ALABAMA STATE COMMITTEE OF PUBLIC HEALTH
BUREAU OF ENVIRONMENTAL SERVICES
ADMINISTRATIVE CODE

CHAPTER 420-3-22
FOOD ESTABLISHMENT SANITATION

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420-3-22-.01 General Provisions.

(1) Purpose - The purpose of these rules is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

(2) Statutory authority – The State Committee of Public Health is authorized to adopt and promulgate these rules under and by virtue of the authority of Sections 22-2-2(6) and 22-20-5, Code of Alabama, 1975.

(3) Adoption by reference - Chapters 1 through 8 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code ("Food Code") is hereby incorporated by reference and, except as provided for in Rules 420-3-22-.01 through 420-3-22-.08, made a part of these rules as if set out in full and all provisions thereof are adopted as a rule of the State Committee of Public Health. Said document is available at http:// www.alabamapublichealth.gov/.

(4) Definitions -

(a) In addition to definitions in the document entitled 2013 edition of the Food Code, for the purpose of these rules:

1. “Bed and Breakfast” means a private owner-occupied residence providing accommodations for a charge to the public with no more than ten (10) guest rooms for rent. Breakfast only may be provided to the guests. Bed and Breakfast establishments are exempt from the Rules for Construction, Maintenance, and Operation of Hotels, 420-3-11 and the Rules for Food Service Sanitation, 420-3-22.

2. "Caterer" means a person operating from a permitted food service establishment who contracts with one individual or firm to provide a predetermined menu and quantity of food at a specific site, off the premises of the food establishment, which is generally different for each event; the site or event not being open to the general public.

3. “Catfish” means any species of fish classified within the family Ictaluridae.

4. “Catfish product” means, as used in Code of Alabama, 1975, Sections 22-20A-30, et seq., any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof, except products which contain catfish only in small portions and which are exempt from this definition by rules of the State Committee of Public Health.

5. “Child day care center” means any child care facility receiving more than 12 children for daytime or nighttime care for all or part of a day. The term “child day care center” includes but is not limited to facilities commonly called “day care centers,” “day nurseries,” “nursery schools,” “kindergarten,” “play groups,” and “nighttime centers” with or without stated educational purposes. Such term further includes, but is not limited to, kindergarten or nursery schools or other programs operated as part of a private school and receiving more than 12 children younger than lawful school age for daytime care for more than 4 hours a day with or without stated educational purposes.

6. “Commissary” means a permitted food establishment to which a mobile food establishment or transportation vehicle returns daily for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

7. "Committee" means the State Committee of Public Health of the State of Alabama as defined by Section 22-2-4, Code of Alabama, 1975, or the State Health Officer or his designee, when acting for the Committee, for the purposes of these rules, the Bureau of Environmental Services.

8. "Cottage Food" means a non-potentially hazardous food that has been prepared in a person's home that does not require time or temperature control for safety to limit pathogenic microorganism growth or toxin formation and that does not include meat, poultry, or fish, including the following:

(i) Cakes, breads, Danish pastries, donuts, pastries, and pies.

(ii) Jam, jellies, and fruit preserves.

(iii) Candy.

(iv) Dried and dehydrated herbs, herb mixes, vegetables, or fruits.

(v) Roasted coffee.

(vi) Dried baking mixes.

(vii) Fermented or preserved vegetables or fruit that do not result in the production of alcohol and that have an acidity level allowed by the department as defined in Chapter 1 of the Food Code under time/ temperature control for safety food.

9. “Country of Origin” means the country in which an animal, from which a covered commodity is derived, is born, raised, slaughtered, or substantially transformed. If the animal is born, raised, slaughtered, or substantially transformed in different countries, the term includes each country.

10. “Covered Commodity” means farm-raised fish and wild fish. The term does not include processed food where an ingredient is a covered commodity.

11. “Date limit” means all terms reasonably construed to mean food is not intended to be used or sold after the date limit, or that food quality is best before the date limit, and includes but is not limited to the terms “Sell By;” “Freeze By;” “Sell or Freeze By;” “Not to be Sold After;” “Best if Used By;” “Best if Purchased By;” “Expiration;” or other similar designations.

12. “Department” means the Alabama Department of Public Health.

13. “Farm-raised fish” means, as used in Code of Alabama, 1975, Sections 22-20A-1, et seq., farm-raised shellfish and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

14. “Food establishment” means both food service establishments and retail food stores, along with the lower risk priority categories in either designation. The term does not include:

(i) A kitchen in a private home if only food that is not time/temperature controlled for safety food is prepared for sale or service at a function such as a charitable, religious, civic, or not-for-profit organization's food sale, or at a state sanctioned farmer's market, and if the consumer is informed by a clearly visible label, tag, or placard at the sales or service location that the food is prepared in a kitchen that is not inspected by a regulatory agency. This exclusion shall not be construed as allowing the sale of low acid foods in a hermetically sealed container (i.e., such as home-canned vegetables) when such food is not prepared in a permitted establishment.

(ii) Private gatherings with a limited and identifiable membership where no sale of food takes place. A sale of food shall be any situation in which there is a charge for profit for the food, or a membership fee is required for entry or participation.

(iii) A Cottage Food Production Operation. A person operating out of his or her home who meets the following requirements:

a. Produces cottage food for sale.

b. Sells the foods produced in a cottage food operation only directly to consumers, whether in-person, by phone, or online in the state.

c. Delivers the foods directly to consumers in the state.

d. A cottage food production operator shall complete a food safety course approved by the department and label all cottage foods that the operation sells. The label shall include in at least size 10-point font:

1. The common or usual name of the food.

2. The name, home or P.O. Box address of the cottage food production operation.

3. A statement that the food is not inspected by the department or local health department.

4. A list of the ingredients in the food in descending order of predominance and shall include a disclaimer that the food may contain allergens.

15. "Food processing plant" means a commercial food processing establishment or operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food service establishment or a retail food store in which such foods are processed if:

(i) The food items are sold to, or sold from, no more than two other retail food establishments during the annual period coinciding with the food permit issuance and expiration date.

(ii) The total value of food sales to other retail establishments during the annual period coinciding with the food permit issuance and expiration date is less than $25,000.

16. "Food service establishment" means any place, vehicle, or vessel where food for individual portion service is prepared, stored, held, transported, served, or dispensed and includes any such place regardless of whether consumption is on or off the premises. The term also includes delicatessen type operations that prepare food intended for individual portion service; and also includes all schools and child day care centers.

17. "Health Officer" means the Health Officer of the county or district in which the food establishment in question is located as provided in Section 22-3-2, Code of Alabama, 1975, or the authorized representative of the Health Officer.

18. "Label" means, as used in and for the purpose of enforcement of Code of Alabama, 1975, Sections 22-20A-30, et seq. a legible display of written, printed, or graphic information on a placard, menu, sign, or other material that represents the product to the consumer.

19. "May not" means a mandatory prohibition.

20. "Mobile food establishment" means, except for pushcarts, a unit mounted on or pulled by a self- propelled vehicle; is self-contained with its own drinking water tank and wastewater tank unless handling only prepackaged foods; is designed to be readily movable; and is moved daily to return to its commissary. A pushcart is a category of mobile food establishment.

21. "Priority category" means, for purposes of permitting and inspection scheduling, a tiered structuring of food establishments based on the public health risk for foodborne illness inherent in the establishment due to menu, operations, or consumers.

22. "Priority Category 4 establishment" means a food establishment meeting the definition of a Category 2 or Category 3 and in addition performs an operation requiring a variance as per 420-3-22.01(4)(a)32 or a HACCP plan.

23. "Priority Category 3 establishment" means any of the following:

(i) A food establishment where unpackaged raw food from an animal source is handled, prepared, or used.

(ii) Time/temperature controlled for safety food that is not ready-to-eat is cooked or further prepared to eliminate or reduce pathogens.

(iii) Customer contact utensils are reused, or food is cooled, or food previously cooled in the establishment is reheated.

24. "Priority Category 2 establishment" means a food establishment which, by the nature of operation and menu, does not use raw foods of animal origin, does not cool foods that have been heated, and does not reuse tableware. This type of food establishment may dispense or sell on-premises, only in single-service articles, unpackaged:

(i) Foods that are not time/temperature controlled for safety, or

(ii) Raw foods of plant origin that would otherwise be considered a time/temperature controlled for safety food, or

(iii) Time/temperature controlled for safety foods that are received from an approved processing establishment as ready-to-eat, provided, such foods may be removed from the original package and heated one time for quality reasons (not heated as a required step to destroy microorganisms of public health concern), or

(iv) Any combination of these.

(v) The foods allowed include, but are not limited to, hard cheese such as cheddar; dip ice cream; fully cooked luncheon meat including wieners, or any other fully cooked meat received from a processing establishment approved by the USDA or a state Department of Agriculture; or the produce area of a retail food store if issued a separate permit. This type establishment may also be called a "Limited Food Service Establishment."

25. "Priority Category 1 Establishment" means those food establishments that sell or market only prepackaged time/temperature controlled for safety food items. The term does not include establishments that handle only prepackaged foods that are not time/temperature controlled for safety, roadside markets that offer only fresh fruits and vegetables for sale, food service establishments, or food and beverage vending machines. This type establishment may also be called a "Limited Retail Food Store Establishment."

26. "Pushcart" means a non-self propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person. A pushcart can be used to prepare and serve only:

(i) Foods that are not time/temperature controlled for safety such as popcorn, lemonade, or flavored ice, or

(ii) Foods pre-wrapped at the commissary and maintained at the required temperatures, or

(iii) Foods that meet the definition of "Priority Category 2."

27. "Regulatory Authority" means the Health Officer of the county or district in which the food establishment in question is located as provided in Section 22-3-2, Code of Alabama, 1975; or the authorized representative of the Health Officer; except for the purpose of issuing a variance from these rules, for which action the Regulatory Authority is only the State Health Officer.

28. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments that handle only prepackaged food that is not time/temperature controlled for safety; roadside markets that offer only fresh fruits and fresh vegetables for

sale; food service establishments; or food and beverage vending machines.

29. "Shall" means a mandatory requirement.

30. "Shellfish" means, as used in Code of Alabama, 1975, Sections 22-20A-1, et seq., crab, lobster, oyster, shrimp, crayfish, clam, and scallops in the wild and farm-raised shellfish.

31. "Temporary event" means a special occurrence or celebration that is community wide, such as a fair, carnival, public exhibition, festival, or similar occasion that lasts no more than 14 days. A temporary event does not include ongoing commercial activities, such as a sale at a retail store.

32. "Variance" means, as used in the Food Code, review by the Bureau of Environmental Services and is not equivalent to the definition used in the Rules of the State Committee of Public Health Chapter 420-1-2.

33. "Verified complaint" means, as it pertains to the source or origin of fish products, a signed and verified allegation of noncompliance with the seafood law that can be attributed to the complainant.

34. "Waiver relating to pet dogs" means a written request from a food service establishment to permit pet dogs in a designated outdoor dining area of a food service establishment under certain conditions.

35. "Wild fish" means, as used in Code of Alabama, 1975, Sections 22-20A-1, et seq., naturally born or hatchery raised fish and shellfish harvested in the wild. The term includes a fillet, steak, nugget, and any other flesh from wild fish or shellfish. Net pen aquaculture or other farm-raised fish or shellfish are excluded from the definition.

36. "Wild harvested mushroom" means a fresh mushroom that has been picked in the wild and has not been processed (e.g., dried). A wild harvested mushroom does not include mushrooms that have been packaged in an approved food processing plant or cultivated mushrooms.

37. "Wild harvested mushroom identification expert" means an individual who has successfully completed and passed a comprehensive wild harvested mushroom certification course that includes, but is not limited to the following critical learning objectives as recommended in the Conference for Food Protection Guidance Document for a Model Wild-harvested Mushroom Program:

(i) Illness information.

(ii) Identification.

(iii) Harvesting.

(iv) Best handling practices.

(v) Regulatory requirements.

(5) Control – Where there is consistency between Chapter 420-3-22 and the Food Code, these rules control. Where these rules are silent, the Food Code controls.
Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Gambill
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: New Rule: Filed November 20, 1996; effective December 25, 1996. **Amended:** Filed June 10, 2002; effective July 15, 2002. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. Amended and Adopt By Reference: Filed March 20, 2009; effective April 19, 2009. **Amended:** Filed October 21, 2009; effective November 25, 2009. **Amended:** Filed October 20, 2010; effective November 24, 2010. **Amended:** Filed July 16, 2014; effective August 20, 2014. **Amended:** Filed August 19, 2016; effective October 3, 2016. **Amended:** Published November 29, 2019; effective January 13, 2020. **Amended:** Published November 30, 2021; effective January 14, 2022. **Repealed and New Rule:** Published December 31, 2024; effective February 14, 2025.

420-3-22-.02 Management And Personnel.

(1) **Exclusion** – The provisions of sections 2-102.11(A) and 2-102.11(C) of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code are expressly excluded from adoption.

(2) **Applications** –

(a) For Priority Category 3 and 4 establishments the permit holder or their designee shall possess a valid certification from an accredited program or shall have verification of attendance from an accredited program. On or after January 1, 2020, a designated person in charge with a valid certification from an accredited program or verification of attendance from an accredited program shall be present during all hours of operation. For multiple permitted establishments within one physical structure and under the same operation ownership, such as multiple departments within one retail grocery store, the permit holder or their designee may be any one person with supervisory authority over any department.

(b) Priority category 1 and 2 establishments and temporary food establishments are exempt from the requirements of subpart 2-102.11(B).

(3) **Additional provisions, modifications, waivers allowed** -

(a) Nothing in these rules shall be construed to prevent the Health Officer from imposing additional requirements to protect against health hazards related to employee health when, in his/her medical opinion, such additional requirements are necessary to protect public health. Nothing in these rules shall be construed to prevent the Health Officer from waiving or modifying requirements of these rules relating to employee health when, in his/her medical opinion, no health hazard will result.

(b) For enforcement purposes, the provisions of subpart 2-302.11 pertaining to "trimmed" fingernails mean the fingernails do not extend beyond the finger.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed February 20, 2013; effective March 27, 2013. **Amended:** Filed August 19, 2016; effective October 3, 2016.

420-3-22-.03 Food.

(1) Exclusions and Applications -

(a) Time/temperature controlled for safety foods requiring refrigeration and with a date limit placed by the manufacturer or packager shall not be used or served after the date limit. A date limit placed by the manufacturer or packager on time/temperature controlled for safety foods requiring refrigeration shall not be changed or covered, and such food with one date limit shall not be commingled with food with a different date limit unless the shortest date limit is applied to the commingled food.

(b) The provisions of Section 3-201.11(A), Food Code, do not apply to rabbit processed and sold within Alabama.

(c) The provisions of Section 3-306.13, Food Code, shall not be construed to prohibit dispensing food from containers placed on tables around which consumers are seated at child day care centers or recreational camps. Such food dispensing shall be closely supervised by the person in charge to

preclude the mishandling or contamination of food. Leftover food from containers placed on tables shall be discarded after one meal service.

(d) The provisions of Sections 3-401.11, 3-401.12, and 3-603.11, Food Code, shall not be construed to prohibit a food establishment from serving a food item cooked to less than the specified temperature if individually ordered by the immediate consumer and it is not a food establishment that serves a highly susceptible population.

(e) Child day care facilities receiving prepared, ready-to-eat meals from outside sources shall use only catered meals obtained from a food handling establishment permitted by the Health Officer. During transportation, food shall meet the requirements of these rules relating to food protection and storage.

(f) At child day care facilities, formula and juice served in baby bottles shall be fully prepared and packaged (ready-to-feed) and identified for the appropriate child at the child's home and provided daily to the child day care facility by the parent(s)/guardian; or provided by the child day care facility as a pre-packaged, ready-to-feed, fully prepared and packaged single-use item; or formula and juice as prescribed by the child's physician or parent(s)/guardian may be provided by the child care facility if bottles are sanitized in accordance with these rules. Any excess formula, mothers' milk, or juice shall be discarded after each feeding.

(g) Formula and juice which require refrigeration, and baby food (after opening and recovering) shall be identified for the appropriate child and shall be refrigerated according to these rules. Baby bottles used for drinking water purposes shall be properly labeled identifying the appropriate child and shall be stored and handled in such a manner as to prevent contamination.

(2) Catfish Labeling Requirements –

(a) A food service establishment shall not advertise or label a food item as catfish unless it is fish classified within the family of Ictaluridae.

(b) Any advertising of catfish or other members of the Order of Siluriformes, or catfish products or siluriformes products by food service establishments shall state the country of origin if the product was imported from a country other than the United States of America. The advertising required in this rule states the country of origin of the product shall be displayed daily when the catfish or siluriformes or catfish products or siluriformes products are from a country other than the United States of America.

(c) No catfish or siluriformes product shall be offered for sale at a food service establishment unless consumers are notified of the name and country of origin of the product. A food service establishment shall comply with this requirement by listing the country of origin on the menu in the same location and in the same size font as the product being offered, or by using a sign or tabletop display identifying the country of origin of the catfish offered for sale. If a sign is used, it shall be a minimum of 93 square inches with characters at least 1 inch in size. The sign or a series of signs shall be posted on a wall in a conspicuous location or locations in plain view of all patrons. If a tabletop display is used, it shall be at least 30 square inches and be placed on each table that is used for service.

(3) Right to Know Country of Origin of Fish Notice Requirements -

(a) Any individual or entity who supplies a covered commodity to a food service establishment shall provide the country of origin of the covered commodity to the food service establishment. Any covered commodity with the United States as its country of origin may have the appropriate state name, or USA, or United States of America, including a trade name or trademark, listed in lieu thereof to accommodate products produced in any of the states or a territory of the United States of America.

(b) A food service establishment, including an in-store deli, selling or providing a covered commodity that originated outside of the United States for primarily off premises preparation shall provide the country of origin of the covered commodity, or denote that the covered commodity is imported, in letters no smaller than the same size, font, and shade as the covered commodity being offered is listed, by means of a label, stamp, mark, placard, or other visible sign on the package, display, holding unit, or bin containing the covered commodity at the final point of sale or by posting a sign stating such that measures not less than 8 1/2 inches wide by 11 inches tall and is placed not less than 36 inches from the floor located in a conspicuous location where the covered commodity is held for offer using English letters not less than 1 inch in size.

(c) (1) A food service establishment that primarily prepares a covered commodity that originated outside of the United States on-premises, which it sells or provides using a menu as a standard business practice, shall display on all menus the country of origin of the covered commodity, or denote that the covered commodity is imported, in letters no smaller than the same size, font, and shade as the covered commodity being offered is listed, immediately adjacent to the menu listing of the covered commodity being offered. In lieu of this requirement, the notice may be paper-clipped to the menu, with

the same location, size, font, and shade restrictions required when the notice is listed directly on the menu or may be posted as a sign stating such that measures not less than 8 1/2 inches wide by 11 inches tall and is placed not less than 36 inches from the floor located in a conspicuous location where the covered commodity is held for offer using English letters not less than 1 inch in size.

(2) A food service establishment that primarily prepares a covered commodity that originates outside of the United States on premises and that does not use a menu as a standard business practice shall display on a sign posted at the main entrance to the establishment stating that certain covered commodities, as applicable, being offered by the establishment are imported. Each sign shall be not less than 8 1/2 inches wide by 11 inches tall and shall be written in the English language in letters not less than 1 inch in size. The sign shall be placed in an open area and in a conspicuous position not less than 36 inches from the floor so that it is visible to all patrons.

(d) (1) A food service establishment offering farm-raised fish or wild fish shall differentiate between farm-raised fish and wild fish by stating such in the same manner as is required by subsection (b) or (c).

(2) The terms “farmed-raised fish” and “wild fish” as used in this Subsection mean fish and shrimp only. The terms do not include crab, lobster, oyster, crayfish, clam, or scallops.

(e) The State Health Officer, upon verified complaint and in compliance with all applicable state and federal laws, shall investigate any and all reports of noncompliance. Upon receipt of the verified complaint, a copy of the complaint shall be given to the retail food establishment or food service establishment.

(f) The State Health Officer shall impose these penalties on a graduated scale in accordance with the following schedule for all violations within a 24-month period:

1. For a first offense – a written warning.

2. For a second offense - a fine of one hundred dollars ($100).

3. For a third offense – a fine of two hundred fifty dollars ($250).

4. For a fourth offense - a fine of five hundred dollars ($500).

5. For a fifth and any subsequent offense – a fine of one thousand dollars ($1,000).

(g) Any food service establishment that unknowingly violates this article due to a good faith reliance upon the establishment's supplier's attestation of the covered commodity's country of origin shall be held harmless against penalties.

(h) The requirements of the seafood law shall not apply to hospitals.

(4) Wild Harvested Mushrooms

(a) A food service establishment proposing to offer for sale or service wild harvested mushrooms shall obtain a variance approval from the regulatory authority as specified in Sections 8-103.10 and 8-103.11, Food Code. The variance proposal shall describe how the requirements of this section will be met.

(b) Only the wild harvested mushrooms listed by common and scientific name in Appendix "B" may be offered for sale or service in a food service establishment.

(c) A food service establishment that sells, uses, or serves wild harvested mushrooms shall disclose to the consumer by a tabletop display, placard, or menu notation the following statement: "Wild harvested mushrooms are not an inspected product and are harvested from a non-inspected site."

(d) All wild harvested mushroom species served in a retail food service establishment must have a written buyer specification record. The buyer shall retain the written buyer specification record for 90 days from the date the mushrooms are sold, served, or discarded. The written buyer specification record must include all the following information:

1. Identification of each mushroom species by the scientific and common name.

2. Date of purchase by the food establishment.

3. Quantity by weight of each species sold.

4. A statement that each mushroom was identified in its fresh state.

5. Date of harvest and location (e.g., town, county, township, Global Positioning System, etc.).

6. The name, address, and telephone number of the wild harvested mushroom identification expert and the mushroom seller.

7. A statement as to the qualifications and training of the wild harvested mushroom identification expert.

(e) A food service establishment offering for sale or service wild harvested mushrooms shall keep the written buyer specification record attached to the container until the mushrooms are sold, served, or discarded.

(f) The written buyer specification record shall be retained in chronological order by the food service establishment for a minimum of 90 days from the date the last wild harvested mushroom is sold, served, or discarded.

(g) Commingling of wild harvested mushrooms by species and lot during storage is prohibited.

(h) Wild harvested mushrooms should not show any signs of spoilage (rotten, soggy, mushy, slimy, moldy, or insect infestation).

(i) Wild harvested mushrooms should be received in packaging with air holes or a breathable material and maintained by the establishment in such.

(j) The department shall maintain a list of approved mushroom certification courses at http://www.alabamapublichealth.gov/environmental/rules.html.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Gambill
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed October 21, 2009; effective November 25, 2009. **Amended:** Filed October 20, 2010; effective November 24, 2010. **Amended:** Filed February 20, 2013; effective March 27, 2013. **Amended:** Filed August 19, 2016; effective October 3, 2016. **Amended:** Published January 31, 2020; effective March 16, 2020. **Repealed and New Rule:** Published December 31, 2024; effective February 14, 2025.

420-3-22-.04 Equipment, Utensils, And Materials.

(1) **Applications** -

(a) The provisions for use of two compartment utensil sinks in a food establishment, as described in Chapter 4 of the document entitled 2013 edition of the United States Department

of Health and Human Services Food Code, shall be applied only when the food establishment meets the requirements of 420-3-22-.10.

(b) The provisions of section 4-904.13 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code, shall not be construed to prevent the short-term use of preset tableware to facilitate group dining, such as for banquet settings, provided no contamination of the tableware occurs.

Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed August 19, 2016; effective October 3, 2016.

420-3-22-.05 Water, Plumbing, And Waste.

(1) **Applications** -

(a) When a sample of a non-public water system taken as provided in section 5-102.13 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code shows coliform present as reported by the Alabama Department of Public Health Bureau of Clinical Laboratories, a resample shall be taken within seven days. Whenever two consecutive samples taken on separate days show coliform present, the permit to operate shall be suspended by the Health Officer in accordance with appropriate administrative procedures. A sample result of coliform absent with no confluent growth is required prior to reinstatement of the permit.

(b) The Health Officer may collect samples of water from bulk water dispensing, or water vending, or ice vending machines, as often as necessary to protect the public health. The sample shall meet the bacterial standards of this rule. Immediate suspension of the authorization to operate a water dispensing, water vending, or ice vending machine shall be instituted whenever the bacterial quality standards of this rule is violated on two consecutive samples taken on separate days. The suspension shall remain effective until a sample result of coliform absent with no confluent growth is obtained.

(c) The provisions of paragraph 5-203.11(C) of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code, concerning special allowances for handwashing at mobile or temporary food

establishments, shall be allowed only in declared disaster or emergency situations and no better facilities are available.

(d) "Law" relating to plumbing standards, sizes, and numbers, other than when a minimum is specified in these rules or in the document entitled 2013 edition of the United States Department of Health and Human Services Food Code, means local plumbing codes as enforced by local plumbing officials.

(2) **Grease traps that are located outdoors or accessible to the general public**

(a) Grease traps with manholes shall be designed to withstand expected loads and prevent access by children. The manhole cover shall be secured by a bolt or locking mechanism or be constructed of round cast iron or similar construction rated for heavy road traffic with sufficient weight to prevent unauthorized access. A public water or sewer authority may specify either manhole access exclusively, provided it conforms to this rule and prevents unauthorized access.

(b) A commercial food service establishment shall ensure that a grease trap manhole is secured or locked, if applicable, at all times.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Lerner
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed February 20, 2013; effective March 27, 2013. **Amended:** Filed August 19, 2016; effective October 3, 2016. **Amended:** Filed August 15, 2018; effective September 30, 2018.

420-3-22-.06 Physical Facilities.

(1) **Application** - The provision of section 6-202.14 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code for self-closing doors on toilet rooms shall not apply to toilet rooms used by children in child day care centers.

(2) **Allowance of a pet dog in an outdoor dining area** - A pet dog that is under the control of a person shall be permitted in an outdoor dining area of a food service establishment if all of the following conditions are met:

(a) The owner of the food service establishment elects to allow pet dogs in its outdoor dining area. To evidence this election, the owner of the food service facility shall file

for a waiver with the department stating they will adhere to the rules.

(b) A separate outdoor entrance is present where the pet dog can enter without going through the food service establishment to reach the outdoor dining area. At no time may pet dogs be permitted to travel through the indoor or non-designated outdoor portions of the food establishment.

(c) A prominent sign is displayed sufficient to put the public on notice that the designated outdoor dining area is available for the use of patrons with pet dogs.

(d) A pet dog is not allowed on the chairs, benches, seats, or other fixtures in the outdoor dining area of the food service establishment.

(e) The outdoor dining area is not used for food preparation or the storage of utensils.

(f) The designated outdoor dining area where pet dogs are allowed is at least 12 feet away from any bar or area where beverages are prepared.

(g) A food service establishment employee refills beverages from a pitcher or other container at the table in the outdoor dining area where pet dogs are allowed.

(h) The outdoor dining area is well maintained, kept clean, and all surfaces that have been contaminated by pet dog excrement or other pet dog bodily fluids are properly cleaned and sanitized immediately.

(i) The pet dog is kept on a leash or confined in a pet carrier at all times and is kept under the control of the person possessing the pet dog.

(j) The food service establishment ensures it is in compliance with all local ordinances related to sidewalks, public nuisances, and sanitation.

(k) A food service establishment employee is prohibited from having direct contact with a pet dog in the outdoor dining area while on duty.

(l) A food service establishment employee who violates subdivision (k) shall wash his or her hands as required by food safety regulations immediately.

(m) All live animals are prohibited from being inside a food establishment, except as provided by the applicable regulations of the federal Food and Drug Administration, and except as follows:

1. Service dogs which are individually trained to provide assistance to an individual with a disability.

2. Dogs under the control of a uniformed law enforcement officer acting within the course and scope of his or her duties.

(n) Emotional support animals are not service dogs within the meaning of the Americans with Disabilities Act and are therefore expressly prohibited from being inside a food service establishment.

(o) The food service establishment prepares written procedures that include:

1. A diagram of the outdoor area to be designated as available to consumers with pet dogs.

2. The establishment's procedure for assuring that employees do not touch, pet, or otherwise handle pet dogs.

3. The establishment's procedure describing the location of materials and equipment necessary for the immediate clean up of accidents involving dog waste.

4. The establishment's procedure for notifying employees and consumers of the requirements of this paragraph.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Lerner, Rachel Sullenger
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed August 19, 2016; effective October 3, 2016. **Amended:** Published November 30, 2021; effective January 14, 2022.

420-3-22-.07 Poisonous Or Toxic Materials.

(1) **Application** - The application of Chapter 7 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code does not include any special provisions.

Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed August 19, 2016; effective October 3, 2016.

420-3-22-.08 Compliance And Enforcement.

(1) **Exclusions** - Sections 8-302.14, 8-401.10, and 8-401.20 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code are specifically excluded from this adoption.

(2) **Permit required** - It shall be unlawful for any person to operate a food establishment in Alabama unless such person possesses a valid permit issued by the Health Officer for the operation of such establishment. Only persons who comply with the provisions of these rules shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to person, food establishment, or location. The permit shall be kept posted by the proprietor in a conspicuous place within the food establishment, but shall remain the property of the Health Department. The permit shall be revocable for violation of these rules.

(3) **Issuance of permits**

(a) Any person desiring to operate a food establishment shall make written application for a permit on forms provided by the Health Officer. Such application shall include the name and address of each applicant, the location and type of the proposed food establishment and the signature of each applicant. The permits shall be applied for and issued on forms prescribed by the State Health Officer. Permits shall automatically expire on the date upon which state, county and municipal annual privilege licenses expire or on a date designated by the Health Officer, and shall be renewable each year upon written application from the operator within one hundred fifty days prior to date of expiration of food permits and upon compliance with the laws and rules.

(b) Prior to approval of an application for a permit, the Health Officer shall inspect the proposed food establishment or review the inspection file of the food establishment to determine compliance with the requirements of these rules.

(c) The Health Officer shall issue a permit to the applicant if his/her inspection or review reveals that the proposed food establishment complies with the requirements of these rules, including, when required, verification that the permit holder or their designee, possess a valid certification from an accredited program, issued within the previous five years (60 months) or completion of an accredited program without certification within the previous twelve months from the date of the permit application. The permit shall be specific for the type of food establishment for which the permit is

requested on the application, as Priority Category 1, Priority Category 2, Priority Category 3, or Priority Category 4.

(4) **Permit denials, suspensions, and revocations** – The Health Officer's denial, suspension and/or revocation of a permit shall be governed by the Alabama Administrative Procedure Act, §41-22-1, et seq., Code of Ala. 1975. The Department shall fulfill any request for license or permit within 28 calendar days after receiving the application or notify the applicant of the reason for failure to issue the license or permit.

(5) **Hearings** –

(a) Contested case hearings shall be provided in accordance with the Alabama Administrative Procedure Act, § 41-22-1, et seq., Code of Ala. 1975, and the State Board of Health's Contested Case Hearing Rules, Chapter 420-1-3. Informal settlement conferences may be conducted as provided in the State Board of Health's Contested Case Hearing Rules, Chapter 420-1-3.

(b) A person may appeal a civil penalty assessed pursuant to the authority of Act Number 2009-584 and 2015-156 (Catfish labeling law) by submitting a written request for a hearing to the Department of Public Health. The written request for hearing must be received by the Department within 15 days from the date the person received written notice of the imposition of the civil penalty from the Department. The written request for hearing shall be mailed to the following address: Alabama Department of Public Health, Office of General Counsel, P.O. Box 303017, Montgomery, Alabama 36130-3017. A copy of the written request for hearing shall also be furnished to the health officer of the county from which said penalty was imposed.

(6) **Suspension of permits** - Permits may be suspended temporarily by the Health Officer for failure of the permit holder to comply with the requirements of these rules.

(7) **Revocation of permits** - The Health Officer may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the Health Officer in the performance of his duty or for failure to comply with the provisions of a notice of permit suspension issued under 420-3-22-.08(6).

(8) **Application after revocation** - Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit after 90 days from the date of revocation. The applicant shall demonstrate compliance with the requirements of these rules and shall specifically set forth any change in circumstances that would justify issuance of a new permit.

(9) **Inspection frequency**

(a) Food establishments shall be inspected at a minimum schedule based on their assigned Priority Category.

1. Priority Category 4 establishments shall be inspected at least four times per year,

2. Priority Category 3 establishments shall be inspected at least three times per year, when the sanitation score on the last inspection was 94 or below and at least two times per year when the sanitation score on the last inspection was 95 or above.

3. Priority Category 2 establishments shall be inspected at least two times per year, and

4. Priority Category 1 establishments shall be inspected at least one time per year.

5. Bars and lounges serving only beverages, or only beverages along with Priority Category 2 food items, shall be inspected at least annually.

6. Food establishments earning a sanitation score of less than 85 on the last inspection shall be inspected again within the next 60 days.

(b) Legal notices (ADPH-F-Insp-.17/7-82 or similar form prescribed by the State Health Officer) shall be issued when priority or priority foundation items are violated and the necessary reinspections shall be made in accordance with 420-3-22-.08(13).

(c) Additional inspections of food establishments shall be performed as often as necessary for the enforcement of these rules.

(d) The State of Alabama, Department of Public Health, shall make Food Sanitation Surveys and Program Evaluations as determined by the State Health Officer. Surveys shall be made in accordance with the provisions of these rules and the results incorporated in the annual Alabama Public Health Report. The Department shall provide education and training in food sanitation and in regulation interpretation, standardized inspection techniques and enforcement procedures for food protection program personnel.

(10) **Access** - The Health Officer, after proper identification, shall be permitted to enter any food establishment at any reasonable time for the purpose of making inspections to determine compliance with these rules. The Health Officer shall be permitted to examine the records of the establishment to obtain information

pertaining to food and supplies purchased, received or used, or to persons employed.

(11) **Report of inspections** -

(a) Whenever an inspection of a food establishment is made, the findings shall be recorded on the inspection report form prescribed by the State Health Officer. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by rule number, the rule violated and shall state the corrections to be made.

(b) The rating score of the establishment shall be the total of the weighted point values for all violations subtracted from 100, except as otherwise provided in this section. The original of the inspection report form shall be conspicuously displayed for public view within the establishment.

(c) When an initial inspection finds that a new establishment has met the requirements of these rules for obtaining a permit, the inspection results shall be reported as "Approved for permit."

(d) The score shall be promptly entered on the Food Inspection Chart or electronic file in the county health department. A copy of the inspection report shall be filed with the records of the county health department. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

(12) **Correction of violations**

(a) The completed inspection report form shall specify a reasonable period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

1. If an imminent health hazard exists, such as extended interruption of electrical or water service, complete lack of refrigeration, complete lack of hot water under pressure, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, substantial damage due to fire or flooding, or other circumstance that may endanger public health, including an inspection score of less than sixty on an inspection for enforcement purposes (not an inspection for training or survey purposes), the establishment shall immediately cease operations. Operations shall not be resumed until

authorized by the Health Officer. A permit holder need not discontinue operations in an area of an establishment if, in the opinion of the Health Officer, the area is unaffected by the imminent health hazard.

2. Except as otherwise allowed in 420-3-22-.08(13)(a)3, all violations of priority and priority foundation items shall be corrected as soon as possible, but in any event, within three days for priority items and ten days for priority foundation items following the inspection.

3. Failure of the permit holder or their designee to have a valid certification from an accredited program issued within the previous five years (60 months) or completion of an accredited program without certification within the previous twelve months prior to the date of the inspection, shall be corrected within 120 days.

4. All core items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection. The Health Officer may approve a compliance schedule for core items that extends beyond the time limits specified under this section if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

5. When the rating score of the establishment is less than seventy, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.

6. When the rating score of the establishment is less than sixty on an inspection for enforcement purposes (not an inspection for training or survey purposes), the permit shall be immediately suspended. The permit shall remain suspended until all priority and priority foundation items are corrected, the permit holder or their designee has registered to attend an accredited program regardless of the Priority Category of the food establishment, and the rating score is eighty-five or above. Reinspections will be conducted at reasonable time intervals and in accordance with the provisions of 420-3-22-.08(4).

7. In the case of temporary food service establishments, all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the Health Officer.

8. In the case of mobile food units, all violations shall be corrected within the time limits set by this rule. Priority and priority foundation violations on the mobile food unit shall be considered failure to follow an approved plan of operations and shall be noted as such on the commissary inspection report.

9. Failure to conspicuously post for public view any document issued by the Health Officer and required by these rules to be so posted, or any document required by law to be posted and with the Health Officer as the enforcement authority, shall be corrected as soon as possible, but in any event, within ten days following the inspection.

(b) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations. An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the Health Officer within 15 days following cessation of operations. If a request for hearing is received, a hearing shall be held in accordance with 420-3-22-.08(5).

(c) Whenever a food establishment is required under the provisions of 420-3-22-.08(4) to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

(13) **Vending machines** - For the purpose of these rules, provisions relating to vending machines shall be enforced against the food processing establishment providing food for Except that, nothing in this placement in the vending machines. rule shall be construed to prevent the Health Officer from taking any necessary action to abate a public health problem or nuisance associated with a vending machine.

(14) **Examination and condemnation of food** -

(a) Food may be examined or sampled by the Health Officer as often as necessary for enforcement of these rules.

(b) The Health Officer may, upon written notice to the owner or person in charge, specifying with particularity the reason therefore, place a do not sell order on any food which he believes is in violation of 420-3-22-.03 or any other section of the rules. The Health Officer shall tag, label, or otherwise identify any food subject to the do not sell order.

(c) No food subject to a do not sell order shall be used, served or moved from the establishment. The Health Officer

shall permit storage of the food under conditions specified in the do not sell order unless storage is not possible without risk to the public health, in which case the food shall be destroyed in accordance with Section 22-10-3, Code of Ala. 1975.

(d) The do not sell order shall state that a request for hearing may be filed within fifteen days and that if no hearing is requested the food shall be destroyed. If a request for hearing is received, the hearing shall be held in accordance with the Rules of the Board. On the basis of evidence produced at that hearing, the do not sell order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of these rules.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed October 21, 2009; effective November 25, 2009. **Amended:** Filed February 20, 2013; effective March 27, 2013. **Amended:** Filed August 19, 2016; effective October 3, 2016.

420-3-22-.09 Mobile Food Establishments.

(1) **General** – Mobile food establishments, units, or pushcarts shall comply with the requirements of 420-3-22-.09 except as otherwise provided in this rule. The Health Officer may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all time/temperature control for safety food, and when no health hazard will result, may waive or modify requirements of this rule relating to physical facilities, except those requirements of 420-3-22-.09(6). Pushcarts shall have overhead protection, such as an umbrella, to cover the food area.

(2) **Restricted Operation** –

(a) A mobile food establishment or unit shall be approved by the Health Officer to operate within each county before operating within that county. Authorization to operate in one county does not confer authorization to operate in any other county. It shall be the responsibility of the mobile food establishment operator and the commissary permit holder to obtain proper approval and authorization to operate within each county.

(b) Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of these rules, or beverages that are not time/temperature control for safety and are dispensed from covered dispensers, covered urns, or other protected equipment, need not comply with requirements of these rules pertaining to the necessity of water and waste water systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils, if the required equipment for cleaning and sanitizing exists at the commissary.

(c) During operation, all food shall be conveyed, held, stored, displayed, and served from the mobile food unit, except that pull-behind trailer units used only for cooking may be allowed if pre-approved by the Health Officer.

(d) All foods, single service articles, single use articles, and other items used for the operation of the mobile food unit shall be stored at the approved commissary other than during normal business operation of the mobile food unit, except that time/temperature control for safety foods in packages or containers that have been opened, including opened or unpackaged time/temperature control for safety foods in holding bins on the mobile food unit, shall be discarded after each day's operation.

(3) **Requirements** -

(a) Public health protection - Mobile food units or pushcarts shall have the appropriate facilities to provide public health protection for the specific type of food operation conducted on or at the mobile unit or pushcart according to Appendix "A".

(b) Handwashing facilities - Handwashing facilities shall be provided on the mobile food establishment or pushcart where any food preparation activities are conducted or unpackaged foods are handled. This facility shall include a sink, soap and towels in dispensers, and a reliable supply of hot and cold water dispensed through a mixing valve faucet. Facilities to heat water shall be on the mobile food unit. The facilities and supplies shall be located to be easily accessible and unobstructed for use by the operator. Gloves are not allowed as a substitute for a handwashing facility.

(c) Single-service articles - Mobile food units or pushcarts shall provide only single-service articles that are individually wrapped or in sanitary containers or approved dispensers for use by the consumer.

(d) Mobile food unit identification - The business name and address of the commissary, as shown on the commissary's Food

Permit, and telephone number of the commissary, shall be permanently placed on at least two sides of the mobile food unit. Lettering shall be legible, clearly visible to the public from the service area, and of a color contrasting with the unit exterior. The name shall be in letters at least three inches high with strokes of at least 3/8 inch width. The address and telephone number shall be in letters at least one inch high.

(e) Plan review -

1. A drawing showing the location of the mobile unit or pushcart's water supply tank, waste water retention tank, handwashing facility, utensil washing facility, food storage compartments and any other pertinent information requested by the Health Officer shall be provided in conjunction with the commissary plan review required in section 420-3-22-.09(6)(c).

2. A plan of operations shall be filed with the Health Officer stating the proposed menu and methods of complying with the requirements of these rules for temperature control, handwashing, and servicing at the commissary. The plan of operations shall specify if the mobile food establishment is proposed to:

(i) be at any one sales location, or essentially the same sales location, for longer than two hours,

(ii) be at any sales location that is more than two hours travel time from the commissary, or

(iii) operate in a county other than where the commissary is located.

3. For any location where the mobile food establishment is proposed to stay for two or more hours, the plan of operations shall provide for toilet facilities for the operator. These toilet facilities shall be in a permanent building that is not a private residence; shall be readily available for use by the mobile food unit operator; within approximately 200 feet of the mobile food unit's location unless otherwise approved by the Health Officer; and except for ventilation and ceiling construction, meet the requirements of these rules for food establishment toilet rooms.

(4) **Responsibility of commissary permit holder** - It shall be the responsibility of the commissary permit holder to comply with the provisions of the approved plan of operations. Failure to comply with the provisions of the plan of operations, including preventing priority or priority foundation item violations on the mobile food unit, shall be noted on the commissary inspection

report and may be grounds for suspension or revocation of the commissary food permit and the authorization to operate a mobile food establishment.

(5) **Caterer** - Caterers shall furnish the following information along with the application for a Food Permit:

(a) A list of the general types of foods proposed to be catered such as "barbecue pork", "baked goods" or similar general descriptions;

(b) A description of food preparation processes and, if time/ temperature control for safety food is to be cooled prior to service, a description of cooling methods; and,

(c) A description of methods and equipment for food storage, food display, and food service.

(6) **Commissary base of operations** -

(a) Mobile food units or pushcarts shall operate from a commissary and shall report at least daily to such location for all supplies and for all cleaning and servicing operations

(b) The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushcarts shall include, at a minimum, in accordance with Appendix “A”, employee toilet facilities, a handwashing sink, a warewashing sink, a servicing area, and be constructed and operated in compliance with these rules.

(c) An existing food establishment proposing to convert to a commissary for a mobile food establishment shall first furnish plans for review and approval showing compliance with the requirements of these rules for a servicing area as specified in 420-3-22-.09(6), the proposed storage area for foods and other supplies, and, if the mobile unit is a pushcart, the covered and protected storage area reserved for the pushcart.

(d) The commissary owner shall make the mobile food units or pushcarts available for inspection at the commissary at any reasonable time as requested by the Health Officer. In the event a mobile food unit or pushcart cannot be presented for inspection at the commissary, the commissary’s permit shall be suspended in accordance with the provisions of 420-3-22-. 08(4).

(7) **Mobile Food Unit Servicing Area** -

(a) A mobile food unit servicing area shall be provided and should include overhead protection for any supplying, cleaning or servicing operation. This servicing area will not be required where only packaged food is placed on the mobile food

unit or pushcart or where mobile food units do not contain water tanks or waste water retention tanks.

(b) Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies.

(c) The surface of the servicing area shall be constructed of a smooth, nonabsorbent material, such as concrete or machine laid asphalt, and shall be maintained in good repair, kept clean and be graded to drain.

(d) The construction of the walls and ceilings of the servicing area is exempted from the provisions of 420-3-22-.06.

Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed August 19, 2016; effective October 3, 2016.

420-3-22-.10 Priority Category 2 Establishments.

(1) **General** - A Priority Category 2 establishment shall comply with the requirements of these rules, except as otherwise provided. The application for a permit and the permit shall specify the designated food items that will be prepared, handled, or served. It shall be the responsibility of the person applying for a Priority Category 2 Establishment Food Permit to show evidence satisfactory to the Health Officer that any proposed food items for sale meet the requirements of 420-3-22-.01(4)(a)23.

(a) Establishments serving only coffee in single service cups and utilizing single service stirrers and coffee condiments that are not time/temperature control for safety do not require a permit or inspections.

(b) Self-contained ice vending machines that dispense only bagged ice do not require a permit or inspections.

(2) **Facilities**

(a) An adequately sized warewashing sink having at least two compartments furnished with hot and cold water and a drain board or easily movable dish table shall be used for cleaning all equipment and utensils in a Priority Category 2 establishment.

(b) At least one handwashing sink shall be provided convenient to the work area. Each handwashing sink shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Soap and provisions for hand drying shall be furnished at each handwashing sink.

(c) Priority Category 2 establishments shall have the garbage and refuse container cleaning facilities specified in 420-3-22-.05. Outside storage of garbage and refuse containers shall be in accordance with 420-3-22-.05 except that portion which requires storage of outside garbage containers on or above a smooth surface of nonabsorbent material such as concrete or machine laid asphalt. Refuse handling units shall be exempt from 420-3-22-.05 provided that insanitary conditions do not develop which create a health hazard or cleaning problem.

(d) The construction requirements of any area wherein equipment and utensils are washed or operation of equipment such as popcorn machines may result in grease, steam, or water accumulations shall include those specified in 420-3-22-.06. The construction requirements of 420-3-22-.06 shall not apply to any food service area or toilet room area of the limited food establishment in which no health hazard or cleaning problem will be created.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Gambill
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed February 20, 2013; effective March 27, 2013. **Amended:** Filed August 19, 2016; effective October 3, 2016. **Amended:** Published November 29, 2019; effective January 13, 2020.

420-3-22-.11 Priority Category 1 Establishments.

General - A Priority Category 1 establishment shall comply with the requirements of these rules except as otherwise provided. The application for a permit and the permit shall specify that only prepackaged food items shall be sold or handled.

(2) **Facilities**

(a) Equipment and utensil cleaning facilities shall not be required in Priority Category 1 establishments which market only prepackaged food items.

(b) At least one handwashing sink shall be provided and supplied with water, hand cleanser, and provisions for hand drying.

(c) A Priority Category 1 establishment shall have the garbage and refuse cleaning facilities specified in 420-3-22-.05 or demonstrate other effective means for keeping the containers clean.

(d) Floors, walls and ceilings of the Priority Category 1 establishment shall be maintained in good repair and shall be kept clean.

Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008.

420-3-22-.12 Temporary Food Service Establishments.

(1) **General** -

(a) A temporary food service establishment shall comply with the requirements of these rules, except as otherwise provided in this rule. The Health Officer may impose additional requirements to protect against potential health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all time/ temperature control for safety foods, and may waive or modify requirements of these rules after considering potential public health risks and no health hazard is reasonably expected to result due to mitigating factors including total length of time for the event of less than four days, event location, time of year, restricted menus, or other determining factors.

(b) It shall be unlawful for any person to operate a temporary food service establishment unless such person possesses a valid permit issued by the Health Officer for the operation of such establishment.

(c) A mobile food establishment that does not have its' commissary in the same county as the temporary event, or that does not return daily to its commissary during the course of the event, shall obtain a separate temporary food permit for the event.

(2) **Exemptions allowed**

(a) A temporary event sponsored by a political subdivision of this state or an agency or organization that is exempt from taxes or business license requirements may apply for an exemption from these rules for a temporary event of not more than three days (72 hours) duration, and shall be issued an exemption from the requirements of these rules, provided:

1. All food operations, from initial preparation, service to the consumer, and final clean-up and removal from the site, are completed within 72 hours,

2. The event site location, the name of each food vendor, and a general description list of foods to be sold from each food vendor are supplied along with, and as a part of, the application for exemption at least five days prior to the date of the event, and

3. The list of foods meets the restriction of Section (2) (d) of this rule, and

(b) An exemption is for the event itself and shall apply only to vendors named in the application for an exemption. Individual temporary food service establishments may not receive an individual exemption apart from the event. Individual components of a multiple-day event, such as daily exhibitions as part of a multiple-day event, shall not be construed as separate events eligible for an exemption under this rule.

(c) The Health Officer may issue a stop sale, seize or hold order for any food suspected of being the cause of a foodborne illness, regardless of whether the food is being sold, held, or otherwise processed at an exempt temporary event. Any person to whom such an order is issued shall comply immediately therewith.

(d) An exemption shall not be construed as allowing the sale of low acid foods in a hermetically sealed container (for example, such as home-canned vegetables) when such food is not prepared in a permitted establishment.

(3) **Restricted operations** - Only those time/temperature control for safety foods approved by the Health Officer for preparation or service at the temporary food service establishment shall be prepared or served.

Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Amended:** Filed June 10, 2002; effective July 15, 2002. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008. **Amended:** Filed February 20, 2013; effective March 27, 2013. **Amended:** Filed August 19, 2016; effective October 3, 2016.

420-3-22-.13 Food Establishments And Food Processing Establishments Outside Jurisdiction Of The Health Officer.

Food from food establishments or food processing establishments outside the jurisdiction of the Health Officer of the State of Alabama may be sold within the State of Alabama if such establishments conform to the provisions of these rules or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the State Health Officer may accept reports from responsible authorities in other jurisdictions where such food establishment or food processing establishments are located.
Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: New Rule: Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008.

420-3-22-.14 Repealer.

Except for those rules promulgated et sequnder the authority of Sections 22-21-20, *et seq*., Code of Ala. 1975, all rules promulgated by the Board which are in conflict with these rules or any portion thereof are hereby expressly repealed.
Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: New Rule: Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008.

420-3-22-AA **Appendix A.**

REQUIREMENTS by menu and type of Mobile Unit.
The key to the numbersis on the next page.

FOOD ITEM	PUSHCART	SELF-PROPELLED VEHICLE
Pre-packaged PHF* (For only pre-packaged ice cream, no permit is required.)	1 or 2 6 9	1 or 2 6 9
Dispensing raw shrimp or raw fish (not pre-wrapped).	Not allowed on a pushcart.	1 or 2 3 6 7 10
Unpackaged "Category 2" items	1 or 2 3 4 or 5 or 7 6 (for PHF) 9	1 or 2 3 4 or 5 or 7 6 (for PHF) 9
Heating or hot holding a pre-cooked PHF* food (unpackaged), or heating non-PHF*	1 or 2 3 4 or 5 or 7 6 (for PHF) 9 PHF must meet definition of Priority Category 2 Food.	1 or 2 3 4 or 5 or 7 6 (for PHF) 8 9
Cooking raw PHF*	Not allowed on a pushcart	1 or 2 3 4 6 8 9

*PHF = Potentially Hazardous Food

THESE ARE GENERAL REQUIREMENTS BASED ON BROAD MENU CATEGORIES. A SPECIFIC MENU AND OPERATION MAY REQUIRE ADDITIONAL FACILITIES.

Key to chart on previous page

1- Operate from a commissary meeting all requirements of 420-3-22-.09. The commissary must have, at a minimum, facilities to store food at the required temperatures, a toilet facility and, except when all food is prepackaged, fill potable water tanks, empty wastewater tanks, provide a handwashing sink, provide an appropriate warewashing sink and all required items of the Food Sanitation Rules. If food preparation activities on the mobile unit generate grease or grease-laden vapors, the commissary must have a grease trap in accordance with local requirements.

2- Operate from a permitted food service establishment (which may be a separately - owned business under the restrictions of 420-3-22-.09) with facilities to store food at the required temperatures, a toilet facility and, except when all food is prepackaged, fill potable water tanks, empty wastewater tanks, provide a handwashing sink, provide an appropriate warewashing sink and all required items of the Food Sanitation Rules. If food preparation activities on the mobile unit generate grease or grease-laden vapors, the commissary must have a grease trap in accordance with local requirements.

3- Handwashing facility on-board the mobile unit; potable (drinking) water tank securely affixed on-board; waste water holding tank securely affixed on-board, 15% larger than the potable water tank; warm water (100°F) provided at all times in adequate amounts.

4- Three-compartment sink on-board with chemical test papers available and used.

5- Two-compartment sink on-board with chemical test papers provided and used.

6- Refrigeration/cold holding facilities on-board and/or facilities for hot holding food on-board, thermometers provided and used.

7- Four sets of food handling utensils, properly sanitized and prewrapped, on-board.

(CHECK WITH THE LOCAL COUNTY HEALTH DEPARTMENT WHERE OPERATION IS PROPOSED TO VERIFY IF THIS OPTION IS ALLOWED).

8- Cooking facilities on-board, to include thermometers, water under pumped pressure to all sinks, sufficient ventilation to remove vapors and smoke from the cooking area, screens or effective forced air barriers, self closing doors, shielded lights, and smooth, non-absorbent, easily cleanable floors, walls, and ceilings.

9- Transport entire mobile unit to commissary daily.

10 - (For vehicles used for dispensing only raw fish or shrimp) Maintain product in direct contact with ice with meltwater contained until delivery is completed. Meltwater shall be disposed in a sanitary manner at the commissary or in accordance with law. Insulated containers and all necessary articles used for dispensing must be in an enclosed part of the vehicle, such as in a covered bed of a pick-up or inside a van. The commissary must have the capability to wash, rinse, and sanitize all food contact surfaces, and for cleaning the vehicle.

Author: Ronald Dawsey, Billy W. Johnson, Mark Sestak

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.

History: **New Rule:** Filed November 20, 1996; effective December 25, 1996. **Repealed and New Rule:** Filed July 20, 2005; effective August 24, 2005. Amended and Adopt By Reference: Filed March 21, 2008; effective April 25, 2008.

Ed. Note: Appendices A, C, and D is repealed and Appendix B was renamed Appendix A as per certification filed March 21, 2008.

420-3-22-AB **Appendix B.**

ATTACHMENT TO RULE 420-3-22-.03

Only the following wild harvested mushroom species may be offered for sale or service in a food service establishment:

Beefsteak *(Fistulina hepatica)*
Black Trumpet *(Craterellus fallax)*
Blewits *(Lepista nuda)*
Blue Milky *(Lactarius indigo)*
Cauliflower *(Sparassis spp.)*
Chanterelles *(Cantharellus spp. Exception C. persicinus)*
Chicken of the Woods *(Laetiporus spp. Exception L. persicinus)*
Golden and Burgundy Milkies *(Lactarius corrugis, L.volemus, L. hygrophoroides)*
Green Quilted Russula *(Russula virescens, R. parvovirescens, R. crustosa)*
Hedgehog *(Hydnum repandum, H. albomagnum)*
Honey mushrooms *(Armillaria mellea, A.tabescens)*
Lions Mane or Pom or Bearded tooth or Bear's head *(Hericium spp.)*
Lobster *(Hypomyces lactifluorum)*
Maitake or Hen of the woods *(Grifola frondosa)*
Morels *(Morchella spp.)*
Oyster Mushroom *(Pleurotus spp. Exception Pleurotus levis, P. dryinus)*
Pecan Truffle *(Tuber spp.)*
Puffballs *(Lycoperdon spp., Calvatia spp.)*
Reishi mushrooms *(Ganoderma curtisii, G. tsugae, G. sessile)*
Shaggy mane *(Coprinus comatus)*
Turkey tail *(Trametes versicolor)*
Umbrella Polypore *(Cladomeris umbellata)*
Wood Ears *(Auricularia spp.)*
Author: Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Gambill
Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-20-5.
History: New Rule: Published January 31, 2020; effective March 16, 2020.