



Manufacturing Regulations for Non-potentially Hazardous Foods in Tennessee

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As of May 21, 2012, Tennesseans interested in manufacturing non-potentially hazardous foods for sale were provided with additional legislative flexibility with the signing of SB3547/HB3302. In some cases, the new law allows producers of non-potentially hazardous foods such as jams, jellies, candies and dried mixes to forgo the food safety class and permitting and inspection by the Tennessee Department of Agriculture Regulatory Services Division required by the “Domestic Kitchen” and previous regulations. The new law does create and maintain some regulatory requirements for all food manufacturers, however.

The “Domestic Kitchen Regulations,” which became effective in January 2007, provided the ability for non-potentially hazardous foods manufactured for sale to be produced in a home-based kitchen when a specified food safety class was attended and an inspection and permit process were complete. Prior to the “Domestic Kitchen Regulations” all food manufactured for sale had to be made in licensed and inspected commercial kitchens.

The following requirements must be met under the new law in order to manufacture and sell non-potentially hazardous foods in Tennessee without inspection and licensing:

- Products manufactured must be non-potentially hazardous foods

“Non-potentially hazardous food” means jam, jellies, candy, dried mixes and other such food that do not meet the definition of potentially hazardous food.

“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 which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, home-canned foods other than jams and jellies, or any food that requires temperature control for safety.

- Products can only be sold direct to consumers at the manufacturer’s personal residence, a community or social event, including church bazaars and festivals, flea markets or a farmers market located in Tennessee.

- A sign must be displayed at the place of sale stating, “These food products were made in a private home not licensed or inspected.” The sign must be 8.5 by 11 inches in size with a 0.75 inch font.
- Products must be labeled with manufacturer’s name, address, name of food, date of packaging, list of ingredients in descending order of predominance and the statement “This product was made in a private home not licensed or inspected.”

Food manufacturers are still liable for the safety of the products in the event their product causes food poisoning or an improperly labeled product causes an allergic reaction. Although training is not a requirement of the new law, state officials highly encourage it to educate participants on current safe food manufacturing procedures. More information about in-person and on-line trainings is available online at <https://ag.tennessee.edu/foodscience/Pages/Domestic-Kitchen-Workshop.aspx> or by contacting Nancy Austin in the University of Tennessee Department of Food Science and Technology at (865) 974-7717 or naustin@utk.edu.

Food manufacturers may also reap benefits of voluntarily continuing the Domestic Kitchen training, inspection and licensing requirements. Licensed manufacturers may have more credibility with consumers and use their licensed status as a competitive advantage. Licensed manufacturers are allowed to market at venues other than those allowed in the new law.

In any case, those interested in manufacturing food products should clearly understand the regulatory requirements in place and the current food safety manufacturing procedures.

The text of the new law made effective in May 2012, now called State of Tennessee Public Chapter Number 1105, is provided as Appendix A.

The text of the “Domestic Kitchen Regulations” made effective in January 2007, officially titled “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,” is provided as Appendix B.

More information about in-person and on-line trainings is available online at <https://ag.tennessee.edu/foodscience/Pages/Domestic-Kitchen-Workshop.aspx> or by contacting Nancy Austin in the University of Tennessee Department of Food Science and Technology at (865) 974-7717 or naustin@utk.edu.

Appendix A

State of Tennessee
Public Chapter No. 1105

Senate Bill No. 3547
Substituted for House Bill No. 3302

Effective May 21, 2012



State of Tennessee
PUBLIC CHAPTER NO. 1105

SENATE BILL NO. 3547

By Crowe; Mr. Speaker Ramsey; Barnes, Beavers, Bell, Berke, Burks, Campfield, Faulk, Finney, Ford, Gresham, Harper, Haynes, Henry, Herron, Johnson, Kelsey, Ketron, Kyle, Marrero, Massey, McNally, Norris, Overbey, Roberts, Southerland, Stewart, Summerville, Tracy, Watson, Yager

Substituted for: House Bill No. 3302

By Hill, Evans, Shipley, Eldridge, Lollar, Powers, Marsh, Faison, Stewart, Shaw

AN ACT to amend Tennessee Code Annotated, Title 53, Chapter 8, Part 1, relative to sales of certain foods and food products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 8, Part 1, is amended by deleting § 53-8-117 in its entirety and by substituting instead the following language:

53-8-117.

(a) As used in this section, unless the context otherwise requires:

(1) "Home based kitchen" means a cooking facility located in that person's primary residence;

(2) "Nonpotentially hazardous food" means jam, jellies, candy, dried mixes and other such food that do not meet the definition of potentially hazardous food; and

(3) "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 which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, home-canned foods other than jams and jellies, or any food that requires temperature control for safety.

(b) Notwithstanding any law, rule or regulation to the contrary, nonpotentially hazardous food prepared in a home based kitchen may be sold at that person's personal residence, a community or social event, including church bazaars and festivals, flea markets, or at farmer's markets located in this state.

(c) Persons offering for sale nonpotentially hazardous food prepared in a home based kitchen shall display an eight and one-half inch by eleven inch (8 1/2" x 11") sign with three-fourths inch (3/4") font at the place of sale stating: "These food products were made in a private home not licensed or inspected."

(d) Each food product that is sold shall be labeled with the name and address of the person who prepared the food product, the common or usual name of the food product, the date on which the food product was packaged, the net quantity of the food product, the statement "This product was made in a private home not licensed or inspected," and a list of ingredients in descending order of prominence of weight. If any ingredient contains milk, eggs, fish, crustaceans, shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients shall include the common name of the ingredient.

(e) Whenever the commissioner finds that a nonpotentially hazardous food prepared in a home based kitchen is, by reason of microbiological, physical, chemical or allergenic contamination, injurious to the public health, the commissioner may prohibit the sale of such food until the facility in which it was prepared is inspected and found to be in substantial compliance with the regulations for establishments

utilizing domestic kitchen facilities for bakery and other nonpotentially hazardous food, and the contamination is eliminated. Any food product prepared in a home based kitchen failing to meet the definition of a "nonpotentially hazardous food" shall immediately be removed from sale.

(f) All nonpotentially hazardous food from a home based kitchen may be distributed as free samples.

(g) An individual who processes nonpotentially hazardous foods in a home based kitchen is encouraged but shall not be required to complete a food safety course and to have their recipes and processes reviewed by a person who is knowledgeable about food processing and who is recognized by the department or a state college or university with a curriculum in food safety as an authority on preparing processed food.

(h) This section shall not prohibit a person from obtaining a regulatory services permit for a domestic kitchen when appropriately applied for and the relative requirements are met.

(i) If a conflict exists between this section and Title 53, Chapter 1, then this section shall control.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 3547

PASSED: May 1, 2012



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of May 2012



BILL HASLAM, GOVERNOR

Appendix B

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

Effective January 27, 2007

**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**

TABLE OF CONTENTS

0080-4-11-.01 Purpose	0080-4-11-.05 General Provisions
0800-4-11-.02 Definitions	0080-4-11-.06 Facility Requirements
0080-4-11-.03 Limitations of Sale	0080-4-11-.07 Labeling of Products
0080-4-11-.04 Permit Requirements	0080-4-11-.08 Exemptions

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: T.C.A. §53-1-207. *Administrative History:* Original rule filed September 29, 2006; effective January 27, 2007.

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: T.C.A. §53-1-207. *Administrative History:* Original rule filed September 29, 2006; effective January 27, 2007.

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

Authority: T.C.A. §53-1-207. *Administrative History:* Original rule filed September 29, 2006; effective January 27, 2007.

0080-4-11-.04 PERMIT REQUIREMENTS.

(Rule 0080-4-11-.04, continued)

- (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: T.C.A. §§53-1-207 and §53-1-208. **Administrative History:** Original rule filed September 29, 2006; effective January 27, 2007.

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.

(Rule 0080-4-11-.05, continued)

- (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: T.C.A. §53-1-207. Administrative History: Original rule filed September 29, 2006; effective January 27, 2007.

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.

(Rule 0080-4-11-.06, continued)

- (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: T.C.A. §53-1-207. *Administrative History:* Original rule filed September 29, 2006; effective January 27, 2007.

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.

REGULATIONS FOR ESTABLISHMENTS UTILIZING
11
DOMESTIC KITCHEN FACILITIES FOR BAKERY
AND OTHER NON-POTENTIALLY HAZARDOUS FOODS
INTENDED FOR SALE

CHAPTER 0080-4-

(Rule 0080-4-11-.07, continued)

Authority: T.C.A. §§53-1-207 and §53-1-208. **Administrative History:** Original rule filed September 29, 2006; effective January 27, 2007.

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: T.C.A. §53-1-207. **Administrative History:** Original rule filed September 29, 2006; effective January 27, 2007.