

# **COLORADO DEPARTMENT OF AGRICULTURE**

## **Inspection and Consumer Services Division**

### **Rules Pertaining to the Administration and Enforcement of the Sale of Meat Act Method of Sale of Home Food Service**

#### **8 CCR 1202-12**

#### **Part 1. Definitions and Construction of Terms**

- 1.01. As used in these rules and as the context requires, the singular includes the plural, the masculine gender includes the feminine and neuter, and vice versa.
- 1.02. Any term used in these rules that is defined in §§ 35-33.5-104, C.R.S., of the Sale of Meat Act shall have the meaning set forth therein.
- 1.03. The term “buyer” means both the actual and prospective purchaser, but does not include persons purchasing for resale.
- 1.04. The term “contract” means all of the collective written agreements subscribed by a buyer at the time of sale relating to the purchase of a home food service plan, except promissory notes or other financing agreements.
- 1.05. The term “nonfood item” means each inedible product sold as part of a home food service plan, including, but not limited to, paper products, health and beauty products, detergents, cleaners and disinfectants, rolls of wrapping, and like products. The term does not include food items and durable consumer goods such as appliances.
- 1.06. The term “service charge” means the total price for any additional features, services, and processing associated with the purchase of a home food service plan, whether stated in terms of membership fees or otherwise.
- 1.07. The term “primal source” means the following cuts: (i) for beef, the primal sources are the round, flank, loin, rib, plate, brisket, shuck, and shank; (ii) for veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib), and shoulder; and (iii) for pork, the primal sources are the belly, loin, ham, spareribs, shoulder, and jowl.

#### **Part 2. Contract and Disclosure Requirements**

- 2.01. At the time of sale, the home food service plan operator shall provide the buyer with a single document, referred to in this subsection as the “written agreement,” which shall clearly and conspicuously disclose the following:
  - (a) the full name, current mailing address and telephone number of the home food service plan operator and the name and address of the buyer;

- (b) the date of the contract;
- (c) the price of the food and nonfood items of the home food service plan;
- (d) the service charge or the price of any service charges associated with the home food service plan;
- (e) the total price to be paid by the buyer under the contract, including, without limitation, any applicable charges for cutting, freezing, wrapping, packaging, delivery, freezer or locker rental, insurance, and any interest, finance charge, service charge, or membership charge;
- (f) a statement, in bold type of minimum size of 10 points, in substantially the following form:
 

**“YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.”;**
- (g) a merger clause stating that the contract excludes any terms not expressly contained therein;
- (h) the signature of the buyer;
- (i) a written list of all food items to be sold, which shall include:
  - (i) the identity and weight of each unit and the United States Department of Agriculture quality grade of the item, if so graded; the primal source; and the brand or trade name;
  - (ii) the quantity of each item sold;
  - (iii) the estimated serving size by net weight of each piece of meat, poultry, and seafood item offered for sale under the home food service plan, provided, however, that such estimates shall not differ from the actual weight at the time of delivery by more than 5 percent, and that the dollar value of the meat, poultry, and seafood items delivered is equal to or greater than that represented to the buyer; and
  - (iv) the net weight, measure, or count of all other food items offered for sale;
- (j) a separate itemization of all nonfood charges;
- (k) the make, model number, and cubic-foot capacity of any locker, freezer, or other appliance or facility sold or rented under the contract;
- (l) the exact number, period, and amount of any installments to be paid during the life of the contract or any associated financing agreement;

- (m) the annual percentage rate of any interest, finance, penalty, late fee, delinquency, or other charge that is or may be levied on any outstanding balance;
  - (n) if the full balance due under the contract is not paid on delivery, a written statement that the contract may be assigned and, upon assignment, may be collected by a third-party assignee;
  - (o) if a membership is sold, a written statement of all terms, conditions, benefits, and privileges applicable to the membership; and
  - (p) if a service charge is included, a written statement specifically identifying the service(s) provided and the price(s) charged for them.
- 2.02. At the time of delivery, the home food service plan operator shall provide a receipt, for signature by the buyer, disclosing the identity of the item and the net quantity of the contents in terms of either weight, measure or count as required by the Measurement Standards Act, C.R.S. §§ 35-14-101 through 133. The net weight of each food item delivered shall not differ from the estimated weight by more than 5 percent.
- 2.03. In addition to the disclosure required by part 2.0 1(f), the seller is required to furnish each buyer, at the time the buyer signs the sales contract, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract or receipt and be easily detachable, and contain in 10 point or larger bold type the following information and statements in the same language, (e.g. Spanish) as that used in the contract:

**"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, UNOPENED AND UNUSED, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY FOOD OR NONFOOD ITEM DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE FOOD OR NONFOOD ITEM AT THE SELLER'S EXPENSE AND RISK. IF YOU DO MAKE THE FOOD OR NONFOOD ITEM AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE FOOD OR NONFOOD ITEM WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE FOOD OR NONFOOD ITEM AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE FOOD OR NONFOOD ITEM TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR THE PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. TO CANCEL THIS TRANSACTION, MAIL, SEND BY FACSIMILE OR HAND DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR OTHER WRITTEN NOTICE OF YOUR DECISION TO CANCEL THIS TRANSACTION, OR SEND A TELEGRAM STATING YOUR DECISION**

TO CANCEL TO (NAME OF SELLER), AT (ADDRESS OF SELLER'S PLACE OF BUSINESS, AND FACSIMILE NUMBER IF APPLICABLE) NO LATER THAN MIDNIGHT OF (DATE).

\_\_\_\_\_  
DATE  
\_\_\_\_\_

BUYER'S SIGNATURE"

- 2.04. It is a violation for any home food service plan operator to:
- (a) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the seller's facsimile number, if applicable, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer must give notice of cancellation.
  - (b) Include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section, including but not limited to the buyers right to cancel the sale in accordance with the provisions of this section.
  - (c) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the home food service plan, of the right to cancel set forth in the notice of cancellation, and that any food or nonfood item must be unopened and unused to cancel.
  - (d) Misrepresent in any manner the buyer's right to cancel.
  - (e) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice to:
    - (i) refund all payments made under the contract or sale;
    - (ii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.
  - (f) Negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the home food service plan was purchased.

**Part 3. Advertisement and Sale of Home Food Service Plans**

- 3.01. Any advertisement of a home food service plan shall state, in a clear and conspicuous manner, whether there are any service charges or other additional costs associated with the purchase of a home food service plan.

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- 3.02. No advertisement of a home food service plan shall make false or misleading statements of fact concerning:
- (a) the grade, quality or special properties of the food item being sold;
  - (b) the reasons for, existence of, or amounts of price reductions of a food item; or
  - (c) the purchase or use of a food item by any other person, hotel, restaurant or institution.

#### **Part 4. License Expiration Date**

4.01. The expiration date for a license to sell a home food service plan shall be June 30.

#### **Parts 5 – 7. Reserved**

#### **Part 8. Statements of Basis, Specific Statutory Authority and Purpose**

##### **8.01 Emergency Rule Adopted July 1, 2009 – Effective July 1, 2009**

###### **STATUTORY AUTHORITY:**

The Commissioner's authority for the adoption of these Emergency Rules is set forth in § 35-33.5-105(1), C.R.S., as enacted by SB 09-117, and § 24-4-103(6), C.R.S. (2008).

###### **PURPOSE:**

The purpose of these Emergency Rules is to:

1. Adopt new rules pertaining to the method of sale of home food service plans formerly adopted under the authority of the previous article § 35-33-104(1), C.R.S., which must now be readopted under the authority of the new article § 35-33.5-105(1), C.R.S., as enacted in SB 09-117.
2. Establish a license expiration date of June 30.
3. Add a section to contain the statements of basis, specific statutory authority and purpose.

###### **FACTUAL AND POLICY BASIS:**

The factual and policy issues that require the immediate adoption of these Emergency Rules are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Slaughter, Processing and Sale of Meat Animals Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-117, effective July 1, 2009, specifically:
  - a. SB 09-117 struck all definitions, sections, and references pertaining to the sale of meat and to the licensing and regulation of food plan operators.

- i. Title 35, C.R.S., was amended by the addition of a new article; the Sale of Meat Act to be codified as §§ 35-33.5-101 through 307, C.R.S., to which all authority over Home Food Service Plans is transferred effective July 1, 2009.
    - ii. Emergency rules are therefore needed under the authority of the new Sale of Meat Act.
  - b. The new Sale of Meat Act uses the term “home food service plan” rather than “food plan.” These rules reflect such changes.
  - c. The new Sale of Meat Act states that the license expiration date must be established by the Commissioner in rule. These rules establish a license expiration date of June 30.
2. The Commissioner hereby finds that immediate adoption of these Emergency Rules is imperatively necessary to implement the new Colorado Sale of Meat Act, §§ 35-33.5-101 through 307, C.R.S. enacted in SB 09-117 by the General Assembly in its 2009 legislative session, which take effect on July 1, 2009. These Emergency Rules are required to permit the uninterrupted regulation of home food service plans under the new Act, including the issuance of licenses thereunder.

**8.02 Adopted July 16, 2009 – Effective August 30, 2009**

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rules is set forth in § 35-33.5-105(1) C.R.S., as enacted in SB 09-117.

PURPOSE:

The purpose of these Permanent Rules is to:

- 1. Adopt new rules pertaining to the method of sale of home food service plans formerly adopted under the authority of the previous article § 35-33-104(1), C.R.S., which must now be readopted under the authority of the new article § 35-33.5-105(1), C.R.S., as enacted in SB 09-117.
- 2. Establish a license expiration date of June 30.
- 3. Add a section to contain the statements of basis, specific statutory authority and purpose.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rules are as follows:

- 1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Slaughter, Processing and Sale of Meat Animals Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-117, effective July 1, 2009, specifically:

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- a. SB 09-117 struck all definitions, sections, and references pertaining to the sale of meat and to the licensing and regulation of food plan operators.
    - i. Title 35, C.R.S., was amended by the addition of a new article; the Sale of Meat Act to be codified as §§ 35-33.5-101 through 307, C.R.S., to which all authority over Home Food Service Plans is transferred effective July 1, 2009.
    - ii. Permanent Rules are therefore needed under the authority of the new Sale of Meat Act.
  - b. The new Sale of Meat Act uses the term “home food service plan” rather than “food plan.” These rules reflect such changes.
  - c. The new Sale of Meat Act states that the license expiration date must be established by the Commissioner in rule. These rules establish a license expiration date of June 30.
2. The Commissioner intends to adopt Emergency Rules on July 1, 2009 in order to implement the changes to the Act made by the General Assembly in SB 09-117. These Permanent Rules will make permanent those Emergency Rules.