

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

***Maryland***

**1999**

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## MARYLAND

### Definitions

“Secretary” means the Secretary of Health, and Mental Hygiene or the Secretary’s designee.

“Food” means any substance used for food or drink by human beings or as a component of food or drink for human beings, or chewing gum, or articles used for components of chewing gum.

"Label" means a display of written, printed, or graphic matter, on the container, other than the package liner.

“Labeling” means all labels and other written, printed, or graphic matter upon a substance or any of its containers or wrappers, or accompanying such substance.<sup>1200</sup>

“Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly, or indirectly, in the substance becoming a component or otherwise affecting the characteristics of any food, including any substance intended used to produce, manufacture, pack, process, prepare, treat, package, transport, or hold food; or any source of radiation that is intended for any of these uses; and that is not generally recognized, by qualified experts as having been shown to be safe under the conditions of its intended use through scientific procedures or through either scientific procedures or experience based on common use, if the substance as used in a food before January 1, 1958. Food additive does not include a color additive.

“Color additive” does not include any material that is not a color additive under the

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<sup>1200</sup> MD. CODE ANN. HEALTH-GEN. I § 21-101 (1996 & Supp. 1998).

Federal Act.<sup>1201</sup>

One interesting facet of the labeling requirement is if there is an outside container or wrapper. In such a case, the label must be placed on the outside of the container or wrapper or be legible through the outside container or wrapper.<sup>1202</sup>

### **Adulterated food**

This Act mimics for the most part, the Federal Food , Drug, and Cosmetic Act's definition of adulteration. Consequently, a food is adulterated if :

- (1) it contains any poisonous or otherwise deleterious substance that, in the quantity present, reasonably would be expected to make it injurious to health;
- (2) it contains any added poisonous or added deleterious substance:
  - (i) that is not a food color additive; and
  - (ii) the particular use of which has not be found to safe as provided under § 21-239 of this subtitle;
- (3) it is or contains any food additive or color additive the particular use of which has not been found safe as provided under § 21-239 of this subtitle;
- (4) any part of it is a diseased, contaminated, filthy, putrid, or decomposed substance;
- (5) it was produced, prepared, packed, or held under unsanitary conditions that would reasonably be expected to have:
  - (i) contaminated it with filth; or
  - (ii) caused it to be diseased, unwholesome, or injurious to health;

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<sup>1201</sup> MD. CODE ANN., HEALTH-GEN. I § 21-101 (1996 & Supp. 1998).

<sup>1202</sup> § 21-203.

- (6) any part of its container is composed of any poisonous or otherwise deleterious substance that reasonably would be expected to have caused the food to be injurious to health;
- (7) it has been subjected intentionally to radiation, unless the use of the radiation conforms to that allowed by a rule or regulation under the Federal Act or under § 21-239 of this subtitle;
- (8) at any time after its manufacturing, processing, or packaging, it was refrozen after having been permitted to thaw from a prior freezing; or
- (9) it otherwise is unfit as food for human beings.<sup>1203</sup>

Additional adulteration provisions include:

- (1) if any valuable constituent has been omitted or withdrawn;
- (2) if any substance has been substituted in whole or in part;
- (3) if damage or inferiority has been concealed in any manner;
- (4) if any substance has been added, 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;
- (5) if the food appears to be better or more valuable than it actually is by misleading the consumer.<sup>1204</sup>

MD. CODE ANN. §21-209 sets out standards for adulterated confectionaries.

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<sup>1203</sup> § 21-207.

<sup>1204</sup> § 21-208.

## **Standards of Misbranding**

Again, Maryland's statute mimics the language of the Federal Act. Thus, a food is misbranded when:

- (1) its labeling is false or misleading;
- (2) it is an imitation and does not have a conspicuous label that states it is such;
- (3) it is in a package form and the label does not contain the manufacturer's, packer's, or distributor's name and place of business and an accurate statement of quantity, by weight, or other measure;
- (4) the label is not conspicuous and easily understood by the ordinary user of the product;
- (5) the food claims to be a defined and standardized food as prescribed by § 21-237, it does not conform to the definition and standard. Its label does not contain the name of the defined and standardized food, and if required, the common names of ingredients that are in the food;
- (6) it purports to be or is represented as a food standardized under § 21-237, but falls below that standard, unless the label indicates that the food falls below the standard;
- (7) the label does not clearly state the common name of the food; and if it is made from two or more ingredients, the common name of all ingredients;
- (8) the label does not state vitamin, mineral, and other dietary properties if it claims to be a special dietary use product, so that consumers may be informed as to real value of the product;

- (9) the labeling does not state the presence of artificial flavoring, artificial coloring, or chemical preservatives;
- (10) it is a color additive and the packaging and labeling are not in conformity with the Federal Act provisions for color additives;
- (11) the food was previously frozen and is sold in an unfrozen state and the label does not state that the food was previously frozen;
- (12) it is a product that:
  - (i) is intended to be used as an ingredient of another food; and
  - (ii) if used according to the directions of the supplier, would result in the final food product being adulterated or misbranded; or
- (13) it is offered for sale under the name of another food.<sup>1205</sup>

There are statutory exemptions for artificial colorings, spices, flavorings, and colorings. Also, if compliance with some of the above provisions would be impractical, deceptive, or result in unfair competition, the Secretary can adopt rules that would exempt the particular food products from the provision.<sup>1206</sup>

### **Scope**

The provisions of the Food Act apply to the sale, manufacture, production, possessing, packing, exposing, offering, processing or holding the food for sale. If a substance is alleged to be misbranded because the labeling is misleading, or an advertisement is alleged to be false because it is misleading, the following will be taken into account: the representations made by

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<sup>1205</sup> *Id.*

<sup>1206</sup> § 21-102.

words, devices, sounds, designs, or any combination thereof, and the extent to which the labeling or advertisement fails to reveal consequences that may result from use of the substance.<sup>1207</sup>

### **Food contaminated with microorganisms**

This section sets out the provisions for how to deal with food that may be subject to contamination with microorganisms. The provisions outline the permitting and sampling procedures for such establishments that handle or manufacture such class of food. If there is a violation of this section, including refusal of entry, the permit shall be revoked or suspended.<sup>1208</sup>

### **Standards of food**

The Secretary has the authority to promulgate standards and definition for foods, but if there is no such standard or definition, then the Federal Act's definitions and standards are incorporated.<sup>1209</sup> There are permits available for exceptions to the definitions and standards set forth by the Federal Act and state standards.<sup>1210</sup>

MD. CODE ANN. § 21-239 sets out the allowable added poisonous or deleterious substances, food additive and color additive tolerance levels. The accepted tolerance levels contemplate many factors which are set out in this section of the title.<sup>1211</sup>

MD. CODE ANN. § 21-240 through MD. CODE ANN. § 21-244 deal with the rules that regulate the promulgation of rules made under the Food Act and the process by which these rules are made and to which they are objected.

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<sup>1207</sup> § 21-102.

<sup>1208</sup> § 21-211.

<sup>1209</sup> § 21-237.

<sup>1210</sup> § 21-238.

<sup>1211</sup> § 21-239.

## **False advertisement**

A false advertisement is one that is misleading or false in any way.<sup>1212</sup>

## **Prohibited Acts**

The following are deemed to be prohibited acts:

- (1) the sale or manufacture of misbranded or adulterated food;
- (2) the adulteration or misbranding of any food;
- (3) the making of a food to be adulterated or misbranded;
- (4) the receipt a misbranded or adulterated article;
- (5) the delivery or offer for delivery of food that is misbranded or adulterated;
- (6) the failure to allow entry, inspection, access to records, or sampling of an article of food that is subject to this act;
- (7) the removal of any article under this act without permission;
- (8) falsely representing or otherwise misleadingly use an official mark or tag or label with respect to food under this act.<sup>1213</sup>

## **Enforcement**

The Secretary has the authority to enter and inspect at reasonable times, any place where food is manufactured, held, processed, packed or packaged.<sup>1214</sup> The department and its agents may take samples and specimens of food, make copies of records, or secure other evidence

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<sup>1212</sup> § 21-247.

<sup>1213</sup> § 21-256.

<sup>1214</sup> § 21-249.

necessary to determine whether there has been a violation of the Food Act.<sup>1215</sup> There is injunctive relief available against violators.<sup>1216</sup>

Furthermore, if the food is deemed to be adulterated or misbranded, then the Secretary may tag and detain the item of food. The release of the article will occur only after a determination of no adulteration or misbranding. If there is an action available against the food, the court may order the destruction or forfeiture of the item, the corrective labeling of the item. The item shall be destroyed under the supervision of the Secretary. All court, storage and other fees will be assessed against the claimant of the article.<sup>1217</sup> If there is a situation in which the department deems an imminent danger, then the department may act immediately for the health and safety of the citizens and destroy the food or otherwise make it unusable for human consumption.<sup>1218</sup>

However, minor violations of this act are subject to written notice from the Secretary.<sup>1219</sup>

### **Other Provisions**

MD. CODE ANN. §§ 21-301 through 304 deals with food establishments.

MD. CODE ANN. §§ 21-305 through 312 deals with licensing of food establishments.

MD. CODE ANN. §§ 21-313 through 330 deals with enforcement, inspection, and miscellaneous provisions with respect to food establishments.

MD. CODE ANN. §§ 21-331 through 337 involves soft drink regulation.

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<sup>1215</sup> §§ 21-250, 251.

<sup>1216</sup> § 21-252.

<sup>1217</sup> § 21-253.

<sup>1218</sup> § 21-254.

<sup>1219</sup> § 21-255.

MD. CODE ANN. §§ 21-339 through 343 regulates crab meat as to markings on containers and storage requirements.

MD. CODE ANN. §§ 21-346 through 350 deals with shellfish importation and temperature maintenance requirements.

MD. CODE ANN. § 21-401 et seq. is the milk and milk products section of this act. It outlines the basic requirements for haulers, permitting and standards for handling milk products.

MD. CODE ANN. §§ 21-801 et seq deals with frozen dessert regulation.