

APA-1  
4/18

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Alabama Department of Public Health

Rule Number 420-3-22.06

Rule Title Physical Facilities

         New XXXX Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare or safety? Yes

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 and, if so, to what degree? No

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

Are all facts of the rulemaking 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 §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 P. Ben Hale Date 9/15/2021

REC'D & FILED  
SEP 15 2021  
LEGISLATIVE SVC AGENCY

**FORM APA2**  
**10/17**

**STATE BOARD OF HEALTH**  
**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Public Health

**RULE NUMBER AND TITLE:** 420-3-22.06, Physical Facilities

**INTENDED ACTION:** To amend the food establishment sanitation rules.

**SUBSTANCE OF PROPOSED ACTION:** This amendment will allow the Department to make allowance for pet dogs in outdoor dining areas of food service establishments pursuant to Act 2021-474.

**TIME, PLACE, AND MANNER OF PRESENTING VIEWS:** A public hearing will be held on October 27, 2021, at 9:00 a.m., at the RSA Tower, Suite 1540, 201 Monroe Street, Montgomery, AL 36104.

**FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE:** Written or oral comments will be received until the close of the record at 5:00 p.m. on November 4, 2021. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

**CONTACT PERSON AT AGENCY:** Mark Sestak, Division of Food, Milk, and Lodging, Department of Public Health, P.O. Box 303017, Montgomery, Alabama 36130-3017, Telephone number: (334) 206-5375.



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P. Brian Hale, Agency Secretary

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 employée 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.

**Food Establishment Sanitation**

**Chapter 420-3-22**

**AUTHORS:** Ronald Dawsey, Mark Sestak, Phyllis Fenn, Lauren Lerner, Rachel Sullenger

**STATUTORY AUTHORITY:** Sections 22-2-2(6) and 22-20-5, Code of Alabama, 1975.

**HISTORY:** New rule: filed November 20, 1996, effective December 25, 1996. Repealed and Replaced: Filed July 20, 2005, effective August 24, 2005. Amended: Filed March 20, 2008; effective date April 25, 2008. Amended: Filed August 19, 2016; effective date October 3, 2016. Amended: Filed XX-XX-XXXX.