meet all requirements specified in Food Code §5-303.13.

(A) A fill hose and water holding tank must be labeled as "Potable Water."

(B) A holding tank must be tested for contamination by collecting a sample upon request by the regulatory authority.

(9) Sewage and other liquid waste.

(A) Liquid waste from operating a food vending vehicle must be stored in a retention tank that is permanently installed for holding waste.

(B) A leak-proof sewage holding tank in a food vending vehicle must meet the requirements of Food Code §5-401.11 for capacity and drainage.

(C) All connections on the vehicle that are used for servicing MFV waste disposal facilities must be a different size or type than the connections used for supplying potable water to the MFV. All connections must form a tight and complete seal.

(D) Liquid waste must not be released from the retention tank while the MFV is moving.

(E) A waste retention tank must be flushed in accordance with Food Code §5-402.15.

(F) MFV waste must be removed in accordance with Food Code Part 5-4.

(G) Liquid waste holding tanks must be labeled "Wastewater."

(10) MFV water and wastewater exemption. Roadside vendors that only sell prepackaged food do not have to comply with the water and wastewater requirements in this chapter.

(11) Toilet room requirements. Toilet rooms must be conveniently located and accessible to employees at all times during operations.

(12) Specialized processes. Specialized processing methods, as outlined in Food Code §3-502.11 and §3-502.12, must not be conducted by an MFV on a food vending vehicle. These processes may be conducted when approved by the regulatory authority at CPFs.

(c) Central preparation facility (CPF).

(1) Supplies, cleaning, and servicing operations. Unless all conditions listed in paragraph (3) of this subsection are met, an MFV must operate from a CPF or another fixed food establishment. An MFV must report to this location as required by the regulatory authority for supplies, cleaning, and servicing operations.

(2) Construction. The CPF or other fixed food establishment that serves as the base of operation for an MFV must meet construction and operation standards in accordance with Food Code Chapter 6 - Physical Facilities.

(3) CPF exemption. An MFV may operate without a CPF or commissary if all requirements of this paragraph are met. Each requirement must be checked during inspection. Requirements include the following.

(A) Equipment for cooling and heating food, and holding cold and hot food, must be sufficient in number and capacity on the food vending vehicle to provide food temperatures as specified in Food Code Chapter 3 - Food.

(B) All food stored on the food vending vehicle must be kept in a way that prevents cross contamination and contamination from other sources as described in Food Code Chapter 3 - Food.

(C) Food equipment, utensils, and single-service articles must be stored on the food vending vehicle in a way that prevents contamination. Storage practices must comply with requirements in Food Code Chapter 3 - Food and Chapter 4 - Equipment, Utensils, and Linens.

(D) Food vending vehicle warewashing compartments must be large enough to completely cover the largest equipment and utensils with water, as required by Food Code Paragraph 4-301.12(B).

(E) Potable water for the food vending vehicle must come from an approved source as outlined in Chapter 228, Subchapter E of this title (relating to Water, Plumbing, and Waste) and Food Code Part 5-1. Potable water cannot be taken from an untested water well or from a private residence.

(F) Sewage and other liquid waste must be removed from the food vending vehicle at a facility approved for waste servicing or by a sewage transport vehicle. Removal of waste must not cause a risk to public health or create a nuisance as defined by state or local law, regulation, or ordinance.

(G) The MFV must keep records that include the physical address and letters of authorization, if needed, for approved sources of potable water and disposal locations for wastewater. The MFV must always keep the records available for review on the food vending vehicle, and the records must be applicable to the current licensing cycle and locations of operation.

(H) The MFV must keep records that show proof of loaded vehicle weight as issued by Texas Department of Transportation.

(d) Outdoor servicing area and operations, if used.

(1) Protection.

(A) An MFV servicing area must provide overhead protection for any supplying, cleaning, or servicing activity. Overhead protection is not required for areas only used for loading water or discharging sewage and

other liquid waste through a closed hose system.

(B) The location for flushing and draining liquid waste in the servicing area must be separate from the area used for potable water servicing and from the area used for loading and unloading food and related supplies.

(C) A servicing area is not required when only prepackaged food is held and dispensed from the MFV or when the MFV does not have waste retention tanks.

(D) The servicing area's surface must be made of smooth, nonabsorbent material, such as concrete or machine-laid asphalt. The servicing area's surface must remain in good condition, always clean, and be graded to drain.

(E) Potable water servicing equipment must be installed in the servicing area as required by the Plumbing Code, as defined in §228.2 of this title (relating to Definitions). The equipment must be stored and handled in a way that keeps both the water and the equipment from becoming contaminated.

(2) Construction exemption. Walls and ceilings in the servicing area do not have to meet the requirements in Food Code §6-201.11.

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

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SUBCHAPTER E. INSPECTIONS

25 TAC §226.8

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

The new section implements Texas Government Code §524.0151, Texas Health and Safety Code §1001.075, and Texas Health and Safety Code Chapters 437 and 437B.

§226.8. Mobile Food Vendor Inspections.

(a) Mobile food vendor (MFV) categories. The department assigns each MFV to a category based on the type of food served and how the food is prepared. Each category of MFV is described in the definition of "mobile

food vendor (MFV)" in §226.2 of this chapter.

(b) Reclassification. When an MFV wants to sell food or beverages that require a different category than initially approved, the MFV must inform the department about the specific food or beverages to be sold. The regulatory authority may conduct a health inspection to decide if a new category is needed.

(c) Health inspection. The regulatory authority may require an MFV to appear at a location chosen by the regulatory authority. The food vending vehicle must be fully functional at the time of inspection, including proper operation of handwash stations, warewash equipment, refrigeration units, and wastewater disposal systems. The following documentation must be available during inspection:

(1) Certified Food Protection Manager and Food Handler Certification;

(2) central preparation facility (CPF) authorization (if required): a signed letter of authorization is required, to verify facility use, if the CPF is not owned by the mobile unit operator;

(3) CPF inspection report (if required);

(4) servicing area documentation and authorization: the MFV must keep the following records on the food vending vehicle:

(A) records that show use of an approved water source and an approved sanitary sewage system; such records may include invoices, written agreements, or other available evidence;

(B) a servicing area activity log that must show the date and time the MFV obtained potable water, properly disposed sewage and other liquid waste, or properly disposed grease or other cooking waste; and

(C) a signed letter by the department or local authority, if applicable, giving authorization to use a servicing area, if the servicing area is not owned by the MFV; and

(5) a menu of all food items to be sold.

(d) Notice of location for inspections. An MFV must provide the department, to the best of the vendor's knowledge, a list of all planned locations of operation along with an itinerary listing the dates and times the MFV plans to operate at these locations. The itinerary must be provided at least seven days before the first date listed in the itinerary. The MFV can share the itinerary on the MFV's social media or website. If the MFV does not post the itinerary on social media or the vendor's internet website, the MFV must send the itinerary to the department, in the form and way the department requires.

(1) The regulatory authority must be able to find and inspect an MFV using the provided itinerary. If an MFV cannot be located, then the regulatory authority may require an MFV to come to a location designated by the regulatory authority.

(2) If an MFV is not able to be located according to provided itinerary or does not appear for an inspection agreed upon by the regulatory authority then the MFV's license may be subject to suspension or revocation.

(e) An MFV must allow inspection by a representative of the regulatory authority during any hours of operation to check compliance with this chapter. An MFV's refusal of inspection or cooperation with a complaint investigation may result in suspension or revocation of a license. Refusal to allow an inspection by a local authority acting under a collaborative agreement with the regulatory authority will be considered a refusal to allow the regulatory authority to inspect.

(f) The MFV must provide the required valid driver's license or commercial driver's license upon request to the regulatory authority during pre-licensing, routine health inspections, and investigations. Driver's licenses required for the operation of the food vending vehicle must be present during all hours of MFV operation.

(g) Refusal, revocation, or suspension of a license; administrative penalties.

(1) Basis. The department may refuse an application for a license or may revoke or suspend a license for violations of this chapter or for interference with a department representative in the performance of their duties under this chapter.

(2) Hearings. Any hearings for the refusal, revocation, or suspension of a license are governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) or under the provisions of the Texas Government Code Chapter 2001, Administrative Procedure Act.

(3) Reinstatement. A former license holder may apply for reinstatement of a suspended license by demonstrating corrections and controls are implemented to prevent future violations. The department may reinstate the license after the department has determined the MFV no longer poses a risk to public health and safety. The department may also require employees of a MFV to successfully complete a department-accredited training course on food safety principles before reinstatement of the license.

(4) Administrative penalties. Administrative penalties in Texas Health and Safety Code §437.018, and in §229.261 of this title (relating to Assessment of Administrative Penalties), may be assessed for violations of this chapter.

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

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