**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 15 FOOD**

**10.15.03 Food Service Facilities**

Authority: Health-General Article, §§18-102, 21-101, 21-102, 21-211,
21-234, 21-301, 21-304, and 21-308; Annotated Code of Maryland

**Notice of Proposed Action**

[19-110-P]

     The Secretary of Health proposes to amend Regulations **.02**, **.06**, **.09**, **.15**, **.25**, and **.27** and adopt new Regulation **.40** under **COMAR 10.15.03 Food Service Facilities**.

**Statement of Purpose**

The purpose of this action is to conform regulations to changes made to cottage food businesses and micro markets by House Bill 1087/Senate Bill 758 and House Bill 1106, respectively, passed during the 2018 General Assembly session. The proposed action amends definitions related to cottage foods and micro markets, adds new methods for the sale of cottage foods, and promulgates a new regulation related to the requirements of micro markets.

This proposal also makes several corrections, clarifications, and deletions of obsolete text. These include conforming storage temperature requirements for crab meat to COMAR 10.15.02; specifying food disposal or reconditioning procedures; clarifying thawing procedures for potentially hazardous foods; and allowing for outdoor cooking at mobile food service facilities.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**The proposed action will strengthen cottage food businesses’ ability to sell directly to consumers by allowing the sale of cottage foods by personal delivery and by mail order. Cottage food businesses will still be limited by a $25,000 cap on annual revenues from the sale of cottage food products; however, expanding the ways that sales can be made will positively affect cottage food businesses. The Department is unable to estimate the magnitude of this effect.

|  |  |  |
| --- | --- | --- |
|   | Revenue (R+/R-) |   |
| **II. Types of Economic Impact.** | Expenditure (E+/E-) | Magnitude |
|   |  |
|  |  |  |
| A. On issuing agency: | NONE |  |
| B. On other State agencies: | NONE |  |
| C. On local governments: | NONE |  |
|   |
|   | Benefit (+)Cost (-) | Magnitude |
|   |  |
|  |  |  |
| D. On regulated industries or trade groups: | (+) | Indeterminable |
| E. On other industries or trade groups: | NONE |  |
| F. Direct and indirect effects on public: | NONE |  |
| **III. Assumptions.** (Identified by Impact Letter and Number from Section II.) |
| D. The proposed action will strengthen cottage food businesses’ ability to sell directly to consumers by allowing the sale of cottage foods by personal delivery and by mail order. Cottage food businesses will still be limited by a $25,000 cap on annual revenues from the sale of cottage food products; however, expanding the ways that sales can be made will positively affect cottage food businesses. The Department is unable to estimate the magnitude of this effect. |

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 8, 2019. A public hearing has not been scheduled.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(17-1) (text unchanged)

(17-2) “Cottage food product” means:

(a) A non-potentially hazardous food as specified in Regulation .27 of this chapter that is offered for sale **[**only**]***directly to a consumer from a residence,* at a farmer’s market **[**or**]***, at a* public event*, by personal delivery, or by mail delivery*; and

(b) A food that is not offered for sale through **[**Internet sales or**]** interstate commerce.

(17-3)—(33) (text unchanged)

(34) Food Service Facility.

(a) (text unchanged)

(b) “Food service facility” includes:

(i) (text unchanged)

(ii) A food operation in an industry, institution, health care facility, club, school, camp, church, catering kitchen, commissary, or a similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; **[**and**]**

(iii) An excluded organization either with or without a license that serves potentially hazardous foods**[**.**]***; and*

*(iv) A micro market licensed under Business Regulation Article, Title 17, Subtitle 17, Annotated Code of Maryland, and meeting the requirements of this chapter as a food service facility.*

(c) (text unchanged)

(35)—(44) (text unchanged)

*(44-1) “Micro market” means an unstaffed, self–checkout retail food service facility that:*

*(a) Includes one or more micro market displays;*

*(b) Has an automated payment kiosk or other device designed to accept electronic payments that is operated by the consumer;*

*(c) Is located indoors and within a separate business; and*

*(d) Is generally accessible only to individuals within the building in which the food service facility is located.*

*(44-2) “Micro market display” means the place where the food being sold by a micro market is displayed, including:*

*(a) An open rack;*

*(b) A refrigerator or a refrigerated cooler;*

*(c) A freezer;*

*(d) A vending machine;*

*(e) A beverage dispenser; or*

*(f) A single–serve coffee brewer.*

(45)—(86) (text unchanged)

**.06 Food Protection During Storage, Service, and Transport.**

The person-in-charge shall ensure that:

A. (text unchanged)

B. When storing and holding food:

(1)—(7) (text unchanged)

**[**(8) In existing refrigeration that can cool the food and maintain the food’s internal temperature between 42°F and 45°F, the potentially hazardous food’s internal temperature, except as provided in §B(9)—(14) of this regulation, is kept at 45°F or less pending equipment upgrade as set forth in Regulation .15A(6) of this chapter;**]**

**[**(9)**]** *(8)* If pasteurized crab meat, the crab meat’s internal temperature is maintained at **[**38°F**]***41°F* or less;

**[**(10)**]***(9)*—**[**(14)**]***(13)*(text unchanged)

C. While displaying and serving food:

(1)—(9) (text unchanged)

(10) Except for drinking cups reused by self-service consumers in a manner to prevent cross-contamination, employees and self-service customers do not reuse soiled tableware, including single service articles to:

(a) (text unchanged)

(b) Obtain additional food from display and serving equipment; **[**and**]**

D. During the transportation of food:

(1)—(3) (text unchanged)

(4) Food is in covered containers or completely wrapped or packaged to protect against contamination**[**.**]***; and*

*E. During the preparation, storage, or service of food:*

*(1) Unsafe or adulterated food is discarded or reconditioned according to an approved procedure by the approving authority;*

*(2) Food that is not from an approved source as specified under Regulation .04 of this chapter is discarded;*

*(3) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under Regulation .14A and B of this chapter is discarded; and*

*(4) Food shall be discarded if it is contaminated by employees, consumers, or other persons through:*

*(a) Contact with their hands;*

*(b) Bodily discharges, such as nasal or oral discharges; or*

*(c) Other means.*

**.09 Food Preparation — Temperature and Cross-Contamination Control.**

The person-in-charge shall ensure that:

A.—C. (text unchanged)

D. Potentially hazardous food is thawed:

(1)—(3) (text unchanged)

(4) If a potentially hazardous reduced oxygen packaged food:

(a) In the food’s airtight package *at or below 41°F*; **[**and**]**

(b) **[**At or below 38°F;**]***At a lower temperature if specified by the manufacturer; or*

*(c) If fish or seafood, completely removed from the reduced oxygen environment or package prior to thawing.*

(5)—(6) (text unchanged)

E.—F. (text unchanged)

**.15 Food Equipment and Utensils.**

A. The person-in-charge shall ensure that:

(1)—(5) (text unchanged)

**[**(6) Existing refrigeration equipment used to maintain potentially hazardous foods that is incapable of maintaining the potentially hazardous food at 41°F or less is upgraded or replaced by December 17, 2012;**]**

**[**(7)**]***(6)—***[**(16)**]***(15)* (text unchanged)

B. The approving authority may allow the use of equipment that meets **[**§A(3)—(11)**]** *§A(3)—(10)* of this regulation but fails to comply with §A(1) of this regulation if a review indicates the equipment and its use are:

(1)—(2) (text unchanged)

**.25 Special Food Service Facilities.**

A. (text unchanged)

B. For a special food service facility that handles food that is removed from the original package or that prepares, packages, or wraps food at the facility, the person-in-charge shall ensure that:

(1) Compliance is maintained with Regulations **[**.01—.06, .08—.14**]***.01—.14*, .15A(3)—(11), .16—.25, and .28—.39 of this chapter;

(2)—(5) (text unchanged)

C.—H. (text unchanged)

**.27 Farmer’s Market, Bake Sales, and Cottage Food Business.**

A. The approving authority shall accept as being from an approved source the homemade foods specified in §B of this regulation when the foods are:

(1) (text unchanged)

(2) Offered or sold only **[**at a farmer’s market, bake sale, or public event.**]***in the State directly to a consumer:*

*(a) At a farmer’s market;*

*(b) At a bake sale;*

*(c) At a public event;*

*(d) By personal delivery; or*

*(e) By mail order.*

B.—D. (text unchanged)

***.40 Micro Markets.***

*A. The owner or operator of a micro market shall not be required to have a person in charge present during the hours of operation of the micro market if the micro market meets the requirements of this regulation.*

*B. Food sold at the micro market shall:*

*(1) Be commercially prepackaged food or ready-to-eat food;*

*(2) Be prepackaged in tamper-evident packaging; and*

*(3) Contain all the following information on the packaging label:*

*(a) Nutrition information required by the federal food, drug, and cosmetic act;*

*(b) A freshness or expiration date; and*

*(c) Any other information required by Maryland law.*

*C. Refrigerated or frozen food sold at a micro market shall be stored and displayed in a refrigerator, refrigerated cooler, or freezer that:*

*(1) Maintains an internal temperature of 41°F or lower;*

*(2) Has self-closing doors;*

*(3) Has doors that allow the food on display to be viewed without opening the door to the refrigerator, refrigerated cooler, or freezer; and*

*(4) Has an automated self-locking feature that prevents a consumer from accessing the food on the occurrence of any condition that results in the failure of the refrigerator, refrigerated cooler, or freezer to maintain the internal temperature required under Regulation .06 of this chapter.*

*D. Signage and Notice. The owner or operator of a micro market shall post a sign that is clearly visible to the consumer near the micro market entryway or while using the electronic payment device that includes the following information:*

*(1) The name of the owner or operator of the micro market to whom complaints and comments regarding the micro market may be addressed;*

*(2) The business mailing address of the owner or operator;*

*(3) The business telephone number of the owner or operator; and*

*(4) The e-mail address and website address of the owner or operator, if applicable.*

*E. Security. The owner or operator of a micro market:*

*(1) May secure the product and premises of a micro market by the use of video surveillance that:*

*(a) Operates 24 hours per day, 7 days per week;*

*(b) Records consumers viewing, selecting, handling, and purchasing products from the micro market; and*

*(c) Provides sufficient resolution to identify consumers described in §E(1)(b) of this regulation; and*

*(2) Shall ensure that video surveillance recordings made under §E(1) of this regulation:*

*(a) Are maintained by the owner for 14 days after the date of the video recording; and*

*(b) Be made available for inspection by the appropriate health or law enforcement agency on the request of such agency within 24 hours from the time the request is received by the owner or operator.*

*F. Record Keeping. The owner or operator of a micro market shall ensure that:*

*(1) In the event of a failure of an automated self-locking unit, records are kept for:*

*(a) Service of the repair or replacement of the failed unit in the form of receipt or receipts or a completed service order; and*

*(b) All products in the unit at the time of the failure and include:*

*(i) Product description; and*

*(ii) Quantity of product or products discarded or destroyed, or both;*

*(2) Service receipt or receipts for the repair or replacement of the failed unit and product destruction shall be kept for a minimum of 90 days; and*

*(3) All records are available for review upon request.*

ROBERT NEALL
Secretary of Health