

**FOOD SAFETY**  
**State and Federal Standards and Regulations**

*Delaware*

**1999**

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The National Association of State  
Departments of Agriculture (NASDA)  
1156 15<sup>th</sup> 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

## DELAWARE

### Food

Delaware defines "food" as all articles used for food, drink, ice, confectionery or condiment, by use by humans or other animal, whether simple, mixed, or compound.<sup>523</sup> The manufacture or sale of adulterated or misbranded food is prohibited.<sup>524</sup>

### When Food Is Deemed Adulterated

Delaware law states that a food is deemed adulterated if:

- (1) any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;
- (2) any part has been partially or completely substituted;
- (3) any valuable part has been partially or completely abstracted;
- (4) damage or inferiority has been concealed in any way;
- (5) it contains any poisonous or other added deleterious ingredient which may render the article of food injurious to health. There is then an exception for the preservation of food for shipment purposes;
- (6) it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than from slaughter.<sup>525</sup>

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<sup>523</sup> DEL. CODE ANN. tit. 16 § 3301 (1995).

<sup>524</sup> § 3302.

<sup>525</sup> § 3304.

Delaware law also controls adulteration of a confectionery and allows for the destruction of adulterated candy.<sup>526</sup>

### **Misbranded**

Misbranded food is all food which enters into the composition of food, when the package or label bears any statement or design that is false or misleading in any particular, and is any food that bears a false or misleading label as to the place in which it was manufactured or produced.<sup>527</sup>

Delaware law states that a food is misbranded if:

1. it is an imitation of another food or offered for sale under the distinctive name of another food;
2. it is labeled to deceive or mislead the purchaser or purports to be a foreign product, and is not, or if any part of the product was removed and re-packaged, or if it fails to bear a statement that would label the quantity of “morphine, opium, cocaine, heroin” or other type substances that is contained in the food;
3. it does not clearly display the weight of the product;
4. it is false or misleading as to any particular regarding the ingredients or substances in the food;
5. the food was formerly frozen and then labeled as fresh.<sup>528</sup>

### **Exceptions To Adulteration Or Misbranding**

An article of food which does not contain any added poisonous or deleterious ingredients

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<sup>526</sup> §§ 3305-3306.

<sup>527</sup> § 3307.

<sup>528</sup> § 3309.

is not deemed to be adulterated or misbranded in the following cases if:

1. it is a mixture or compound known as a food under its own distinctive name and if it is not an imitation of another article, and if the name is accompanied with the place of manufacture or production.
2. it is a food and plainly bears the words compound, imitation, or blend.<sup>529</sup>

### **Violations**

Violators of Delaware law are subject to a fine, imprisonment or both.<sup>530</sup>

### **Other Exceptions**

An offense is not committed if a food that is required to comply with standards does not, and the difference is made known at the time of mixture to a food that is not intended to fraudulently increase its bulk or weight, or not to conceal inferior quality, if at the time of purchase, the purchaser knows of the mixture.<sup>531</sup>

### **Enforcement**

The Department of Health and Social Services is the enforcing agency with the authority to promulgate rules and regulations relating to food.<sup>532</sup>

### **Treatment Of Meat**

No person shall sell meat or flesh of any animal that contains any drug or preparation that is deleterious or detrimental to persons that may eat the same. This also applies to internal or

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<sup>529</sup> § 3310.

<sup>530</sup> § 3312.

<sup>531</sup> § 3314.

<sup>532</sup> § 3315.

external application of drugs or preparations. Upon a showing of probable cause, a warrant will be issued to search the place where meat is held. The officer may take samples of the suspected flesh. Violation of the meat drug prohibition carry both monetary penalties and imprisonment.<sup>533</sup>

### **Seizure And Quarantine**

When an authorized agent of the Department either finds, or has probable cause to believe that a food is adulterated or misbranded they may tag or mark the item, and give notice that the item is under suspicion of being adulterated or misbranded. The agent can detain or quarantine the item and warn all persons not to dispose of the article by sale or other disposition until given permission to do so. Once notified, no one may dispose or sell the item without permission.<sup>534</sup>

If the article is deemed unfit or unsafe, then the article will be destroyed at the expense of the claimant, under the supervision of the agent. All storage, and other costs, will be assessed against the claimant. If the misbranding or adulteration can be cured by proper labeling, then such article may be relabeled or reprocessed. The Department has the authority to destroy, condemn or render unsaleable as human food articles those which are unsound, contain any filthy decomposed or putrid substance, or that may be unsafe, poisonous, or deleterious. This applies to any food found in any room, building, vehicle of transportation or other structure.<sup>535</sup>

Other chapters of the law deal with specific foods or food inspection processes. They are:

1. canneries and other establishments processing food. This chapter outlines rules and regulations governing such establishments and the inspection and licensing

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<sup>533</sup> §§ 3317-3319.

<sup>534</sup> § 3323.

<sup>535</sup> *Id.*

processes;<sup>536</sup>

2. tomato processing. The provisions outlaw deceptive labeling of tomatoes and specifies prohibited processing practices;<sup>537</sup>
3. frozen sweetened products. This chapter outlines prohibited and permitted ingredients;<sup>538</sup>
4. food storage. This chapter outlines the marking dates and transportation regulations for food storage. It sets out guidelines for the disposal of stored food as well;<sup>539</sup>
5. natural food substances, which by their definition includes only amygdalin, vitamin B-17;<sup>540</sup>
6. the meat and poultry products inspection.<sup>541</sup> Delaware's Department of Agriculture administers these provisions.<sup>542</sup> The Federal Food, Drug and Cosmetic Act and the Federal Meat Inspection Act are incorporated by reference in this chapter, as are the definitions in those acts.<sup>543</sup> The Meat and Poultry Products Inspection Act provides for the inspection of post mortem and ante

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<sup>536</sup> §§ 3501-3513.

<sup>537</sup> §§ 3901-3904.

<sup>538</sup> § 4101-4107.

<sup>539</sup> § 4501-4511.

<sup>540</sup> § 4901-4905.

<sup>541</sup> DEL. CODE ANN. tit. 3 § 8701 *et seq.* (1993).

<sup>542</sup> § 8702.

<sup>543</sup> § 8703.

mortem livestock and poultry products. It also requires certain labeling, container, and sanitary conditions. It outlines licensing provisions for slaughter facilities.<sup>544</sup>

This act also prohibits the slaughter, sale, transportation of, adulteration, or misbranding of any poultry or livestock that is to be used for human consumption.<sup>545</sup>

Furthermore, no one shall fraudulently or falsely label or possess falsely labeled animals intended for food. No person shall transport or sell equine intended for use as human food, nor shall they buy, sell, transport, or offer for sale or transportation livestock or poultry products that are not intended for human use unless they are denatured or identified as such. There is a prohibition against buying, selling, transporting, or offering to sell or transport dead, dying, disabled, or diseased animals, or any animal which died otherwise than by slaughter for human food purposes.<sup>546</sup> Violators are subject to imprisonment, a fine or both.<sup>547</sup>

If the inspector has reason to believe that there are violations of this chapter, they are authorized to detain the goods. The property, if it is deemed to have been in violation of this chapter, will be forfeited to the Department. Seizure of the goods may occur if the seizure is incident to an arrest; the property has been the subject of a prior judgment in favor of the State; the Department has probable cause to believe that the property is directly or indirectly a danger to health or safety; the Department has reasonable belief that the property is in violation, or intended to violate this chapter. In some circumstances this seizure can take place

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<sup>544</sup> §§ 8707-8708.

<sup>545</sup> § 8710.

<sup>546</sup> §§ 8711-8712.

<sup>547</sup> §§ 8713, 8719.

immediately.<sup>548</sup>

### **Adulterated Meat or Poultry**

Meat or poultry is deemed adulterated:

1. if it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance, the article shall not be considered adulterated under this clause if the quantity of the substance in or on the article does not ordinarily render it injurious to health;
2. if it bears or contains (by reason of administration of any substance to the livestock or poultry or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity, (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food;
3. if it is, in whole or part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug, and Cosmetic Act;
4. if it bears or contains any food additive that is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;
5. if it bears or contains any color additive that is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act, provided that article which is not otherwise deemed adulterated under this subdivision or subdivision (3) or (4) of this section shall nevertheless be deemed adulterated if use of the

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<sup>548</sup> §§ 8716-8717.

- pesticide chemical, food additive, or color additive, in or on the article, is prohibited by regulations of the Secretary in official establishments;
6. if it consists in whole or in part of any filthy, putrid, or decomposed substance, or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;
  7. if it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
  8. if it is, in whole or part, the product of an animal (including poultry) which has died otherwise than by slaughter;
  9. if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
  10. if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;
  11. if any valuable constituent has been, in whole or in part, been omitted or abstracted therefrom; or if any substance has been substituted, wholly, or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or
  12. if it is margarine containing animal fat and any of the raw material used therein

consisted in whole or in part of any filthy, putrid, or decomposed substance.<sup>549</sup>

### **Misbranded Livestock and Poultry**

Meat and poultry is considered misbranded:

1. if its labeling is false or misleading;
2. if it is offered for sale under the name of another food;
3. if it's an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" appears directly after the name of the food imitated ;
4. if the container is misleadingly made, formed or filled ;
5. unless the label contains
  - (a) the manufacturer's, packer's, or distributor's name and place of business;
  - (b) an accurate statement of quantity, by weight, or other measure (reasonable variations are permitted);
6. If the label is not conspicuous and easily understood by the ordinary user of the product;
7. if the food claims to be a defined and standardized food as prescribed by section 8708 or the Federal Act, and it does not conform to the definition and standard, unless its label contains the name of the defined and standardized food, and if required, the common names of optional ingredients that are in the food;
8. if it purports to be or is represented as a food standardized under section 8708, but falls below that standard, unless the label indicates that the food, or fill

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<sup>549</sup> § 8704.

- requirements, fall below the standard;
9. if the food is not subject to part (7) of this section then it must bear labeling
    - (a) that clearly states the common name of the food; and
    - (b) if made from two or more ingredients, the common name of all ingredients, with the exception of spices, flavorings, and colorings that do not otherwise need to be named, if such naming is impractical or deceptive, or results in unfair competition;
  10. unless the label states vitamin, mineral, and other dietary properties if it claims to be a dietary use product, so that consumers may be informed as to real value of the product. Exemptions will be recognized if compliance with this part is impracticable;
  11. unless the labeling states the presence of artificial flavoring, artificial coloring, or chemical preservatives. Exemptions will be recognized if compliance with this part is impracticable;
  12. if it fails to bear directly and on its containers the official inspection legend as required by the Secretary, as to the number of the establishment where it was prepared, and other information that the Secretary may require to ensure that the consumer is not misled, so that they will know how to handle the article to maintain its wholesomeness.<sup>550</sup>

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<sup>550</sup> § 8705.