

FOOD SAFETY

State and Federal Standards and Regulations

Kansas

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KANSAS

Kansas regulates food quality through the Kansas Meat and Poultry Inspection Act, the Food, Drug and Cosmetic Act, and through comprehensive legislation on milk, cream, dairy products, and eggs. The regulating authority is shared by the Board of Agriculture and the Department of Health and the Environment.

Meat and Poultry Inspection

The state Board of Agriculture is charged with administration of the Kansas Meat and Poultry Inspection Act⁹⁹² to prevent products which are adulterated or improperly labeled from entering intrastate commerce.⁹⁹³ The Act defines “livestock” to include cattle, buffalo, sheep, swine, goats, domesticated deer, horses, mules or other equines and all creatures of the ratite family not indigenous to the state, including ostriches, emus and rheas,⁹⁹⁴ while “meat food products” includes meat from livestock or domestic rabbits.⁹⁹⁵ “Poultry” means any domesticated bird.⁹⁹⁶

Registration is required of those who engage in business in intrastate commerce as meat brokers, animal food manufacturers, wholesalers, or public warehousemen handling meat and poultry products.⁹⁹⁷

⁹⁹² KAN. STAT. ANN. § 65-6a44 (1992 & Supp. 1998).

⁹⁹³ §§ 65-6a20, 65-6a24.

⁹⁹⁴ § 65-6a18(aa).

⁹⁹⁵ § 65-6a18(g).

⁹⁹⁶ § 65-6a18(h).

⁹⁹⁷ § 65-6a34.

Inspection

The Act requires the inspection of livestock, poultry and domestic rabbits before they enter a slaughter facility. If they show symptoms of disease, they must be handled separately from all other animals.⁹⁹⁸ Post-mortem inspection of carcasses and parts capable for use as human food is also required. Carcasses and parts found to be adulterated must be condemned and destroyed for food purposes.⁹⁹⁹ If these articles are brought into a facility which does slaughtering, canning, salting or packing, inspection must be completed prior to their entry into any department where the carcasses or parts are to be treated and prepared for meat food products or poultry food products.¹⁰⁰⁰

Meat food products and poultry food products are also subject to examination and inspection.¹⁰⁰¹ Inspection may also be made of the sanitary conditions of the establishments where slaughtering, canning, salting or packing is carried out.¹⁰⁰²

It is a violation of the Act to or sell, offer or expose for sale or to distribute or transport any carcass or part thereof capable for use as human food which has not been inspected and passed as required under the Act.¹⁰⁰³

The inspection requirements do not apply to the slaughter of animals of a person's own raising when for use of the person, members of the household (present and former) and

⁹⁹⁸ § 65-6a20.

⁹⁹⁹ § 65-6a21.

¹⁰⁰⁰ § 65-6a22.

¹⁰⁰¹ § 65-6a23.

¹⁰⁰² § 65-6a25.

¹⁰⁰³ § 65-6a27(b)(2).

nonpaying guests and employees.¹⁰⁰⁴ Nor do they apply to custom slaughtering or the custom preparation of meat food products from animals of a person's own raising or to game animals. Such establishments still must comply with the regulation, sanitation and adulteration provisions.¹⁰⁰⁵ Food locker plants who prepare products for the owner or products that have been inspected are exempt from the regulation and inspection provisions.¹⁰⁰⁶ Retail businesses that handle inspected carcasses and parts and restaurants who prepare only inspected and processed carcasses or parts are also exempt from the Act.¹⁰⁰⁷

The storage of meat food products must be handled in such a way as to prevent adulteration or misbranding. This aspect is regulated by the Board of Agriculture.¹⁰⁰⁸ The Board of Agriculture may exempt operations that would be exempt under the federal law.¹⁰⁰⁹

Adulteration

The Act prohibits the sale, offering or exposing for sale, distributing or transporting of any meat, meat food product, poultry or poultry product which is adulterated. It also is a violation to cause adulteration while the product is being distributed, transported, or held for sale.¹⁰¹⁰ Adulteration is defined consistently with the federal law.¹⁰¹¹

¹⁰⁰⁴ § 65-6a31(a)(1).

¹⁰⁰⁵ § 65-6a31(b).

¹⁰⁰⁶ § 65-6a31(c).

¹⁰⁰⁷ §§ 65-6a31(a)(2)-(3).

¹⁰⁰⁸ § 65-6a32.

¹⁰⁰⁹ § 65-6a44.

¹⁰¹⁰ § 65-6a27(a)(3).

¹⁰¹¹ § 65-6a18(l).

Misbranding

Misbranding is also a violation.¹⁰¹² Misbranding is also defined consistently with the federal law.¹⁰¹³ In addition, products which have been inspected are to be labeled or marked as “Kansas inspected and passed” either directly on the product or on the container. The Board of Agriculture may adopt rules with regard to required labeling and any false or misleading marking or labeling is prohibited.¹⁰¹⁴ Special labeling requirements apply to meat and meat products from horses, mules and other equines and domestic rabbits.¹⁰¹⁵ Imported meat and poultry (not including fish or products of fish, except for catfish) must be labeled as “imported” with the country of origin specified.¹⁰¹⁶

Enforcement

The primary method of enforcing the Act is through the authority of the Secretary to withdraw or refuse to provide inspection services if the applicant or recipient has been convicted of any felony or has committed more than one violation related to acquiring, handling, transporting, or distribution unwholesome, mislabeled or deceptively packaged food or fraud in connection with food transactions. Also establishments which fail to maintain sanitary conditions or destroy condemned articles may be denied inspection services.¹⁰¹⁷

If meat or meat products are believed to be adulterated or misbranded, the article may be

¹⁰¹² § 65-6a27(6).

¹⁰¹³ § 65-6a18(m).

¹⁰¹⁴ § 65-6a24.

¹⁰¹⁵ § 65-6a29.

¹⁰¹⁶ §§ 65-6a47, 65-6a53.

¹⁰¹⁷ § 65-6a36.

detained or embargoed and a condemnation proceeding instituted in district court. If the article is found to be adulterated or misbranded, it must be destroyed with costs and expenses paid by the owner. If the problem can be corrected by reprocessing, the owner may post a bond (and pay all costs and expenses) and take possession.¹⁰¹⁸

Three areas are covered by special legislation: the addition of water to pork products,¹⁰¹⁹ the addition of water to dressed poultry to increase weight,¹⁰²⁰ and the use of certain chemicals in meat products.¹⁰²¹

District courts are empowered to prevent and restrain violations in all cases, except those involving false and misleading marking and labeling of size and form of containers.¹⁰²² In those cases, the secretary may withhold the use of the marking, labeling or container and the applicant's remedy is to seek judicial review after an administrative hearing.¹⁰²³ Criminal penalties may be imposed for violations.¹⁰²⁴

Federal/State Cooperation

The Act specifically directs the Board of Agriculture to cooperate with USDA under

¹⁰¹⁸ § 65-6a37 (referencing procedures set out in § 65-660 for foods in general).

¹⁰¹⁹ § 65-6a44a.

¹⁰²⁰ § 2-1114 (1991).

¹⁰²¹ § 65-619.

¹⁰²² § 65-6a39.

¹⁰²³ § 65-6a24(e).

¹⁰²⁴ § 65-6a40.

provisions of the federal Acts.¹⁰²⁵

Food, Drug and Cosmetic Act

The State Department of Health and Environment administers provisions related to food quality under the Kansas Food, Drug and Cosmetic Act and is to promulgate rules and regulations which are to conform to those under the federal act insofar as is practicable.¹⁰²⁶

“Food” for this purpose includes articles used for food or drink by man or other animals or their components.¹⁰²⁷ The regulations may include standards of identity, definitions, standards of quality and/or fill of container.¹⁰²⁸

One means of administering the Act is to require permits with attached conditions for the manufacture, processing or packaging of any class of food which may become contaminated with microorganisms which would be injurious to health where the injurious nature cannot be determined after the articles enter commerce.¹⁰²⁹

Inspection

The Act gives the secretary or authorized agents free access at all reasonable hours to any factory, warehouse or establishment where foods are manufactured, processed or packed or held for introduction to commerce for purposes of inspecting and sampling.¹⁰³⁰ It is a violation to

¹⁰²⁵ §§ 65-6a19, 65-6a35.

¹⁰²⁶ §§ 65-673, 65-676.

¹⁰²⁷ § 65-656(c).

¹⁰²⁸ § 65-663.

¹⁰²⁹ § 65-666.

¹⁰³⁰ § 65-674.

refuse entry or inspection or the taking of samples.¹⁰³¹

Adulteration

The Act prohibits the sale, delivery, holding or offering for sale or the receipt in commerce of adulterated food. Adulteration is itself prohibited.¹⁰³² Adulteration is defined consistently with the federal laws and with some detail included with regard to tolerances for food additives, pesticide chemical residues and color additives with specific references to the federal regulations.¹⁰³³

Misbranding

Misbranding is also a violation of the Act.¹⁰³⁴ The definition of misbranding is consistent with the federal law. This includes violations related to definitions, standards of identity, standards of quality and/or fill of container.¹⁰³⁵ One specific labeling requirement appears outside the Act but is also enforced by the Secretary. Substances made in imitation of or compounds with butter designated as “oleomargarine” or “margarine” must be plainly labeled as such.¹⁰³⁶

The false advertisement of food is a similar violation.¹⁰³⁷ This includes any advertisement

¹⁰³¹ § 65-657(f).

¹⁰³² § 65-657(a) - (c).

¹⁰³³ §§ 65-664, 65-667.

¹⁰³⁴ § 65-657(a) - (c).

¹⁰³⁵ § 65-665.

¹⁰³⁶ § 65-639.

¹⁰³⁷ § 65-657(e).

which is false or misleading in any particular.¹⁰³⁸ If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, the extent to which the label or advertisement fails to reveal material facts is to be taken into account.¹⁰³⁹

Enforcement

The Department of Health and Environment is authorized to enforce the provisions of the Act through inspections.¹⁰⁴⁰ The secretary may seek injunctive relief in district court to restrain violations¹⁰⁴¹ and each county attorney may initiate proceedings when violations are reported.¹⁰⁴² A detailed procedure is set out for detention and condemnation of articles found to be adulterated or misbranded. The procedure allows immediate destruction of any perishable articles which are unsound, or contain filthy, decomposed or putrid substances or that may be poisonous or deleterious to health or otherwise unsafe as a nuisance.¹⁰⁴³

Violations of the Act are punishable as misdemeanors.¹⁰⁴⁴ Minor violations may be handled with a suitable notice or warning rather than by institution of court proceedings.¹⁰⁴⁵

Milk, Cream, and Dairy Products

¹⁰³⁸ § 65-672.

¹⁰³⁹ § 65-656(k).

¹⁰⁴⁰ § 65-674.

¹⁰⁴¹ § 65-658.

¹⁰⁴² § 65-661.

¹⁰⁴³ § 65-660.

¹⁰⁴⁴ § 65-659.

¹⁰⁴⁵ § 65-662.

The Dairy Commissioner, under the Board of Agriculture, is responsible for enforcing provisions related to milk, cream, and dairy products.¹⁰⁴⁶ The Board is empowered to adopt rules and regulations for the sanitary production, processing, handling, sampling, examination, testing, grading and labeling of all milk and milk products.¹⁰⁴⁷ This regulation is accomplished, in part, through the requirement that all dairy manufacturing plants, milk distributors, milk haulers, milk testers, counter freezers, transfer stations or recovery stations, single service dairy container manufacturers, or homemade ice cream manufacturers be licensed.¹⁰⁴⁸ Permits are required to sell, offer for sale, receive or distribute Grade A milk or milk products.¹⁰⁴⁹

Inspection

The Board is authorized to adopt regulations related to criteria for inspection of dairy farms as well as the various business entities involved in milk processing, handling, and distribution.¹⁰⁵⁰ A statewide system of inspection and regulating services is anticipated.¹⁰⁵¹ All businesses licensed under the Act and all places where milk or milk products or dairy products are produced, manufactured, kept, handled, stored or sold are to be included in the inspection program.¹⁰⁵² Some cleanliness requirements are mentioned in the Act,¹⁰⁵³ but most sanitation

¹⁰⁴⁶ §§ 65-716, 65-720o.

¹⁰⁴⁷ § 65-720n.

¹⁰⁴⁸ § 65-704.

¹⁰⁴⁹ § 65-747.

¹⁰⁵⁰ § 65-720n.

¹⁰⁵¹ § 65-737a.

¹⁰⁵² § 65-701(a)(1).

¹⁰⁵³ § 65-706.

standards, as well as standards of identity, are to be set by the Board.¹⁰⁵⁴

Adulteration

Kansas law makes adulteration along with selling, offering for sale or exposing for sale of milk, milk products or dairy products which are adulterated unlawful.¹⁰⁵⁵ “Adulterated” is defined by reference to the Kansas Food, Drug and Cosmetic Act which tracks the federal definition.¹⁰⁵⁶

Misbranding

Misbranding and the selling, offering for sale or exposing for sale of adulterated milk, milk products or dairy products is unlawful.¹⁰⁵⁷ “Misbranded” is defined by reference to the Kansas Food, Drug and Cosmetic Act which tracks the federal definition.¹⁰⁵⁸

Enforcement

The Dairy Commissioner has broad authority to enforce the various provisions. Since most entities dealing with milk, milk products and dairy products do so under license or permit, the Commissioner’s authority to deny, revoke, suspend or refuse to renew licenses or permits is a major enforcement tool. This may be exercised where the applicant or holder of a license or permit fails to comply with the Act or the regulation or violates any of the provisions. Denying access to premises or interfering with inspectors or other authorized representatives can serve as

¹⁰⁵⁴ §§ 65-720n(b)(2)-(3).

¹⁰⁵⁵ § 65-702l(c).

¹⁰⁵⁶ §§ 65-737(k), 65-703(s) (referring to § 65-664).

¹⁰⁵⁷ § 65-720l(c).

¹⁰⁵⁸ §§ 65-703(n), 65-737(l) (referring to § 65-665).

the basis for the Commissioner's action in this regard.¹⁰⁵⁹

The Commissioner may issue cease and desist orders related to unlawful activities or practices.¹⁰⁶⁰ Injunctions may be sought to prevent, restrain, or enjoin any violation or threatened violation.¹⁰⁶¹ Civil penalties may be imposed against any dairy manufacturing plant who violates any of the provisions.¹⁰⁶² Criminal penalties may be applicable as well.¹⁰⁶³

¹⁰⁵⁹ §§ 65-705, 65-752.

¹⁰⁶⁰ §§ 65-753, 65-720j.

¹⁰⁶¹ § 65-720k.

¹⁰⁶² § 65-770.

¹⁰⁶³ §§ 65-715, 65-748.