

FOOD SAFETY

State and Federal Standards and Regulations

Alaska

1999

A Project of the

**National Association of State Departments of Agriculture
Research Foundation**

through the

National Center for Agricultural Law Research and Information

This publication was made possible by a financial grant from the National Association of State Departments of Agriculture (NASDA), Washington, D.C., through funds made available from the United States Food and Drug Administration (FDA).

Disclaimer

This book's information is to be used as an educational tool and is not a substitute for individual legal advice. Any person wishing to obtain legal advice should consult a competent attorney and/or food law specialist. The utilization of these materials by any person constitutes an agreement to hold harmless the author, the National Association of State Departments of Agriculture, the National Center for Agricultural Law Research and Information, the University of Arkansas, and the United States Food and Drug Administration for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this book.

The National Association of State
Departments of Agriculture (NASDA)
1156 15th Street, N.W.
Suite 1020
Washington, D.C. 20005-1704
(202)296-9680
FAX: (202)296-9686
nasda@patriot.net

National Center for Agricultural Law Research
and Information
U of A School of Law - 147 Waterman Hall
University of Arkansas, Fayetteville, AR 72701
(501) 575-7646
FAX: (501) 575-5830

ALASKA

Alaska Statutes covered in this section include Title 17, Chapter 20, the “Alaska Food, Drug, and Cosmetic Act,” and Title 3, dealing with “Agriculture and Animals.” These acts were revised during the 1998 legislative session. References in these acts to commissioner means “Commissioner of Environmental Conservation.”¹³⁰ Under these acts, the commissioner may issue orders, regulations, permits, quarantines, and embargoes relating to food.¹³¹ The commissioner may set sanitation requirements for slaughtering, processing, storing, and transportation facilities.¹³² Other areas coming under the commissioner’s authority include: aquatic farms, “enforcement of hazard analysis critical point programs,” inspection of facilities, use of chemicals, and food product labeling.¹³³ Under these acts, the term federal act means the “Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U.S.C. §§301-392; 52 Stat. 1040-1059.”¹³⁴

Food

Food means:

1. anything used for food or drink for human or animal;
2. chewing gum; and
3. anything used for components of such.¹³⁵

¹³⁰ ALASKA STAT. § 17.20.075(1) (1988).

¹³¹ § 17.20.005(1)(A).

¹³² § 17.20.005(1)(B).

¹³³ §§ 17.20.005(1)(A), (1)(C), (3), (5)(A), (5)(B).

¹³⁴ § 17.20.370(10).

¹³⁵ § 17.20.370(12).

Anything regarding “sale of food” includes: “manufacture, production, processing, packing, exposure, offer, possession, and holding” of food for sale. It also includes: “the sale, dispensing, and giving of [food], and the supplying, or applying of [food] in the conduct of a [food] establishment.¹³⁶ “Contaminated with filth” means food . . . not securely protected from dust, dirt, and as far as necessary by all reasonable means, from foreign or injurious contamination.¹³⁷

Adulteration

The adulteration of any food is a “prohibited act,” as is the “receipt in commerce, manufacture, sale, delivery, holding, or offering for sale of any food . . . that is adulterated.”¹³⁸

Food is not adulterated if it contains or bears a substance that is not an “added substance” and the quantity of the substance in the food does not “ordinarily render it injurious to health.”¹³⁹

Food is adulterated if:

1. it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
2. it is contaminated with filth, rendered diseased, unwholesome, or unhealthy due to being “produced, prepared, packed, or held under unsanitary conditions;”
3. it is the product of a diseased animal, an animal that did not die by slaughter, or an animal fed uncooked offal from a slaughterhouse;
4. the container is made of any substance that might make the contents injurious to

¹³⁶ §17.20.340.

¹³⁷ §17.20.370.

¹³⁸ §17.20.290(a)(1).

¹³⁹ §17.20.020(a)(1).

- health;
5. any valuable part has been in whole or in part omitted or withdrawn;
 6. any substance has been in whole or in part substituted;
 7. any damage or inferiority has been concealed;
 8. anything has been added, mixed, or packed so as to increase bulk, reduce quality, reduce strength, or make it appear better or more valuable than it is;
 9. “contains any coal tar color other than one from a batch which has been certified under the authority of the federal act.”¹⁴⁰

Furthermore, food is adulterated if it has any added poisonous or added deleterious substance that may make it injurious to health.¹⁴¹ However, where a poisonous or deleterious substance is required in food production, or can’t be avoided “by good manufacturing practice. . . the department shall adopt regulations limiting the quantity of it to the extent necessary for the protection of public health.”¹⁴² When setting tolerances, the department shall appraise the degree to which the substance is required or can’t be avoided and “other ways in which the consumer may be affected by that or other poisonous or deleterious substances.”¹⁴³ An added poisonous or deleterious substance, is not considered adulterated if there is a regulation in effect limiting the quantity of the substance and it does not exceed regulation limits. Yet, if the substance exceeds regulation limits, it is unsafe and adulterated.¹⁴⁴

¹⁴⁰ §§ 17.20.020(a)(3-6), (b)(1-4), (d).

¹⁴¹ § 17.20.020(a)(1).

¹⁴² § 17.20.030.

¹⁴³ § 17.20.030.

¹⁴⁴ *Id.*

A confection is adulterated if it contains any alcohol or nonnutritive object or substance. A confection may contain the following without being considered adulterated: harmless coloring, flavoring, natural gum and pectin; harmless resinous glaze not in excess of four-tenths of one percent; harmless natural wax not in excess of four-tenths of one percent; or less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts. Chewing gum may contain “harmless nonnutritive masticatory substances.”¹⁴⁵

Additives

Poisonous & deleterious

See adulteration supra for references to poisonous and deleterious. There are no specific references to nor sections dealing with additives.

Misbranding

The misbranding of any food is a “prohibited act,” as is the “receipt in commerce, manufacture, sale, delivery, holding, or offering for sale of any food . . . that is misbranded.”¹⁴⁶

Food is misbranded and prohibited as such if:

2. its label is false or misleading,¹⁴⁷
3. it is depicted as a food which has a standard of quality defined by regulations and the food quality falls below this standard, unless its label states such case;
4. It is represented as for special dietary uses and its label does not contain information of vitamin, mineral, and other dietary properties required by the

¹⁴⁵ § 17.20.020(c).

¹⁴⁶ § 17.20.290(a)(2)-(3).

¹⁴⁷ § 17.20.040(1).

regulations as necessary for consumers to determine its value for such use,¹⁴⁸

5. any food fish product labeled or sold as halibut unless the fish food is Hippoglossus or Stenolepsis;¹⁴⁹
6. it contains artificial flavoring or coloring, or chemical preservative, and its label does not states that fact. Exemptions are established by regulations for those instances where compliance with this requirement is impracticable.¹⁵⁰

Mislabeling or Labeling

“Labeling” means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying the article.¹⁵¹ Standards and labeling requirements are established by the Commissioner of Environmental Conservation under either the Alaska Food, Drug, and Cosmetics Act or Title 3, Agriculture and Animals.

Enforcement

The Commissioner of Environmental Conservation is responsible for enforcing Alaska Statutes §§17.20.005 thru 17.20.075.¹⁵² Additionally, the commissioner is responsible for enforcing the prohibitions relating to food in Alaska Statutes §17.20.290,¹⁵³ and inspecting food establishments and facilities under Alaska Statues §17.20.200.

¹⁴⁸ § 17.20.040(10).

¹⁴⁹ § 17.20.045.

¹⁵⁰ § 17.20.040(11).

¹⁵¹ § 17.20.370(15).

¹⁵² § 17.20.072.

¹⁵³ § 17.20.290(b).

Inspection

Inspectors have authority to enter, inspect, and take samples, during reasonable hours, of any place in which food is manufactured, processed, packed, or held for commerce, including aquatic farms, and to enter any vehicle being used to transport or hold such food, in order to determine if the requirements of the Act are being violated.¹⁵⁴ Inspectors have authority to enter a storehouse, warehouse, cold storage plant, slaughterhouse, retail store, or any other building or place, during usual business hours, and inspect agricultural products.¹⁵⁵ Inspectors may take samples of any food or aquatic farm product. Examinations shall be made of the samples in order to determine if any part of the Act is being violated.¹⁵⁶ The commissioner may seek, from the superior court, a permanent or temporary injunction restraining a person from violating the inspections and examinations portions of §17.20.200 of the Alaska Food, Drug, and Cosmetic Act.¹⁵⁷

Condemnation or Detention

If there is probable cause that a food is so adulterated, or misbranded as to be dangerous, the Commissioner shall embargo or detain it, giving warning and notice of such by attaching a tag or mark. The notice shall warn all persons not to remove, dispose, or sell the food until permission is given by the commissioner or the court.¹⁵⁸ The Commissioner of Environmental Conservation shall petition the court for “a libel for condemnation” whenever embargoed or

¹⁵⁴ § 17.20.200(a).

¹⁵⁵ § 3.05.040(a) (1998).

¹⁵⁶ § 17.20.200(a)(2), (b).

¹⁵⁷ § 17.20.280.

¹⁵⁸ § 17.20.230(a).

detained food is found to be adulterated or misbranded.¹⁵⁹

If a class of food contaminated “with microorganisms during manufacture, procession, or packing” has entered commerce and the injurious nature of the food can’t be determined, in that case only, regulations shall be adopted for emergency permits to manufacturers, processors, or packers of that class of food which shall contain “conditions governing the manufacture, processing, or packing of that class of food.” These permits shall be for whatever temporary period of time is necessary to protect the public health. During this time, no one shall introduce into commerce such food “unless the manufacturer, processor, or packer of [the food] holds a permit issued by the Commissioner.”¹⁶⁰ Such emergency permit may be suspended if the conditions are violated, however, a person holding a suspended permit may apply for permit reinstatement. After a prompt hearing, suspended permits shall immediately be reinstated if it is found that the original or amended conditions are being followed.¹⁶¹

Destruction

The commissioner shall bring claims of adulteration or misbranding before the superior court.¹⁶² If the court finds an item is adulterated or misbranded, it shall order the item destroyed at the expense of the claimant and under the supervision of the commissioner.¹⁶³ The claimant of the item will be charged court fees, storage fees, and other proper expenses.¹⁶⁴ The

¹⁵⁹ § 17.20.240.

¹⁶⁰ § 17.20.050.

¹⁶¹ § 17.20.060.

¹⁶² § 17.20.240.

¹⁶³ § 17.20.250.

¹⁶⁴ § 17.20.250.

court may order the item returned to the claimant for correction of adulteration or misbranding under supervision of the director, provided all costs, fees, and expenses are paid, and a bond executed. The expense of supervision shall be paid by the claimant.¹⁶⁵

Perishable items such as meat, seafood, vegetable, or fruit in any building or vehicle which is unsound, or “contains a filthy, decomposed, or putrid substance,” or items that may be poisonous or harmful to health or otherwise unsafe are a nuisance. The commissioner shall immediately condemn, destroy, or “render such items unsalable as human food” whenever such items are found.¹⁶⁶

Confiscation

See condemnation and destruction above.

Penalties

Anyone “who with criminal negligence violates . . . a regulation, order, quarantine, embargo, recall . . . or provision of a permit issued under this [Act] is guilty of a class A misdemeanor for each offense.”¹⁶⁷

Meat and Meat Products

Meat and meat products are regulated under the Alaska Food, Drug, and Cosmetics Act and Alaska Statutes Title 3. The definitions and rules regarding adulteration, additives, misbranding, poisonous and deleterious substance, and inspections are the same for meat, slaughterhouses, packing houses, and cold storage facilities as they are for other foods and

¹⁶⁵ § 17.20.260.

¹⁶⁶ § 17.20.270.

¹⁶⁷ § 17.20.305.

agricultural products. Thus, these subjects are not covered in this section.

An agricultural product in violation of a regulation is deemed “a public nuisance injurious to the public interest” and may not be moved except by specific instruction of the commissioner or inspector.¹⁶⁸ Routine inspection of food animals is required in order to protect the public from disease.¹⁶⁹ All domesticated animals and poultry are subject to inspection and testing for diseases.¹⁷⁰ After inspection and testing, the inspector shall determine if the animal is subject to quarantine, slaughter, or destruction.¹⁷¹ Animals or poultry found to have any contagious disease are subject to quarantine, slaughter, or destruction.¹⁷² The inspector sets the conditions and length of time for quarantine. The inspector may condemn and determine the manner of slaughter or destruction. Reimbursement is allowed only for the slaughter or destruction of dairy cattle.¹⁷³ The Commissioner or an authorized veterinarian shall issue emergency orders to prevent the spread of infectious disease among livestock and poultry. These orders may include provisions for the care or for the extermination of the stock. These orders may “prohibit transportation of the stock and products derived from the stock, with compensation to owners as authorized by law.”¹⁷⁴

¹⁶⁸ § 3.05.050(a)(1).

¹⁶⁹ § 3.05.020(a).

¹⁷⁰ § 3.45.050.

¹⁷¹ § 3.45.060(a).

¹⁷² § 3.45.050.

¹⁷³ § 3.45.060(b)-(c).

¹⁷⁴ § 3.05.060(a).

Dairies and Dairy Products

Labeling and grading of milk and milk products and standards of sanitation will be “at least the minimum of current recommendations of the United States Public Health Service pasteurized milk ordinances as it may periodically be revised.”¹⁷⁵ Livestock regulations are discussed above under the heading “Meat and Meat Products.” Dairy animals kept by dairies offering products to the public shall be inspected and tested yearly. Dairy animals kept for private uses shall be inspected yearly if they are “readily accessible.” All dairy animals not accessible shall be inspected before being brought into a community where “animals used for dairy purposes are kept.” Inspections shall be made by or in cooperation with the Animal Disease Eradication Branch of the USDA using its regulations.¹⁷⁶ Reimbursement for the slaughter or destruction of dairy cattle is allowed.¹⁷⁷ There are no other sections relating to only dairies or dairy products. Sections relating only to milk and dairy products were repealed during the 1998 legislative session.

Poultry and Poultry Products

There are no sections relating to only poultry or poultry products. Poultry and poultry products will not be covered in this section as any questions can be answered by reference to the sections above.

Eggs

There are no sections relating to only eggs. Eggs will not be covered in this section as

¹⁷⁵ § 17.20.005(4).

¹⁷⁶ § 3.45.050.

¹⁷⁷ § 3.45.060(c).

any questions can be answered by reference to the sections above.

Seafood

Requirements regarding frozen fish are the same as those for meat and are covered in the section above under “Meat and Meat Products.” Enforcement, inspection, condemnation, destruction, penalties, adulteration, misbranding, and labeling are covered in the above sections. Thus these requirements will not be repeated in this section.

Seafood processing facilities and processing vessels must have a permit and the permit must be renewed annually. All seafood processing facilities and processing vessels must have a written hazard analysis critical control point plan. “A critical control point means a point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated, or reduced to acceptable levels.” This plan must “explain the procedures used at each critical control point in the operation” of the seafood processing facility or processing vessel. These plans may be reviewed or commented on as to completeness. However, the department may not require annual submission of the plan unless a change in operation, product, or process requires a change in the plan.¹⁷⁸ Any facility or aquatic farm holding a permit from the commissioner must give free access to inspectors for determining if the conditions of the permit are being followed. Denial of access is grounds for permit suspension.¹⁷⁹

The commissioner shall monitor aquatic farms and aquatic farm products and assure regulations are followed including requirements of the “national shellfish sanitation program

¹⁷⁸ § 17.20.065(a) - (b).

¹⁷⁹ § 17.20.070.

manual of operations published by the Food and Drug Administration.”¹⁸⁰ It is misbranding and a prohibited act to label or sell any food fish product as halibut unless the fish food is Hippoglossus or Stenolepsis;¹⁸¹

Federal and State Cooperation

The acts relating to food safety seldom mention any federal acts or cooperation between the state and the federal government. Domestic animals and poultry are subject to inspection and testing by the Animal Disease Eradication Branch of the USDA. Animal inspections are to be made by or in cooperation with the Animal Disease Eradication Branch of the USDA and “in accordance with its regulations.”¹⁸² The commissioner may enter into cooperative agreements with the USDA involving disease control in dairy cattle.¹⁸³ Title 3, Chapter 5 relating to agriculture and animals authorizes cooperation with federal agencies.¹⁸⁴

¹⁸⁰ § 17.20.005(6).

¹⁸¹ § 17.20.045.

¹⁸² § 3.45.050.

¹⁸³ § 3.45.070.

¹⁸⁴ § 3.05.010(b)(5).