

Proposed Rules  
Of The  
Department Of Agriculture  
Regulatory Services Division

Chapter 0080-4-9  
Retail Food Store Sanitation

Presented herein are proposed amendments to the Retail Food Store Sanitation Rules, Department of Agriculture submitted pursuant to Tenn. Code Ann. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Regulatory Services Division, Tennessee 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 General Counsel of the Department of Agriculture, P.O. Box 40627, Nashville, TN 37204, and in the Department of State, Department of State, 8<sup>th</sup> Floor, William R Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0307, 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 on 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: Jimmy Hopper, Director, Regulatory Services, Department of Agriculture, Ellington Agricultural Center, 615-837-5150.

The text of the proposed amendments as follows:

Amendments

Rule 0080-4-9-.01 General Provisions is amended by deleting the subparagraph (1)(p) in its entirety; so that the new subparagraph shall read:

- (p) 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 (aW) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.

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

Rule 0080-4-9-.02 Food is amended by deleting paragraph (2) in its entirety so that the amended paragraph (2) shall read:

- (2) Food Protection.
  - (a) General

1. At all times, including while being stored, prepared, displayed, dispensed, packaged, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling, flooding, draining, and overhead leakage or condensation, or other agents of public health significance. Hermetically sealed packages shall be handled so as to maintain product and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have been returned to, or are being detained by, the retail food store because of spoilage, container damage, or other public health considerations, shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the regulatory authority.
  2. Emergency Occurrences. The person in charge of a retail food store that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the regulatory authority of the emergency.
- (b) Food Temperatures. Except as otherwise provided in these rules, potentially hazardous food shall be maintained:
1. At 41°F(=5°C) or below or 140°F(=60°C) or above at all times except as otherwise provided in these rules.
  2. At 45°F(=7°C) or below in existing refrigeration equipment that is incapable of maintaining the food at 41°F(=5°C) or less, if
    - (i) the equipment is in place and in use in the Retail Food Store, and
    - (ii) within five (5) years from the effective date of these rules, the equipment is upgraded or replaced to maintain food at a temperature of 41°F(=5°C) or less.
  3. In any event, five (5) years from the effective date of these rules, all potentially hazardous food shall be maintained at 41°F(=5°C) or below, or 140°F(=60°C) or above at all times.

Authority: T.C.A. §§ 53-8-101 et seq.

Rule 0080-4-9-.02 Food is amended by deleting paragraph (3) subparagraph (b) part 2 in its entirety so that the amended 0080-4-9-.02(3)(b)2 shall read:

2. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 41°F (=5°C) or below. Potentially hazardous foods of large volumes or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 41°F(=5°C) or below unless maintained in accordance with the hot storage requirements of this code.

Authority: T.C.A. §§ 53-8-101 et seq.

Rule 0080-4-9-.02 Food is amended by deleting paragraph (4) subparagraph (g) part 1 in its entirety so that the amended 0080-4-9-.02(4)(g)1 shall read:

1. In refrigerated units at a temperature not to exceed 41°F(=5°C); or

Rule 0080-4-9-.02 Food is amended by deleting paragraph (5) subparagraph (a) in its entirety so that the amended 0080-4-9-.02(5)(a) shall read:

- (a) Potentially Hazardous Foods. Potentially hazardous foods shall be held at an internal temperature of 41°F(=5°C) or below or at an internal temperature of 140°F(60°C) or higher during display, except that rare roast beef, which is offered for sale hot, shall be held at a temperature of at least 130°F(=55°C).

Authority: T.C.A. §§ 53-8-101 et seq.

Rule 0080-4-9-.03 Personnel is amended by deleting paragraph (2) subparagraph (a) in its entirety so that the amended 0080-4-9-.03(2)(a) shall read:

- (a) Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, using the toilet, and again upon returning to work after using the toilet; before and after handling raw meat, or raw poultry, or raw seafood; and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

Authority: T.C.A. §§ 53-8-101 et seq.

Rule 0080-4-9-.05 Cleaning, Sanitization, And Storage Of Equipment And Utensils is amended by deleting paragraph (1) subparagraph (c) part 1 in its entirety so that the amended 0080-4-9-.05(1)(c)1 shall read:

1. For manual cleaning and sanitizing of equipment and utensils, a sink with three compartments shall be provided and used. Sink compartments shall be large enough to accommodate the immersion of most equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Where immersion in sinks is impracticable (e.g., because equipment is too large), equipment and utensils shall be cleaned and sanitized manually or by pressure spray methods.

Rule 0080-4-9-.05 Cleaning, Sanitization, And Storage Of Equipment And Utensils is further amended by deleting paragraph (1) subparagraph (c) part 6 in its entirety and renumbering the remaining parts as required.

Authority: T.C.A. §§ 53-8-101 et seq.

Rule 0080-4-9-.06 Sanitary Facilities And Controls is amended by deleting paragraph (4) subparagraph (a) in its entirety so that the amended 0080-4-9-.06(4)(a) 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. In establishments constructed or extensively altered after the effective date of these rules, toilet facilities for each sex shall be provided for the use of patrons. Employees and patrons may use the same facilities. Provided, however, establishments with a seating capacity of sixteen (16) or less are exempted from providing toilet facilities for the use of patrons, unless otherwise required by state statute.

Authority: T.C.A. §§ 53-8-101 et seq.

Rule 0080-4-9-.07 Construction and Maintenance of Physical Facilities is amended by deleting paragraph (8) subparagraph (f) part 1 in its entirety so that the amended 0080-4-9-.07(8)(f)1 shall read:

1. Live animals, with the exception of service dogs accompanying disabled persons, shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store under the control of the permit holder. This exclusion does not apply to edible fish, crustaceans, shellfish, or fish in aquariums.

Live or dead fish bait shall be stored separately from food or food products.

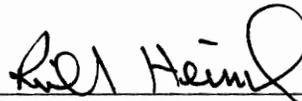
Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons.

Authority: T.C.A. §§ 53-8-101 et seq.

Legal Contact and/or party who will approve final copy: Patricia Clark, General Counsel  
Department of Agriculture  
P. O. Box 40627  
Nashville, TN 37204  
Phone: 615-837-5093  
Fax: 615-837-5092

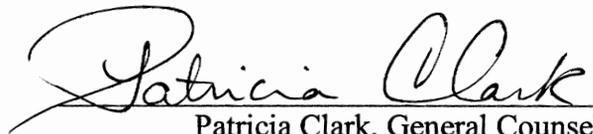
Contact for disk acquisition: Patricia Clark, General Counsel  
Department of Agriculture

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:



Richard Heinrich, Food and Dairy Administrator  
Tennessee Department of Agriculture

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of Agriculture on the 7 day of SEPTEMBER, 20 01.



Patricia Clark, General Counsel  
Tennessee Department of Agriculture

The Secretary of State is hereby instructed that, in the absence of a petition for rulemaking hearing being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.



Dan Wheeler, Commissioner  
Tennessee Department of Agriculture

Subscribed and sworn to before me this the 7 day of September, 2001.

Maice P. Sullivan  
Notary Public

My commission expires on the 27 day of March, 2004.

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G Summers  
Paul G. Summers  
Attorney General and Reporter

The proposed rules set out herein were properly filed in the Department of State 20th day of February, 2002, 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 June, 2002.

Riley C Darnell  
Riley C. Darnell  
Secretary of State

By: Shawna Gaw (Signature)

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