

## HEALTH AND SAFETY CODE

## TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

## SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS

CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES,  
MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS

Sec. 437.001. DEFINITIONS. In this chapter:

(1) "Board" means the executive commissioner.

(2) "Commissioner" means the commissioner of health.

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven. A baked good does not include a potentially hazardous food item as defined by department rule.

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:

(A) produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home;

(B) has an annual gross income of \$50,000 or less from the sale of food described by Paragraph (A); and

(C) sells the foods produced under Paragraph (A) only directly to consumers.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Food," "food service establishment," "retail food store," "mobile food unit," "roadside food vendor", and "temporary food service establishment" have the meanings assigned to those terms by rules adopted by the board under this chapter.

(5) "Home" means a primary residence that contains a kitchen and appliances designed for common residential usage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 5, eff. September 1, 2011.

Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A county or public health district may enforce state law and

rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

(b) This chapter does not authorize a county or public health district to adopt orders establishing standards for the operation of food service establishments, retail food stores, mobile food units, or roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT. To enforce state law and rules adopted under state law, the commissioners court of a county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.004. PUBLIC HEALTH DISTRICT AUTHORITY TO REQUIRE PERMIT. (a) A public health district that is established by at least one county and one or more municipalities in the county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in the district to obtain a permit from the district.

(b) If the public health district has an administrative board, the administrative board must adopt the order in accordance with its procedures.

(c) If the district does not have an administrative board, the governing body of each member of the district must adopt the order. The order is effective throughout the public health district on the 30th day after the first date on which the governing bodies of all members have adopted the order.

(d) This chapter does not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.005. PUBLIC HEARING. (a) A commissioners court, governing body, or administrative board, as applicable, may adopt an order under Section 437.003 or 437.004 only after conducting a public hearing on the proposed order.

(b) At least two weeks' public notice must be given before a public hearing may be held.

(c) The notice must be published in a newspaper of general circulation in

the county or public health district on three consecutive days and be printed in 10 point bold-faced type.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0055. PERMIT FROM DEPARTMENT REQUIRED IN AREAS NOT REGULATED BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A person may not operate a food service establishment, retail food store, mobile food unit, or temporary food service establishment located in an area in which a county or public health district does not require a permit or conduct inspections under this chapter unless the person has a permit issued by the department.

(b) A person required to obtain a permit under Subsection (a) must apply annually for the permit and must pay any fees required by the department.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.

Sec. 437.0056. RULEMAKING AUTHORITY. The board may adopt rules for the efficient enforcement of this chapter by the department in an area not regulated under this chapter by a county or public health district. The board by rule shall establish minimum standards for granting and maintaining a permit in an area not regulated under this chapter by a county or public health district. The commissioner may refuse an application for permit or suspend or revoke a permit in an area not regulated under this chapter by a county or public health district.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.

Sec. 437.0057. REGULATION OF FOOD HANDLERS AND OTHER FOOD SERVICE EMPLOYEES BY COUNTIES, PUBLIC HEALTH DISTRICTS, AND THE DEPARTMENT. (a) A county, a public health district, or the department may require certification under Subchapter D, Chapter 438, for each food handler who is employed by a food service establishment in which food is prepared on-site for sale to the public and which holds a permit issued by the county, the public health district, or the department. This section applies without regard to whether the food service establishment is at a fixed location or is a mobile food unit.

(b) The requirements of certification under this section may not be more stringent than the requirements of Subchapter D, Chapter 438.

(c) A county, a public health district, or the department may not require an establishment that handles only prepackaged food and does not prepare or package food to employ certified food handlers under this section.

(d) A county, a public health district, or the department may exempt a

food service establishment from the requirement that the county, public health district, or department has imposed under Subsection (a) if the county, the public health district, or the department determines that the application of Subsection (a) to that establishment is not necessary to protect public health and safety.

(e) A county, a public health district, or the department may require a food service establishment to:

(1) post a sign in a place conspicuous to employees, in a form adopted by the executive commissioner of the Health and Human Services Commission, describing a food service employee's responsibilities to report certain health conditions to the permit holder under rules adopted by the executive commissioner; or

(2) require that each food service employee sign a written agreement in a form adopted by the executive commissioner to report those health conditions.

Added by Acts 2009, 81st Leg., R.S., Ch. [926](#), Sec. 1, eff. September 1, 2009.

Sec. 437.006. MORE THAN ONE PERMIT PROHIBITED. A food service establishment or retail food store may not be required under this chapter to obtain more than one permit for each location.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.007. NONPROFIT ORGANIZATIONS EXEMPT. A county or public health district may not require a nonprofit organization to obtain a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0073. MEDALLION FOR MOBILE FOOD UNITS IN CERTAIN POPULOUS MUNICIPALITIES. (a) This section applies only to a municipality with a population of 1.5 million or more.

(b) Any person desiring to operate one or more mobile food units in a municipality subject to this section other than restricted operations mobile food units shall obtain an individual medallion for each operating mobile food unit from the health officer of the municipality. Each medallion will be issued unit-by-unit only after an inspection reveals satisfactory compliance with the provisions of this chapter and applicable municipal regulations or ordinances relating to mobile food units. The medallions shall remain the property of the municipality.

(c) A person may not operate or cause to be operated any mobile food unit

that does not possess a valid medallion issued by the health officer.

(d) A medallion shall be affixed by the health officer or the health officer's authorized agents on the mobile food unit in a conspicuous place where it can be viewed by patrons.

(e) Application for a medallion shall be made on forms provided by the health officer and must include:

(1) the applicant's full name and mailing address;

(2) the address of the location at which the mobile food unit is stationed when not in use;

(3) the business name and address of the commissary or other fixed food service establishment from which potentially hazardous food supplies are obtained;

(4) the address of the servicing area;

(5) a description of the mobile food unit that includes the manufacturer's make, model, and serial number;

(6) the vehicle's state registration number; and

(7) the signature of the applicant.

(f) All of the provisions of this chapter and applicable municipal regulations or ordinances pertaining to food service establishments apply to the commissary or other fixed food service establishment from which the food supplies are obtained. Any suspension or revocation of the food dealer's permit for a food service establishment is cause for suspension or revocation of the medallion of any mobile food unit that is supplied or serviced by the establishment.

Added by Acts 2009, 81st Leg., R.S., Ch. [403](#), Sec. 1, eff. June 19, 2009.

Sec. 437.0074. MOBILE FOOD UNITS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least 2.8 million, or a municipality or public health district in the county, shall require a mobile food unit to:

(1) return to the food service establishment or commissary from which the unit operates within the 24-hour period preceding operation of the mobile food unit to have cleaning and other services performed on the unit; and

(2) obtain, on completion of an inspection following servicing, written documentation that the mobile food unit has been serviced daily as required by Subdivision (1).

(b) A county, municipality, or public health district that has installed an electronic tagging system shall register and record confirmation that the unit has been serviced as required by Subsection (a)(1).

(c) A municipality with a population of 1.5 million or more in a county

with a population of 2.8 million or more shall require a mobile food unit, other than a mobile food unit that handles only prepackaged food and does not prepare or package food, to obtain a time and date stamp on the documentation required under Subsection (a)(2) from a time and date stamp unit that is constructed to prevent tampering and approved by the municipality's governing body. A record kept by the municipality regarding the time and date stamp on the documentation under Subsection (a)(2) by means of an electronic tagging system under Subsection (b) controls if that record is inconsistent with the record kept by the mobile food unit.

Added by Acts 2007, 80th Leg., R.S., Ch. [1276](#), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [403](#), Sec. 2, eff. January 1, 2010.

Sec. 437.0075. FOOD MANAGERS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least 2.8 million may require a trained food manager to be on duty during the operating hours of a food establishment.

(b) The training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438.

(c) A food establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 7, eff. June 19, 1999.

Sec. 437.0076. CERTIFIED FOOD MANAGER. (a) A county or public health district may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that holds a permit issued by the county or public health district to employ a food manager certified under Subchapter G, Chapter 438.

(b) The board may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that is required to be operated under a permit under Section 437.0055 to employ a food manager certified under Subchapter G, Chapter 438.

(c) An establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(d) The board by rule may exempt establishments other than the establishments described by Subsection (c) from the requirement imposed under this section if the board determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(e) A county or public health district may exempt establishments other than the establishments exempt under Subsections (c) and (d) from the requirement imposed by the county or public health district under this section if the county or public health district determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(f) A child-care facility, as that term is defined by Section 42.002, Human Resources Code, is exempt from the requirements imposed under this section.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 1, eff. Sept. 1, 2001.

Sec. 437.008. PERMIT RENEWAL. A county or public health district may require the annual renewal of a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.009. INSPECTIONS. Authorized agents or employees of the department, a county, or a public health district may enter the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under the department's, county's, or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with:

- (1) state law, including a requirement to hold and display written authorization under Section 437.021;
- (2) rules adopted under state law; and
- (3) orders adopted by the department, county, or district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1402](#), Sec. 1, eff. June 15, 2007.

Sec. 437.0095. DETENTION. The commissioner or an authorized agent may detain an article of food that is located on the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment and is adulterated or misbranded under Chapter 431.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.010. SUBMISSION OF PLANS AND SUBSEQUENT INSPECTION. (a) Before

issuing a permit, a county or public health district may require an applicant to provide plans of the food preparation, storage, and sales areas to determine if the applicant is in compliance with state law and rules adopted under state law governing the applicant.

(b) The county or public health district may deny the permit after initial inspection only if the applicant is not in compliance with the plans approved by the county or district.

(c) If the county or public health district finds on inspection that an applicant is not in compliance with state law and rules adopted under state law, the county or public health district may reinspect the applicant at a later date to determine if the applicant is in compliance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.011. INSPECTION OF EXISTING ENTITIES ON ADOPTION OF ORDER. (a) When a county or public health district requires a permit, the county or district shall make an initial inspection of the facilities of any existing entity applying for the permit.

(b) An existing entity is entitled to continue to operate pending its initial inspection.

(c) If the county or public health district determines on inspection that an entity does not meet the standards established by state law or rules adopted under state law, the county or district may start revocation proceedings as if the entity had obtained a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.012. COUNTY AND PUBLIC HEALTH DISTRICT FEES. (a) A county or public health district may require the payment of a fee for issuing or renewing a permit.

(b) Except as provided by Subsection (f), the fee charged by a county or public health district for issuing or renewing a permit may not exceed \$150.

(c) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(d) Fees deposited as provided by this section may be spent only for conducting inspections required by this chapter and issuing permits.

(e) This section does not apply to a county or public health district covered by Section 437.0123.

(f) A county or public health district may, by rule or order, adopt a

variable scale to determine the fee charged for a permit under this section. In adopting a rule or order under this subsection, the county or public health district may consider:

- (1) the size of the food service establishment, retail food store, mobile food unit, or roadside food vendor;
- (2) the number of people employed at the food service establishment, retail food store, mobile food unit, or roadside food vendor; and
- (3) the gross sales of the food service establishment, retail food store, mobile food unit, or roadside food vendor.

(g) A fee charged under Subsection (f) may not exceed \$300.

(h) The fee charged to a child care facility under this section may not exceed \$150.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 156, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 72, Sec. 1, eff. Sept. 1, 2001.

Sec. 437.0123. COUNTY AND PUBLIC HEALTH DISTRICT FEES IN CERTAIN POPULOUS COUNTIES. (a) A county that has a population of at least 2.8 million or a public health district at least part of which is in a county that has a population of at least 2.8 million may require the payment of a fee for issuing or renewing a permit or for performing an inspection to enforce this chapter or a rule adopted under this chapter. A county with a population of at least 2.8 million may require a trained food manager to be on duty during each day of operation of a food service establishment. The training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438. A food service establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(b) A county or public health district that requires payment of a fee under Subsection (a) shall set the fee in an amount that allows the county or district to recover at least 50 percent of the annual expenditures by the county or district for:

- (1) reviewing and acting on a permit;
- (2) amending and renewing a permit; and
- (3) inspecting a facility as provided by this chapter and rules adopted under this chapter.

(c) Notwithstanding Subsection (b), the fee charged by a county or public health district may not exceed the highest fee charged by a municipality in the

county or public health district or \$300, whichever amount is less.

(d) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(e) Fees deposited as provided by this section may be spent only for a purpose described by Subsection (b).

Added by Acts 1997, 75th Leg., ch. 156, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 480, Sec. 1, eff. Aug. 30, 1999.

Sec. 437.0125. DEPARTMENT FEES. (a) The department shall collect fees for:

- (1) filing, renewing, or amending a permit; and
- (2) an inspection performed to enforce this chapter or a rule adopted under this chapter.

(b) The department may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures by the department for:

- (1) reviewing and acting on a permit;
- (2) amending and renewing a permit;
- (3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and

(4) implementing and enforcing this chapter, including a rule or order adopted or a license issued by the department.

(d) The department shall spend not less than 50 percent of the permit fees collected to inspect facilities and to enforce and administer this chapter.

(e) All permit fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee fund.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 4, eff. Sept. 1, 1993.

Sec. 437.013. AUDITED STATEMENT. (a) A county or public health district shall file an audited statement with the Texas Department of Health on or before January 15 of each year.

(b) The statement must include the receipts of funds collected under this chapter, all expenditures of funds, and fund balances.

(c) A county or public health district that fails to timely file the statement may not require the payment of a fee for issuing or renewing a permit

until the statement is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.014. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) A county or public health district may refuse to issue a permit or may suspend or revoke a permit if the county or district finds that the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law, rules adopted under state law, or orders adopted by the county or district.

(b) A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.

(c) A county or public health district that requires a permit to operate a food service establishment, retail food store, mobile food unit, or roadside food vendor shall adopt procedures for denying, suspending, or revoking a permit that afford due process to the applicant or permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0145. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend the license of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or order the immediate closing of the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment if:

(1) the department finds the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the public.

(b) An order suspending a license or closing a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(c) An order suspending a license or ordering an immediate closing of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is valid for 10 days after the effective date of the order.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.015. INJUNCTION. A city attorney, county attorney, or district attorney may sue in district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if a permit is required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0155. DEPARTMENT INJUNCTION. (a) If it appears that a person has violated, is violating, or threatens to violate this chapter or a rule adopted under this chapter, the department may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

(b) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that:

(1) a person is violating or threatening to violate this chapter or a rule or order adopted under this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(c) On the department's request, the attorney general shall institute a suit in the name of the state for injunctive relief.

(d) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(e) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.016. CRIMINAL PENALTY: VIOLATION OF COUNTY AND PUBLIC HEALTH DISTRICT PERMIT REQUIREMENTS. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the county or public health district in which the entity is operating.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 5, eff. Sept. 1, 1993.

Sec. 437.0165. CRIMINAL PENALTY: VIOLATION OF DEPARTMENT PERMIT REQUIREMENT. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or temporary food service establishment without a permit that is required by the department under Section 437.0055.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The Alcoholic Beverage Code and rules adopted by the Alcoholic Beverage Commission control to the extent of a conflict between this chapter or an order adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.018. ADMINISTRATIVE PENALTY. (a) The commissioner may impose an administrative penalty against a person who holds a permit or who is regulated under this chapter and who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed \$10,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.

(e) Within 14 days after the date the order is issued, the commissioner shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the commissioner by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. An administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j) (3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(1) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commissioner:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Sec. 437.0185. ADMINISTRATIVE PENALTY BY PUBLIC HEALTH DISTRICT OR COUNTY. (a) The director of a public health district or the commissioners court of a county may impose an administrative penalty on a person the district or county requires to hold a permit under Section 437.003 or 437.004 if the person violates this chapter or a rule or order adopted under this chapter.

(b) The amount of the penalty may not exceed \$500 per day, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court. A person who cannot afford to pay the penalty may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs.

(d) Not later than the 20th day after the date the person receives notice of the penalty, the person in writing may:

- (1) accept the determination and pay the recommended penalty of the director or commissioners court; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) The justice of the peace for the justice precinct in which the retail food store or food establishment is located or the mobile food establishment or roadside food vendor is based shall hold a hearing requested under Subsection (d).

(f) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(g) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(h) If the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount be remitted to the person.

Added by Acts 2007, 80th Leg., R.S., Ch. [1202](#), Sec. 1, eff. September 1, 2007.

Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An administrative penalty may be imposed for a violation of this chapter or a rule or order under this chapter by the state under Section 437.018 or by the director of a public health district or commissioners court of a county under Section 437.0185, but not both.

Added by Acts 2007, 80th Leg., R.S., Ch. [1202](#), Sec. 1, eff. September 1, 2007.

Sec. 437.019. EXEMPTION FOR CERTAIN BED AND BREAKFAST ESTABLISHMENTS.

(a) Except as provided by Subsection (c), a bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guests is not a food service establishment for purposes of this chapter. An owner or manager of a bed and breakfast establishment covered by this subsection shall successfully complete a food manager's certification course accredited by the department.

(b) Except as provided by Subsection (c), a bed and breakfast establishment that has more than seven rooms for rent, or that provides food service other than breakfast to its overnight guests, is a food service establishment for purposes of this chapter but may not be required to meet all criteria applicable to a larger food service establishment such as a restaurant. The board, commissioners court, governing body, or administrative board, as applicable, shall adopt minimum standards for a bed and breakfast establishment covered by this subsection.

(c) A bed and breakfast establishment that provides food service other than to overnight guests is a food service establishment for purposes of this chapter and is subject to all rules and regulations applicable to a food service establishment.

Added by Acts 1995, 74th Leg., ch. 689, Sec. 1, eff. June 15, 1995.

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. A cottage food production operation is not a food service establishment for

purposes of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 6, eff. September 1, 2011.

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL HEALTH DEPARTMENT PROHIBITED; COMPLAINTS. (a) A local health department may not regulate the production of food at a cottage food production operation.

(b) Each local health department and the department shall maintain a record of a complaint made by a person against a cottage food production operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 6, eff. September 1, 2011.

Sec. 437.0193. LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001 (2-b)(A) that the operation sells to consumers. The label must include the name and address of the cottage food production operation and a statement that the food is not inspected by the department or a local health department.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 6, eff. September 1, 2011.

Sec. 437.0194. SALES BY COTTAGE FOOD PRODUCTION OPERATIONS THROUGH THE INTERNET PROHIBITED. A cottage food production operation may not sell any of the foods described in Section 437.001(2-b)(A) through the Internet.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 6, eff. September 1, 2011.

Sec. 437.020. PRODUCE SAMPLES AT MUNICIPALLY OWNED FARMERS' MARKETS.

(a) Except as provided by Subsection (b):

- (1) this chapter does not regulate the provision of samples of produce to consumers at a municipally owned farmers' market; and
- (2) a rule adopted under state law may not regulate the provision of samples of produce to consumers at a municipally owned farmers' market.

(b) Produce samples may only be distributed at a municipally owned farmers' market if the following sanitary conditions exist:

- (1) produce samples must be kept in approved, clean, and covered containers;
- (2) produce samples must be distributed in a sanitary manner;
- (3) clean, disposable plastic gloves must be used when cutting produce samples;

(4) produce intended for sampling must be washed in potable water to remove any soil or other material so that it is wholesome and safe for consumption;

(5) potable water must be available for hand washing and sanitizing as approved by the local or state enforcement agency;

(6) potentially hazardous cut produce, as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit, and produce samples must be disposed of within two hours after cutting;

(7) utensil and hand washing water must be disposed of in a facility connected to the public sewer system or in a manner approved by the local or state enforcement agency; and

(8) utensils and cutting surfaces must be smooth, nonabsorbent, and easily cleaned or disposed of as approved by the local or state enforcement agency.

Added by Acts 2005, 79th Leg., Ch. [191](#), Sec. 1, eff. May 27, 2005.

Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) In this section, "farmers' market" means a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other producers.

(b) The department or a local health department may issue a temporary food establishment permit to a person who sells food at a farmers' market without limiting the number of days for which the permit is effective to the number of days during which the farmers' market takes place.

(c) A permit issued under Subsection (b) may be valid for up to one year and may be renewed on expiration.

(d) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 7, eff. September 1, 2011.

Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT FARMERS' MARKETS.

(a) In this section, "farmers' market" has the meaning assigned by Section 437.0201.

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020 or 437.0201. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this

section.

(c) Except as provided by Subsection (d), the executive commissioner or a state or local enforcement agency may not mandate a specific method for complying with the temperature control requirements adopted under Subsection (b).

(d) The municipality in which a municipally owned farmers' market is located may adopt rules specifying the method or methods that must be used to comply with the temperature control requirements adopted under Subsection (b).

(e) This section does not apply to a farmers' market in a county:

- (1) that has a population of less than 50,000; and
- (2) over which no local health department has jurisdiction.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1317](#), Sec. 7, eff. September 1, 2011.

Sec. 437.021. AUTHORITY TO OPERATE ON CERTAIN PROPERTY. A person operating a mobile food unit, roadside food vendor, or temporary food service establishment in a county with a population of more than 3.3 million shall acquire written authorization from the owner of the property on which the unit, vendor, or establishment is operating. The written authorization must:

- (1) be notarized;
- (2) provide that the operator has the property owner's permission to operate the unit, vendor, or establishment on the property; and
- (3) be prominently displayed in the unit, vendor, or establishment in plain view of the public at all times.

Added by Acts 2007, 80th Leg., R.S., Ch. [1402](#), Sec. 2, eff. June 15, 2007.