

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 420
Department or Agency: Alabama State Board of Health Bureau of Environmental Services
Rule No.: 420-3-22-.03
Rule Title: Food
Intended Action: Repeal and Replace

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Sancha O. Howard
Sancha Howard

Date

Monday, October 21, 2024

REC'D & FILED
OCT 21, 2024
LEGISLATIVE SVC AGENCY

ALABAMA STATE BOARD OF HEALTH  
BUREAU OF ENVIRONMENTAL SERVICES

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Public Health

RULE NO. & TITLE: 420-3-22-.03 Food

INTENDED ACTION: Repeal and Replace

SUBSTANCE OF PROPOSED ACTION:

To repeal and replace the food establishment sanitation rules.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

A public hearing will be held on November 13, 2024, at 9:00 a.m. , at the RSA Tower, Suite 1540, 201 Monroe Street, Montgomery, AL 36104.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Thursday, December 5, 2024

CONTACT PERSON AT AGENCY:

Phyllis Fenn  
Division of Food, Milk and Lodging  
Alabama Department of Public  
Health  
P.O. Box 303017  
Montgomery, Alabama 36130-3017  
Telephone number: (334) 206-5375

*Sancha O. Howard*

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Sancha Howard

(Signature of officer authorized  
to promulgate and adopt  
rules or his or her deputy)

~~420-3-22-.03~~      ~~Food.~~

~~(1) Exclusions and applications~~

~~(a) Time/temperature control 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 control 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 *unless the shortest date limit is applied different date limit 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 person who supplies farm-raised fish or wild fish to a food service establishment shall provide information of the country of origin of the product to the food service establishment as required by federal law. The State Health Officer, upon verified complaint and in compliance with all applicable state and federal law, shall investigate any and all reports of noncompliance with this subsection. Upon receipt of the verified complaint, a copy of the complaint shall be given to the food service establishment.~~

~~(b) If farm-raised fish or wild fish is supplied to a food service establishment and the fish or fish product is not required to be labeled with the country of origin pursuant to the requirements of federal law, the supplier of the fish or fish product or the food service establishment shall not be required to provide any additional information to comply with this act.~~

~~(c) A food service establishment serving farm-raised fish or wild fish shall place a disclaimer or notice on the menu or,~~

~~if the establishment does not have a menu, on a placard used as a menu not smaller than 8½ inches by 11 inches in close proximity to the food establishment permit, in a conspicuous place specifically stating the following: "Under Alabama law, the consumer has the right to know, upon request to the food service establishment, the country of origin of farm-raised fish or wild fish." The disclaimer or notice listed on a menu shall be listed in print as large as the listing of the product. The board may establish the specific size or print requirements for a disclaimer or notice on a menu or placard by rule.~~

~~(d) For purposes of this section, the United States is the country of origin for farm-raised fish hatched, raised, harvested, and processed in the United States and wild fish that were harvested in waters of the United States, a territory of the United States, or a state and processed in the United States, a territory of the United States, or a state, including the waters thereof.~~

~~(e) Any labeling requirements as to farm-raised fish and wild fish offered for direct retail sale for human consumption by a food service establishment may comply with this act by stating the country of origin in lieu of the disclaimer or notice; except, that the appropriate state name or USA or United States of America, including a trade name or trademark, may be inserted in lieu thereof to accommodate similar products produced in any of the states or a territory of the United States of America.~~

~~(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.~~

(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

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