

Proposed Rules  
of the  
Tennessee Department of Agriculture  
Division of Food and Dairy

Chapter 0080-04-09  
Retail Food Store Sanitation

Presented herein are proposed amendments of the Division of Food and Dairy, Department of Agriculture, submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Division of Food and Dairy, Department of Agriculture, to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department of Agriculture, Regulatory Services Division, Ellington Agricultural Center, P.O. Box 40627, Nashville, Tennessee 37204, and in the Department of State, 8<sup>th</sup> Floor, William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Keith Hodges, Legal Associate, Department of Agriculture, Regulatory Services Division, Ellington Agricultural Center, P.O. Box 40627, Nashville, Tennessee 37204, 615-837-5331.

The text of the proposed amendments is as follows:

Amendments

Paragraph (1) of Rule 0080-04-09-.01 General Provisions is amended by deleting the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (1) For purposes of this Chapter:
  - (a) "Approved" means accepted by the commissioner.
  - (b) "Bulk food" means processed or unprocessed food in aggregate containers, from which the consumer can withdraw a desired quantity.
  - (c) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.
  - (d) "Commissioner" means the Commissioner of the Tennessee Department of Agriculture or his duly authorized agent.
  - (e) "Contamination" means the act or process of rendering or potentially rendering unfit for use.
  - (f) "Corrosion-resistant materials" means those materials that maintain acceptable sanitary surface characteristics under the prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.
  - (g) "Cross-contamination" means the act or process of rendering unfit or potentially rendering unfit the use of food as a result of the introduction of pathogens, adulteration, or improper handling.

- (h) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish that residue can be effectively removed by normal cleaning methods.
- (i) "Employee" means the permit holder, individual having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or any other person working in a food store.
- (j) "Equipment" means items other than utensils used in the storage, preparation, display, and transportation of food, such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators and freezers, sinks, ice makers, and similar items used in the operation of a retail food store. The term does not include fork lift trucks or dollies.
- (k) "Extensive remodeling" means changing seating capacity from 16 seats or less to more than 16 seats; or the alteration of walls in food preparation or utensil washing areas; or the increase or decrease of floor size.
- (l) "Food" means any 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.
- (m) "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces normally in contact with food.
- (n) "Food service establishment" means any establishment, place or location, whether permanent, temporary, seasonal or itinerant, where food is prepared and the public is offered to be served, or is served, food, including but not limited to, foods, vegetables, and/or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, and sliced watermelon, ice balls, and/or water mixtures. The term includes any such places regardless of whether there is a charge for the food. The term does not include private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, vending machines, or supply vehicles. The term also does not include any such establishment, place or location, whether permanent, temporary, seasonal or itinerant, which is located west of the Ben Brown Bridge and east of the Lascassas School in Lascassas, Tennessee. Food service establishments shall not include grocery stores which may, incidentally make infrequent, casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, which may, incidentally, make infrequent, casual sales of coffee or prepackaged foods, or both, for consumption on the premises. "Infrequent casual sales" means sales not in excess of fifty dollars (\$50.00) per day on any particular day, for the purposes of the preceding sentence.
- (o) "Hermetically-sealed container" means a container which is designed and intended to be secure against the entry of microorganisms, and which maintains the commercial sterility of its contents after processing.
- (p) "Imminent health hazard" means any condition, deficiency, or practice which, if not corrected, is very likely to result in illness, injury, or loss of life to any person.
- (q) "Law" includes applicable Federal, State, and local statutes, ordinances, and regulations.
- (r) "Packaged" means bottled, canned, cartoned, bagged, or securely wrapped.

- (s) "Permit" means the document issued by the regulatory authority that authorized a person to operate a retail food store.
- (t) "Person" includes any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, the federal government and its agencies and departments, or other legal entity.
- (u) "Potable water" means water that is safe for drinking.
- (v) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans, or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include: foods that have a pH level of 4.6 or below or a water activity (a<sub>W</sub>) value of 0.85 or less under standard conditions; food products in hermetically-sealed containers processed to prevent spoilage.
- (w) "Regulatory authority" means the Tennessee Department of Agriculture.
- (x) "Retail food store" means any establishment or a section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term does not include establishments that handle only prepackaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables; food and beverage vending machines; or food service establishments not located within a retail food store.
- (y) "Safe materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in Section 201 (s) or (t) of the "Federal Food, Drug and Cosmetic Act," as used, they are "safe" only if they are used in conformity with regulations established pursuant to Section 409 or Section 706 of that Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in Section 201 (s) or (t) of the "Federal Food, Drug and Cosmetic Act" and are used in conformity with all applicable regulations of the Food and Drug Administration.
- (z) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, of the food contact surfaces of utensils and equipment to a safe level.
- (aa) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
- (bb) "Single-service articles" means items used by the retailer or consumer such as cups, containers, lids, and packaging materials, including bags and similar articles, which are intended for contact with food and designed for one-time use. The term does not include "single use" articles such as number 10 cans, aluminum pie pans, bread wrappers and similar articles with which food has been packaged by the manufacturer.
- (cc) "Transportation" (transported) means the movement of food within the retail food store or the delivery of food from that retail food store to another place while under the control of the person in charge.

- (dd) "Utensil" means any food contact implement used in the storage, preparation, transportation, or dispensing of food.
- (ee) "Warewashing" means the cleaning and sanitizing of food contact surfaces of equipment and utensils.

Authority: T.C.A. §§4-3-203, 53-8-101 and 53-8-201 et seq.

Subparagraph (a) of paragraph (1) of rule 0080-04-09-.02 Food is amended by deleting the language of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (a) General.
  - 1. Food shall be in sound condition, safe for human consumption, and obtained from sources that comply with applicable laws relating to food safety.

Subparagraph (b) of paragraph (2) of rule 0080-04-09-.02 Food is amended by deleting the language of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) Food Temperatures. Except as otherwise provided in these rules, potentially hazardous foods shall be maintained:
  - 1. At 41°F (= 5°C) or below or 140°F (= 60°C) or above at all times except during necessary periods of preparation.

Part 1 of subparagraph (a) of paragraph (4) of rule 0080-04-09-.02 Food is amended by deleting the language of the part in its entirety and substituting instead the following language so that, as amended, the part shall read:

- 1. Food shall be prepared with a minimum of manual contact. Food shall be prepared on food contact surfaces, with utensils that are clean and have been sanitized to prevent cross-contamination.

Subparagraph (e) of paragraph (4) of rule 0080-04-09-.02 Food is amended by deleting the language of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (e) Reheating. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165° F (= 74° C) or higher for a minimum of 15 seconds before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

Authority: T.C.A. §§53-8-101 and 53-8-201 et seq.

Part 2 of subparagraph (a) of paragraph (4) of rule 0080-04-09-.03 Personnel is amended by deleting the language of the part in its entirety and substituting instead the following language so that, as amended, the part shall read:

- 2. Employees shall consume food or use tobacco only in designated areas. Such designated areas must be located so that the employee's eating or tobacco use does not result in the contamination of food, equipment, or utensils. An employee may drink from a closed beverage container if the container is handled so as to prevent the contamination of the employee's hands, the container, any exposed food, clean equipment, utensils, linens, or unwrapped single-service and single-use articles.

Authority: T.C.A. §§53-8-101 and 53-8-201 et seq.

Subparagraph (a) of paragraph (1) of rule 0080-04-09-.06 Sanitary Facilities and Controls is amended by deleting the language of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (a) General. Sufficient potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to law. All water provided from any source other than an approved public water supply shall have a bacteriological test at least annually or as often as deemed necessary by the Commissioner. The bacteriological test shall be conducted by an accredited laboratory and the laboratory report shall be available for review at the establishment at all times. If the laboratory report indicates that the water is unsafe, the operator of the establishment shall immediately make correction or provide safe water from other approved sources.

Subparagraph (a) of paragraph (4) of rule 0080-04-09-.06 Sanitary Facilities and Controls is amended by deleting the language of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (a) Toilet Installation. Toilet facilities shall be installed according to law, shall be at least one but not less than the number required by law, shall be conveniently located, and shall be accessible to employees at all times. Establishments constructed or extensively altered after August, 2002 shall provide toilet facilities for patrons of each sex, except that establishments with a seating capacity of sixteen (16) or less are exempt from this requirement, unless otherwise required by state law. Employees and patrons may use the same facilities.

Authority: T.C.A. §§53-8-101 and 53-8-201 et seq.

Subparagraph (a) of paragraph (8) of rule 0080-04-09-.07 Construction and Maintenance of Physical Facilities is amended by adding the following language under a new part (3):

3. The traffic of unnecessary persons through food-preparation and utensil-washing areas is prohibited.

Authority: T.C.A. §§53-8-101 and 53-8-201 et seq.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of June, 2008, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of October, 2008. (FS 06-28-08; DBID 2911)

Regulatory Flexibility Act of 2007  
Economic Impact Statement

(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from, the proposed rule:

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

The amendments will affect all retail food stores in Tennessee, a number totaling approximately 9,000.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

None

(4) Statement of the probable effect on impacted small businesses and consumers:

The amendments will allow foods prepared in domestic kitchens to be sold in retail food stores, and will allow individuals to “test market” foods without having to invest in an expensive facility.

(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

None

(6) Comparison of the proposed rule with any federal or state counterparts:

The amendments will be compatible with the rules of the Tennessee Department of Health, where relevant.

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

None