



**TEXAS DEPARTMENT OF STATE HEALTH SERVICES
DIVISION FOR REGULATORY SERVICES
ENVIRONMENTAL AND CONSUMER SAFETY SECTION
POLICY, STANDARDS, AND QUALITY ASSURANCE UNIT
PUBLIC SANITATION AND RETAIL FOOD SAFETY GROUP**

**PUBLIC SANITATION AND RETAIL FOOD SAFETY GROUP
REGULATORY CLARIFICATIONS**

September 24, 2015

PSRFSGRC – No. 17

SUBJECT: Lemonade Stands

Applicable Texas Food Establishment Rules (TFER) Sections:

§228.222 (a) Temporary Food Establishments

Question:

Does a lemonade stand have to be permitted?

Background:

Children's beverage stands, more specifically lemonade stands, have come to forefront with the recent prominent closing of a lemonade stand because the operator/vendor failed to obtain a temporary food establishment permit.

Response:

When an operator sets up a temporary booth and performs open handling of food or drink with the intent to sell to the public, it is a temporary retail food establishment. The TFER requires that temporary retail food establishments obtain a permit and comply with specific food safety requirements. Since lemonade stands perform open handling of food, equipment, and utensils and require a potable water source for preparation of the product prior to sale, they are considered a temporary food establishment.

Lemonade stands must protect food, as well as equipment and utensils used to prepare, store and dispense food, from contamination such as dirt, dust, insects and other sources of contamination. Food handlers must also have a means to properly wash hands.

However, lemonade is a low risk food item. Lemonade is not a food that is required to be held in a temperature-controlled atmosphere, such as a freezer or refrigerator. Lemonade, particularly in the low volumes found in a children's driveway stand, is unlikely to cause food borne illness. For this reason, the Department has determined that lemonade stands pose a minimal health risk as long as the food handlers protect the food and observe good hygienic practices, especially handwashing. In areas served by DSHS regional offices, permits will not be required for children's neighborhood beverage stands.

Local public health departments have the ability to waive or modify requirements of the rules regulating TFE's including, but not limited to, the permitting of temporary food establishments. DSHS encourages local public health authorities to consider the overall risks to public health before requiring children's neighborhood beverage stands to be permitted as TFEs.

Support: §228.222 (a) states ‘The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all time/temperature controlled for safety (TCS) foods, *and when no health hazard will result, such as children’s neighborhood beverage stands, may waive or modify requirements of these rules.*’

Agree to form and substance:



Christopher Sparks, MPA, R.S.

Manager

Public Sanitation and Retail Food Safety Group

This Regulatory Clarification preempts any previous clarification/guidance/policy letters on this subject and remains in effect until superceded in writing by the Public Sanitation and Retail Food Safety Group. Attributed use or reproduction of this information is freely granted.