

Proposed Rules  
of  
Tennessee Department of Agriculture  
Regulatory Services Division

Chapter 0080-4-11  
Regulations For Establishments Utilizing Domestic Kitchen Facilities  
For Bakery and Other Non-Potentially Hazardous Foods  
Intended For Sale

Presented herein are proposed rules of the Regulatory Services Division, 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, 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 rules are published. Such petition to be effective must be filed with the Department of Agriculture, Legal Services, P.O. Box 40627, Nashville, TN 37204, and in the Department of State, 8<sup>th</sup> Floor, Tennessee Tower, 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 rules, or submitted by a municipality which will be affected by the rules, 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 rules, contact: Jimmy Hopper, Director, Regulatory Services Division, Department of Agriculture, Ellington Agricultural Center, 615-837-5150.

The text of the proposed new rules is as follows:

New Rules

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0080-4-11-.01 PURPOSE. The purpose of these rules is to allow individuals using domestic kitchens to prepare, manufacture and sell non-potentially hazardous foods to the public, while ensuring that the public health is protected by compliance with these rules and inspections by the Department of Agriculture.

Authority: Tenn. Code Ann. § 53-1-207.

0080-4-11-.02 DEFINITIONS.

- (1) "Domestic Kitchen" is a home based kitchen that meets the established requirements herein in order to process non-potentially hazardous foods for sale to the general public.
- (2) "Non-potentially hazardous foods" are jam, jellies, candy and baked goods that do not meet the definition of potentially hazardous foods.
- (3) "Potentially hazardous food" are those foods which consist of meat, poultry, liquid eggs and partially cooked egg products, fish, milk and milk products, shellfish, partially cooked bakery products and/or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms when stored at temperatures in excess of 45 degrees F, if a cold food or below 140 degrees F, if a hot food. Also included as potentially hazardous

food, are low acid canned foods (vegetables, fish, meat, etc.) and acidified foods (pickled vegetables, fish, meat, eggs, etc.).

- (4) "Unit of sale" is the form of packaging in which the product is normally offered for sale to the consumer (e.g., 1 loaf of bread, 1 dozen cookies, 1 pie [or piece thereof, as applicable], 1 container of jelly, etc.)

Authority: Tenn. Code Ann. § 53-1-207.

0080-4-11-.03 LIMITATIONS OF SALE. A domestic kitchen shall not exceed 100 units of sale per week.

Authority: Tenn. Code Ann. § 53-1-207.

0080-4-11-.04 PERMIT REQUIREMENTS.

- (1) All facilities in which foods are manufactured, processed, packed or held for introduction into commerce must obtain and maintain a current license (known as a "Regulatory Services Permit") from the Tennessee Department of Agriculture, Regulatory Services, Food and Dairy Section in accordance with Tenn. Code Ann. § 53-1-208. Compliance with all other business license, permit and zoning requirements is the responsibility of the applicant.
- (2) All domestic kitchens shall be available for inspection by the Tennessee Department of Agriculture between the week-day hours of 7:00 a.m. to 5:00 p.m., and the department shall, if it deems it advisable or necessary, inspect such premises on Saturdays, holidays or other times foods are being processed, prepared, packaged or handled.
- (3) An individual who wants to process non-potentially hazardous foods in a domestic kitchen shall have adequate knowledge of safe food handling practices and shall have successfully completed the Tennessee Food Safety Certification Course presented by the University of Tennessee Department of Food Science and Technology or equivalent as determined by the Tennessee Department of Agriculture.

Authority: Tenn. Code Ann. § 53-1-207 and § 53-1-208.

0080-4-11-.05 GENERAL PROVISIONS.

- (1) A food-processing establishment in an area that is part of a domestic kitchen shall comply with all provisions of this policy.
  - (a) All domestic kitchen doors, if doors are provided, openings to other rooms of the dwelling or structure, such as bathrooms and all openings to the outside shall be kept closed during the processing, preparing, packaging or handling of commercial foods. Windows, which are open when processing, shall be effectively screened to prevent the entrance of insects.
  - (b) No person, other than the food establishment licensee or someone under the direct supervision of such licensee, shall directly engage in the processing, preparing, packaging or handling of commercial foods and no other person shall be allowed in the domestic kitchen during such periods of operation.
  - (c) No pets shall be allowed at any time in the dwelling or structure in which the domestic kitchen is located.
  - (d) No processing, preparing, packaging or handling of foods for sale shall be carried on in a domestic kitchen while other domestic activities are being carried on in such

domestic kitchen, including, but not limited to; family meal preparation, serving, eating, dishwashing, clothes washing and ironing, cleaning of floors, walls, cabinets and appliances or when entertaining guests.

- (e) Use of tobacco products is prohibited in the dwelling or structure housing the domestic kitchen during preparing, processing, packaging or handling of commercial foods.
- (f) Employee Health – No food handler shall work in food processing while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease. No food handler shall work in food processing while affected with a boil, an infected wound or an acute respiratory infection.
- (g) Hair restraints and clean outer garments must be worn by all persons in the domestic kitchen during processing, preparing, packaging, or handling of foods. The use of loose or dangling jewelry, nail polish and chewing gum is prohibited by persons in the domestic kitchen during processing, preparing, packaging, or handling of commercial foods.

Authority: Tenn. Code Ann. § 53-1-207.

#### 0080-4-11-.06 FACILITY REQUIREMENTS.

- (1) Each domestic kitchen shall include and be provided with the following:
  - (a) An adequate safe water supply derived from:
    - 1. a municipal service or
    - 2. a private water supply deemed to be safe as determined by inspection and annual microbiological analysis for coliform conducted at a laboratory deemed acceptable by the Tennessee Department of Agriculture. Current documentation of the laboratory analysis must be kept at the facility for review at the time of inspection.
  - (b) Storage space for ingredients, including partially filled ingredient containers that have been properly sealed and labeled, finished product containers and labels for commercial foods that provide effective separation from household cleaning materials, other chemicals or toxic substances.
  - (c) A separate refrigerated unit equipped with an accurate thermometer located in the same structure as the domestic kitchen for storage of perishable products or ingredients utilized in the preparing, processing, or handling of commercial foods.
  - (d) Adequate facilities including a sink for the cleaning and sanitization of all utensils and equipment and adequate space for the draining or air-drying of all utensils and equipment that are or may become food product contact surfaces.
  - (e) Adequate hand washing facilities separate from the utensil cleaning facilities, which include hot and cold water, single service paper towels and hand soap. Properly supplied hand washing facilities provided in toilet facilities located within the structure containing the domestic kitchen may suffice for this provision. Hands shall be washed and dried:
    - 1. after restroom use, and

2. immediately prior to food preparation, processing and/or packaging as often thereafter as is necessary to properly protect the food.
  - (f) A properly functioning toilet facility supplied with single service paper towels, hand soap, toilet tissue and a covered waste receptacle.
  - (g) Utensils and equipment that are made of smooth, nonabsorbent, corrosion-resistant, non-toxic material so constructed as to be easily cleaned.
  - (h) Food packaging materials, containers and closures that are safe for their intended use. Written verification relative to food safety from the manufacturer of the packaging materials, containers or closures may be required.
  - (i) Shielded or shatter resistant lighting in the processing area.
- (2) Operation of the facility shall be conducted in such a manner as to protect the food from contamination during preparing, processing, packaging, storage and distribution. Where applicable, containers may require sanitization prior to use. Suitable dispensing/measuring utensils stored in a manner so as to preclude contamination shall be used to avoid unnecessary manual contact with food.
  - (3) Medical supplies or equipment shall not be stored or allowed in the domestic kitchen unless stored in such a manner that does not permit contamination of food or food product contact surfaces.
  - (4) There shall be no evidence of insect or rodent activity. Chemical pest control application shall be conducted in a manner consistent with manufacturer's directions so as to not contaminate food products or food product contact surfaces. A person shall not apply a pesticide within a dwelling or structure used for the preparation or serving of food except under the direct supervision of a person licensed to apply pesticides in accordance with General Provision 62-21-124(a)(4), Chapter 21 of the Tennessee Application of Pesticides Act of 1978.
  - (5) Waste, including food waste, shall be disposed of in a manner that does not attract rodents, insects or birds.

Authority: Tenn. Code Ann. § 53-1-207.

#### 0080-4-11-.07 LABELING OF PRODUCTS.

- (1) All food items packaged at the facility must be properly labeled prior to sale. The following, at a minimum, must be present on all food items:
  - (a) The name, street address, city, state and zip code of the manufacturer, packer or distributor.
  - (b) An accurate statement of the net amount of food in the package.
  - (c) The common or usual name of the food.
  - (d) The ingredients in the food.
  - (e) Lot dates or numbers shall be evident on each package or container of food.

- (2) All labeling shall comply with the applicable provisions of the Code of Federal Regulations, Chapter 21, Part 101 - Food Labeling. The licensed facility may apply for a Small Business Nutritional Labeling Exemption, if applicable.
- (3) Lot dates or numbers shall be evident on each package or container of food for traceability purposes in the event an issue occurs which may require a market withdrawal of the food. A current distribution list including quantities sold may also be of assistance should an incident occur.

Authority: Tenn. Code Ann. § 53-1-105 and § 53-1-207.

0080-4-11-.08 Exemptions. Establishments that process non-potentially hazardous foods prepared solely with the intent to sale at a single day public event no more that six times per year on non-sequential days on behalf of a non-profit institution or charity are exempt from the requirements of these rules.

Authority: Tenn. Code Ann. § 53-1-207.

The proposed rules set out herein were properly filed in the Department of State on the 29th day of September, 2006, 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 27th day of January, 2007.