

FOOD SAFETY
State and Federal Standards and Regulations

Nebraska

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NEBRASKA

The Nebraska Department of Agriculture is designated as the administrative state agency to assure that only wholesome meat and poultry products enter commerce and that such products are properly identified and labeled.¹⁵⁸⁰ Meat or meat food products include any product “capable of use as human food” from cattle, sheep, swine and goats. Equine (horses and mules) and other mammalian species may also be included by regulation.¹⁵⁸¹ Poultry includes “any domesticated bird or other avian species.”¹⁵⁸²

The regulatory approach is administered through a licensing requirement. Any establishment which is engaged in slaughtering, packing or related meat manufacturing processes, as well as those who prepare, store, sell or offer for sale livestock or poultry and the products therefrom, are required to obtain a license from the Department (unless under federal inspection).¹⁵⁸³ It is a violation of the Act to operate such establishments without the license.¹⁵⁸⁴

Both ante mortem and post mortem inspections are required of all livestock or poultry and it is a violation to sell, transport or offer for sale or receive for transportation any articles capable for use as human food unless they have passed the required inspection. It is also a violation to sell, offer for sale or receive for transportation such articles if they are adulterated or misbranded. Livestock and poultry parts and products must be marked or identified.¹⁵⁸⁵ The

¹⁵⁸⁰ NEB. REV. STAT. § 54-1903 (1993).

¹⁵⁸¹ § 54-1902(5), (7).

¹⁵⁸² § 54-1902(8).

¹⁵⁸³ § 54-1904.

¹⁵⁸⁴ § 54-1909(2).

¹⁵⁸⁵ § 54-1909(7).

same is required for carcasses of horses, mules or other equines which must be “conspicuously marked or labeled” to show the herds of animals from which they were derived.¹⁵⁸⁶

“Adulterated” products include those which fail to comply with the requirements of the Nebraska Pure Food Act. The same is true with regard to mislabeling. In addition, the container or the product must reflect the “official inspection legend and establishment number” and other information as required by regulation.¹⁵⁸⁷ Labeling or containers not in compliance may be withheld from use. This also applies if they are of a misleading size or form.¹⁵⁸⁸

The Director may exempt any operation from the inspection or other requirements of the Act if they would be exempt under either the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act or if the exemption would not jeopardize public health or welfare.¹⁵⁸⁹

Enforcement

The Department is given authority to seize and embargo any adulterated or misbranded products or any that have not been inspected, including those which are exempt from the definition of livestock or poultry product or those subject to federal jurisdiction.¹⁵⁹⁰ The livestock or poultry product or other seized or embargoed article may be destroyed at the expense of the owner or claimant upon receiving written permission of the owner or claimant. If permission cannot be obtained, a court may order the destruction of the article, animal or poultry

¹⁵⁸⁶ § 54-1909.

¹⁵⁸⁷ § 54-1902(12)-(13).

¹⁵⁸⁸ § 54-1908(3).

¹⁵⁸⁹ § 54-1908(9).

¹⁵⁹⁰ § 54-1911.

with the expenses fixed against the owner or claimant. An exception exists when the adulteration or misbranding can be corrected. The owner may reclaim the article upon payment of costs and expenses of an appropriate bond. The correction must be made under the supervision of a departmental inspector.¹⁵⁹¹

Federal/State Cooperation

The Director is authorized to cooperate with the USDA for the exchange and cross certification of inspectors¹⁵⁹² and to accept federal assistance in administration of the Act.¹⁵⁹³ Cooperative agreements with USDA are specifically authorized.¹⁵⁹⁴

Nebraska Pure Food Act

General Provisions

The Department of Agriculture is given responsibility for the administration of a variety of “Codes” under the Pure Food Act. These regulate activities of food establishments (food service establishments, mobile food units, pushcarts, food processing establishments, retail food stores, salvage processing plants, salvage distributors or food storage establishments) and vending machine operators.¹⁵⁹⁵ Food establishments and vending machine operations are required to obtain permits which are issued only after an inspection.¹⁵⁹⁶ Regular inspections are

¹⁵⁹¹ § 54-1912.

¹⁵⁹² § 54-1915.

¹⁵⁹³ § 54-1908(6).

¹⁵⁹⁴ *Id.*

¹⁵⁹⁵ §§ 81-2, 239 to 81-2, 292 (1996).

¹⁵⁹⁶ § 81-2, 270 -2, 272.

required either by the Department or by local authorities under contract with the Department.¹⁵⁹⁷

The Act cross-references various federal regulations and “Codes.” For example, the legislature specifically adopted all or significant parts of the following:

- (a) Food Processing and Storage Code
- (b) Food Salvage Code
- (c) Food Service Code
- (d) Food Vending Code
- (e) Retail Food Code¹⁵⁹⁸

These codes set out details of sanitary requirements for food establishments and vending machine operations.

It is unlawful to operate a food establishment or vending machine operation not in conformity with the Act which, of course, includes the various Codes.¹⁵⁹⁹

Adulteration

Specifically, it is unlawful to adulterate food or manufacture, distribute, offer for sale or sell, any adulterated food. The definition of “adulterated” tracks that of the federal acts. A food is adulterated if:

1. it bears or contains any substance which may render it injurious to health;
2. it consists of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unsafe;

¹⁵⁹⁷ § 81-2, 281.

¹⁵⁹⁸ §§ 81-2, 246 to 81-2, 248, 81-2,250, 81-2,253.

¹⁵⁹⁹ § 81-2, 275.

3. it has been manufactured, processed, packaged, stored or held under unsanitary conditions;
4. it is the product of a diseased animal or one that has died by any means other than slaughter;
5. the container is constructed so as to render the food unsafe or injurious to health;
6. any valuable constituent has been omitted or abstracted.¹⁶⁰⁰

Misbranding

Misbranding is also prohibited. This includes false or misleading labels or labels that do not properly identify the contents, the net quantity and give the name and address of the manufacturer, distributor or seller.¹⁶⁰¹

Likewise, deceptive packaging is unlawful. This includes adding substances to increase bulk or weight, reducing the quality or strength or making it appear better or of greater value than it is. Concealment of inferiority or damage is not permitted. The use of binders, blenders, or extenders in meat, fish or poultry products must be clearly revealed by conspicuous labels.¹⁶⁰²

False advertisement regarding food is also unlawful.¹⁶⁰³

Federal-State Cooperation

The Act authorizes the Department to contract with federal agencies for inspection of

¹⁶⁰⁰ § 81-2, 282.

¹⁶⁰¹ § 81-2, 283.

¹⁶⁰² § 81-2, 284.

¹⁶⁰³ § 81-2, 285.

food establishments and to carry out other regulatory functions.¹⁶⁰⁴ Federal regulations may be applied.¹⁶⁰⁵ The Department is given stop-sale, stop-use and removal order authority and may seek injunctive relief to enforce the provisions of the Act.¹⁶⁰⁶

Nebraska Milk and Milk Products

Milk and milk products are regulated by two laws—the Nebraska Pasteurized Milk Law and the Nebraska Manufacturing Milk Act. Under the first of these, the Nebraska legislature adopted, by reference, “Part II of the Grade A Pasteurized Milk Ordinance - 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 1995 Revision,” with some modifications. The Department of Agriculture is assigned the regulatory functions under the Act but is authorized to contract with local authorities to carry out these functions.¹⁶⁰⁷

For the most part, only Grade A pasteurized milk and milk products may be sold to final consumers or restaurants, soda fountains, grocery stores or similar establishments.¹⁶⁰⁸ Permits are required by producers, processors and handlers and inspections are conducted of dairy herds, dairy farms, milk plants, plants fabricating single-service articles, transfer stations, receiving stations, milk haulers and milk distributors.¹⁶⁰⁹

The ordinance contains adulteration and misbranding provisions. If these are violated,

¹⁶⁰⁴ § 81-2, 288.

¹⁶⁰⁵ § 81-2, 286.

¹⁶⁰⁶ §§ 81-2, 287, 81-2, 289.

¹⁶⁰⁷ §§ 2-3901-3911 (1997).

¹⁶⁰⁸ § 2-3903.

¹⁶⁰⁹ §§ 2-3902, 3906.

the Department is empowered to issue and enforce stop-sale, stop-use and removal orders to protect the public health, safety or welfare.¹⁶¹⁰ Restraining orders may be sought as well as temporary or permanent injunctions to remedy violations.¹⁶¹¹

The Nebraska Manufacturing Milk Act is directed toward the wholesomeness of milk to be used for manufacturing purposes and not required to be of Grade A quality.¹⁶¹² The law sets out detailed sanitary requirements for testing of milk at dairy plants. Smell tests, laboratory examinations and bacterial counts are required on a regular basis as is sediment testing.¹⁶¹³ Drug residues are prohibited and pesticide or other chemical residues cannot be in excess of established limits. Drug residue testing is required.¹⁶¹⁴

The Act includes herd health requirements and standards for milking facilities and sanitation standards for milk houses or milk rooms as well as for milk utensils and equipment.¹⁶¹⁵ Operating procedures are specified especially related to the storage and handling of drugs.¹⁶¹⁶

Detailed sanitation requirements are included for dairy plants, equipment and utensils used for processing milk and the manufacturing of dairy products, transport tanks and for employee operating procedures.¹⁶¹⁷

¹⁶¹⁰ § 2-3907.

¹⁶¹¹ § 2-3909.

¹⁶¹² §§ 2-3913 to -3946.

¹⁶¹³ §§ 2-3916 to -3917.01.

¹⁶¹⁴ § 2-3916(7), (9).

¹⁶¹⁵ §§ 2-3918, -3919, -3923, -3924.

¹⁶¹⁶ § 2-3921.

¹⁶¹⁷ §§ 2-3926, -3929, -3931, -3932, -3934,

Packaging and labeling requirements include the use of container materials sufficient to protect against contamination and proper labeling related to the name of the product, net weight or content, name and address of packer or distributor (or processor or manufacturer for commercial milk containers) and a plant code number.¹⁶¹⁸

Adulterated milk and dairy products cannot be manufactured, produced, processed, distributed, sold or offered for sale.¹⁶¹⁹ Adulteration is defined by reference to the Federal Food, Drug and Cosmetics Act.¹⁶²⁰ The Department of Agriculture is given authority to issue stop-sale, stop-use or removal orders for violation of the adulteration provisions.¹⁶²¹ Restraining orders may be sought to prevent violations.¹⁶²²

Nebraska Graded Egg Act

The Nebraska Graded Egg Act has as its goal the assurance to consumers that shell eggs will be quality graded and weight classified.¹⁶²³ The quality grades are based on those of the USDA and are determined by examination of the interior and exterior condition of individual shell eggs.¹⁶²⁴

Containers must be marked with the correct quality grade and a full, correct and

¹⁶¹⁸ § 2-3937.

¹⁶¹⁹ § 2-3937.01.

¹⁶²⁰ § 2-3914(3).

¹⁶²¹ § 2-3937.01(2).

¹⁶²² § 2-3943.

¹⁶²³ § 2-3501.

¹⁶²⁴ § 2-3503.

unabbreviated designation of size.¹⁶²⁵ The name of the distributor and packer and an identifying code must be included on the label¹⁶²⁶ along with the date packed.¹⁶²⁷

Shell eggs must be held at a temperature of not higher than 45 degrees and a relative humidity of approximately 70%¹⁶²⁸ and must not be placed in unsanitary containers.¹⁶²⁹ A license is required for the sale of shell eggs.¹⁶³⁰ Inspection is by sampling and the Department is given authority to enter any premises “where shell eggs are held” for sampling and inspection purposes. Seizure and ordering “off sale” are permitted where shell eggs are found to be in violation.¹⁶³¹

The Act exempts the sale of shell eggs by producers with annual production from a flock of 3,000 hens or less and by any persons exempt under the Federal Egg Products Inspection Act.¹⁶³²

¹⁶²⁵ §§ 2-3506, -3507.

¹⁶²⁶ § 2-3508.

¹⁶²⁷ § 2-3509.

¹⁶²⁸ § 2-3505.

¹⁶²⁹ § 2-3514.

¹⁶³⁰ §§ 2-3515, -3520.

¹⁶³¹ § 2-3519(2)-(4).

¹⁶³² § 2-3517.