

# **FOOD SAFETY**

## **State and Federal Standards and Regulations**

### *Colorado*

**1999**

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## COLORADO

### Meat Regulation

Colorado’s comprehensive statute —“Slaughter, Processing and Sale of Meat Animals Act”— is designed to regulate all aspects of the slaughter, processing and sale of meat animals intended for human consumption. The Act’s provisions apply to meat and meat products that are derived from cattle, calves, sheep, swine, goats, large game animals and other foods animals including rabbit and poultry.<sup>449</sup> Poultry refers to any domesticated bird including, but not limited to, chickens, turkeys, ducks and geese.<sup>450</sup>

The primary regulatory approach is to require a license from the Department of Agriculture for all operators of food plans, locker plants or meat-processing facilities.<sup>451</sup> “Food plans” include the sale of meat or meat products in a package or delivered during a period of time for storage in a locker box, home freezer or other freezer facility. “Locker plant” is a location where space is rented for storage of frozen food. “Meat-processing facility” is an establishment where meat is slaughtered, dressed, processed, cut, trimmed, wrapped or packaged.<sup>452</sup> Inspection of these facilities is required before the license is issued.<sup>453</sup>

Exempt from the licensing requirement are operations that are licensed under other provisions of Colorado law, retail grocery stores in which 75% or more of the business is from products other than bulk meat, and those establishments that are regulated by USDA. Religious

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<sup>449</sup> COLO. REV. STAT. § 35-33-103 (19)(1998).

<sup>450</sup> § 35-33-103(24).

<sup>451</sup> § 35-33-401.

<sup>452</sup> §§ 35-33-103 (10), (18), (20).

<sup>453</sup> § 35-33-402.

practices of ritual slaughter are also exempt.<sup>454</sup>

### **Federal/State Cooperation**

The Colorado statute includes specific provisions for cooperative agreements between state and federal agencies to avoid duplication of effort.<sup>455</sup> The Department is to adopt regulations of the USDA where applicable.<sup>456</sup>

### **Inspection**

The Department is given access to any premises for the purpose of inspection. In addition to the inspections prior to licensing mentioned above, all meat and meat products are subject to inspection under the federal rules. Meat and meat products processed by custom processing of slaughter of uninspected animals must be marked as “Not For Sale.”<sup>457</sup> Specific sanitary requirements of all meat-processing facilities are outlined in the statute, and the Department is authorized to develop regulations and standards relating to all aspects of the slaughter, processing and sale of meat and meat products to ensure public health.<sup>458</sup> A part of the authority is to conduct inspections necessary to enforce the regulations and standards.<sup>459</sup>

### **Adulteration**

It is a violation of the statute to receive for purpose of slaughter, slaughter, sell, hold for sale, can or pack, or give away for use as human food, meat that is adulterated, diseased or from

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<sup>454</sup> § 35-33-107.

<sup>455</sup> § 35-33-106.

<sup>456</sup> §§ 35-33-104(3), (4).

<sup>457</sup> § 35-33-201(10).

<sup>458</sup> §§ 35-33-104, -201.

<sup>459</sup> § 35-33-104(4).

the carcass of any animal that died from disease or exposure. “Adulterated” is defined by reference to the Colorado Food and Drug Act.<sup>460</sup> That Act defines “adulterated” consistently with the federal law but adds specific reference to chopped or ground beef or hamburger, preservatives, artificial coloring in meat or meat products and the fat content of sausage.<sup>461</sup> Chopped or ground beef or hamburger is adulterated if it contains any meat other than voluntary, striated muscle of beef, or if total fat content is in excess of 30 percent. Antiseptic or chemical preservatives are prohibited in fresh meat, fresh meat products, fresh poultry or fresh poultry products. Artificial coloring is prohibited in meat or meat products. Pork sausage or pork breakfast sausage may not have total fat content in excess of 50 percent.<sup>462</sup>

### **Misbranding**

The Department is also required to issue regulations related to labeling and marking of meat and meat products based on those of USDA.<sup>463</sup> Furthermore, specific requirements related to advertisement of meat and meat products are outlined in the Act. For example, any representation of the grade or yield must conform to USDA standards for meat grades.<sup>464</sup>

### **Enforcement**

In addition to the inspection authority mentioned above, the Department may issue and enforce “cease and desist” orders to any person found in violation of the Act or regulations of the Department. Retention orders may also be used followed by a hearing to determine if the article

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<sup>460</sup> § 35-33-204.

<sup>461</sup> § 25-5-410 (1990).

<sup>462</sup> §§ 25-5-410(k)-(n).

<sup>463</sup> § 35-33-104(3).

<sup>464</sup> § 35-33-302.

should be condemned as unfit for human consumption.<sup>465</sup> Sale of adulterated or diseased meat is a criminal violation<sup>466</sup> as is false or deceptive advertisement.<sup>467</sup> Operation without a license is also a criminal violation.<sup>468</sup> Licenses may be denied, revoked or suspended for violations. The Department may refuse to renew licenses or place a licensee on probation for a violation.<sup>469</sup> In addition to criminal penalties, the Department may assess civil penalties for violations.<sup>470</sup>

One interesting aspect of the Colorado statute is the “Sunset” Provision. The Act is repealed by its own terms as of July 1, 2010 (unless re-enacted).<sup>471</sup>

### **Food Regulation**

The Department of Public Health and Environment is charged with regulation of food under the Colorado Food and Drug Act (also called the “Pure Food and Drug Act”). “Food” means articles used for food or drink by man or other animals, chewing gum or their components.<sup>472</sup> The authority of the Department of Public Health and Environment overlaps that of the Department of Agriculture with regard to items regulated under Department of Agriculture authority, such as meat or eggs, but the Department of Public Health and Environment may,

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<sup>465</sup> §§ 35-33-104(5)-(6).

<sup>466</sup> § 35-33-204.

<sup>467</sup> § 35-33-302(12).

<sup>468</sup> § 35-33-401.

<sup>469</sup> § 35-33-404.

<sup>470</sup> § 35-33-405.

<sup>471</sup> § 35-33-407.

<sup>472</sup> § 25-5-402(11).

when appropriate, take action with regard to these articles to protect public health.<sup>473</sup>

The Department is to make regulations for efficient enforcement of the Act, and these are to conform, as far as practicable, with various federal provisions including the Federal Food, Drug and Cosmetic Act, the Federal Meat Inspection Act and the Federal Fair Packaging and Labeling Act.<sup>474</sup> Definitions and standards of identity, quality and fill of container for food adopted under the Federal Act are applicable, but the Department may adopt definitions and standards for foods not subject to federal requirements.<sup>475</sup> Cooperation with federal authorities is mandated.<sup>476</sup>

One approach to regulation is the issuance of permits to manufacturers, processors and packers for any class of food in which the potential for contamination by microorganisms exists during manufacture, processing or packaging, and the injurious nature cannot be adequately determined after such articles enter commerce.<sup>477</sup>

## **Inspections**

The Department is given authority to inspect any factory, warehouse or establishment in which food is manufactured, processed or packed, or held for introduction into commerce or to enter any vehicle being used for food transport to inspect premises and equipment and to take samples. Copies of any reports, as well as the results of any analysis of samples, are to be

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<sup>473</sup> See e.g. *Ferch v. People*, 74 P. 2d 712, 101 Colo. 471 (1938). The attorney general could rely on either the Pure Food and Drug Act or the Egg Law when acts constitute an offense under either.

<sup>474</sup> COLO. REV. STAT § 25-5-420 (1990).

<sup>475</sup> § 25-5-409.

<sup>476</sup> § 25-5-423.

<sup>477</sup> § 25-5-412.

provided to the owner of the premises or vehicle.<sup>478</sup>

### **Adulteration**

Under the Act, it is a violation to manufacture, sell, deliver, hold or offer for sale, or receive in commerce any food that is adulterated. The adulteration of food is also a violation.<sup>479</sup>

Adulteration is defined consistently with the Federal Act except with regard to pesticide tolerance, which the Department has authority to prescribe “whether or not in accordance with the regulations promulgated under the Federal Act.” The adulteration definition also includes specific reference to chopped or ground beef, or hamburger and pork sausage, or preservatives and artificial coloring in fresh meat mentioned above.<sup>480</sup>

### **Misbranding**

Misbranding of food is also a violation of the Act, as is the manufacture, sale or delivery, or the holding or offering for sale, or receipt in commerce of misbranded food.<sup>481</sup> Dissemination of false or misleading advertisement is prohibited as well.<sup>482</sup> Misbranding is defined consistently with the Federal Act, and the exemptions of Federal Law are adopted.<sup>483</sup>

Specific requirements relate to imported meat or meat products that must bear a label stating that it is imported.<sup>484</sup> Pesticides applied to produce after harvest must be indicated on

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<sup>478</sup> § 25-5-421.

<sup>479</sup> § 25-5-403.

<sup>480</sup> §§ 25-5-410, -413.

<sup>481</sup> § 25-5-403.

<sup>482</sup> § 25-5-403(e).

<sup>483</sup> § 25-5-411.

<sup>484</sup> §§ 25-5-411(n)-(o).

shipping containers.<sup>485</sup> All consumer commodities must be labeled in conformity with the Federal Fair Packaging and Labeling Act.<sup>486</sup>

## **Enforcement**

In addition to the inspection authority mentioned above, the Department may tag and embargo articles believed to be adulterated or misbranded and petition the district court to condemn the article. If found to be in violation, the article is to be destroyed at expense of the owner unless the misbranding or adulteration can be corrected. Upon posting of a bond for expenses and costs, and to assure compliance, the article may be released to the owner.<sup>487</sup> If meat, seafood, poultry, vegetable or other perishable articles are found to be unsound or contain filthy, decomposed or putrid substances that may be poisonous or deleterious to health, the Department may destroy such article as a public nuisance.<sup>488</sup>

The district attorney may initiate appropriate proceeding at the request of the Department.<sup>489</sup> Violations are generally considered misdemeanors.<sup>490</sup> The Department has discretion to issue suitable written notice or warnings for minor violations rather than to institute proceedings.<sup>491</sup> The district court is authorized, upon petition by the Department, to grant

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<sup>485</sup> §§ 25-5-411(1)(m).

<sup>486</sup> § 25-5-419.

<sup>487</sup> § 25-5-406.

<sup>488</sup> § 25-5-406(4).

<sup>489</sup> § 25-5-407.

<sup>490</sup> § 25-5-405.

<sup>491</sup> § 25-5-408.

temporary or permanent injunctions to restrain violators.<sup>492</sup>

### **Dairy Products, Imitation Dairy Products and Frozen Desserts**

The Department of Health is empowered to regulate the production, manufacture and sale of dairy products, imitation dairy products and frozen desserts.<sup>493</sup>

#### **Dairy Products**

Dairy products (food products manufactured from milk or cream and combinations of other ingredients) are subject to detailed sanitary requirements and specific standards. The sanitary requirements apply not only to the dairies where the milk is produced, but to milk plants, equipment and utensils, containers and means of transport.<sup>494</sup> Licenses are required of testers of milk, cream or any other dairy product, and for all persons engaged in receiving, buying, selling or otherwise handling milk or cream (except public transport companies).<sup>495</sup>

Specific standards are set for butter, condensed milk and cream, and for whole milk, cream and cheese. Violations are a misdemeanor.<sup>496</sup>

#### **Imitation Dairy Products**

Products in imitation or semblance of any dairy product must be properly labeled, handled or otherwise marked for identification. Injunctive relief may be sought in court to restrain violations.<sup>497</sup>

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<sup>492</sup> § 25-5-404.

<sup>493</sup> §§ 25-5.5-103, -205, -309.

<sup>494</sup> §§ 25-5.5-104-106.

<sup>495</sup> § 25-5.5-107.

<sup>496</sup> §§ 25-5.5-102, -108, -110, -116.

<sup>497</sup> §§ 25-5.5-204, -206.

## **Frozen Desserts**

Specific standards are set for ice cream, French ice cream and custards, ice milk, low fat frozen dairy dessert, sherbert and water ice. Such food products, if misbranded or adulterated, are subject to embargo and condemnation.<sup>498</sup>

## **Eggs**

The Department of Agriculture is responsible for regulation labeling, sale, storage and inspection of eggs sold in Colorado.<sup>499</sup> A license is required of every person buying poultry eggs for resale or selling poultry eggs (except one who produces and sells only at retail less than 250 dozen eggs per month).<sup>500</sup>

All shell eggs must be candled and graded, in compliance with USDA standards, grades and weight classes, and kept in adequate refrigeration until sold to the consumer.<sup>501</sup> The Department is authorized to inspect all frozen eggs, egg solids or any egg products imported into the state, and USDA standards are applicable. All imported eggs are to be candled, graded and edible.<sup>502</sup>

Violation of any provision of the Act is a misdemeanor. Civil penalties may also be imposed.<sup>503</sup>

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<sup>498</sup> §§ 25-5.5-303 to -307, -311.

<sup>499</sup> § 35-21-106.

<sup>500</sup> §§ 35-21-104, -105.

<sup>501</sup> § 35-21-103.

<sup>502</sup> §§ 35-21-102 (1), (3).

<sup>503</sup> §§ 35-21-107, -107.5.