

FOOD SAFETY
State and Federal Standards and Regulations

South Dakota

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SOUTH DAKOTA

Three separate agencies regulate food safety in South Dakota. The Animal Industry Board enforces provisions related to meat and meat products. The Division of Commercial Inspection and Regulation of the Department of Commerce is responsible for functions related to food and beverages. The Department of Agriculture bears responsibility for milk and milk products, artificial dairy products, frozen desserts, butter and eggs.

Meat and Meat Products

The Animal Industry Board (AIB) is charged with enforcement of the provisions related to meat and meat products. “Meat” is from cattle, bison, sheep, swine, goats, equines, ratites and captive cervidae.²⁴⁵⁰ Rules and regulations are to be in conformity with federal law, and the AIB is specifically authorized to cooperate with federal agencies in carrying out responsibilities under state or federal law. The provisions of the Act do not apply to any act or transaction covered by the federal law.²⁴⁵¹

Regulatory Approach

The regulatory approach authorized by the Act is to require the licensing of any “official establishment” (where inspection of the slaughter of livestock or the preparation of livestock carcasses or meat products occurs), slaughtering establishment, meat processing establishment (one engaged in the preparation or processing of meat food products) , custom exempt plant (where custom slaughtering and preparation of meat food producers for household use by the owner occurs), or retail store meat processor, (where processing or preparation of meat or meat

²⁴⁵⁰ S.D. CODIFIED LAWS §§ 39-5-6 (13), -7 (Michie 1996).

²⁴⁵¹ §§ 39-5-8, -13.

by-products occurs).²⁴⁵² These establishments, if engaged solely in intrastate commerce, are required to comply with sanitary practices prescribed by the AIB.²⁴⁵³

In addition, meat brokers , wholesalers and warehousemen, inedible products renderers, and animal food manufacturers must register with the AIB to do business in the state.²⁴⁵⁴

Inspection

The enforcement of the Act is primarily through the inspection program for meat and meat products in intrastate commerce.²⁴⁵⁵ Both ante-mortem and post-mortem inspections, under the supervision of veterinary inspectors, are required.²⁴⁵⁶ Inspection services are provided, upon application, to establishments wishing to operate under the provision of the Act with the cost borne by the state.²⁴⁵⁷ The AIB may refuse to provide or withdraw inspection services to an applicant or recipient “unfit” to engage in any business requiring inspection. This may be as a result of violations of any of the provisions of the Act, or of any other law designed to protect the public from unwholesome, adulterated or misbranded. Commission of any felony or fraud unconnected with food transactions will also disqualify a business from receiving inspection services. In addition, failure to maintain the establishment in sanitary condition or otherwise fail to conduct operators in accordance with the Act will result in withdrawal of services.²⁴⁵⁸

²⁴⁵² § 39-5-11.1, 6.

²⁴⁵³ § 39-5-24.

²⁴⁵⁴ § 39-5-33.

²⁴⁵⁵ § 39-5-7.

²⁴⁵⁶ §§ 39-5-16, -17, -18.

²⁴⁵⁷ §§ 39-5-15, -19.

²⁴⁵⁸ § 39-5-23.

The provisions requiring inspection do not apply to a livestock producer who slaughters his own livestock on his own farm nor to certain slaughterers who slaughter livestock and prepare meat for the owners or for their own household use. Any person may slaughter livestock and prepare meat for use of his own household members and nonpaying guests. Exemptions may be granted for other limited reasons as well.²⁴⁵⁹

Adulteration

The sale, donation, transportation or offering or receiving for sale or transportation of any livestock carcass or meat food product capable for use as human food that is adulterated is prohibited.²⁴⁶⁰ The definition of “adulterated” is identical to that of the Federal Act.²⁴⁶¹

In addition, margarine containing animal fat is considered adulterated if it consists of any “filthy, putrid or decomposed substance.”²⁴⁶² Livestock carcasses or parts found to be adulterated are to be condemned by the inspection and if the determination is sustained upon appeal, if any, the product is to be destroyed for human food purposes unless they may be reprocessed of so as to be no longer adulterated.²⁴⁶³

Misbranding

The sale, donation, transportation or offering or receiving for sale or transportation of any livestock carcass or meat food product agreeable for use as human food that is misbranded is

²⁴⁵⁹ § 39-5-11.

²⁴⁶⁰ § 39-5-39.

²⁴⁶¹ § 39-5-14 (1) to (8).

²⁴⁶² § 39-5-14 (9).

²⁴⁶³ § 39-5-21.

prohibited.²⁴⁶⁴ False or misleading marking or labeling is a violation.²⁴⁶⁵ All carcasses and meat food products, once inspected, are to be labeled (or be in a labeled container) with specific information.²⁴⁶⁶ The required information includes the name and place of business, the manufacturer, packer or distributor, an accurate statement of quantity and the inspection legend. If a standard of identity or composition has been prescribed for the food, the label must bear the name of the food and the names of optional ingredients. If it purports to be for special dietary uses, the label must bear information on vitamin, mineral and other dietary properties. Artificial flavoring, coloring and preservatives must be shown.²⁴⁶⁷

Enforcement

Aside from the inspection program, the AIB also may enforce the provisions of the law by seizure and condemnation of articles found in violation.²⁴⁶⁸ Articles suspected of being in violation may be detained up to 20 days pending a seizure and condemnation proceeding.²⁴⁶⁹ The AIB may, after notice and an opportunity to be heard, report for criminal prosecution, any violators of the Act.²⁴⁷⁰ The circuit court has jurisdiction to restrain violations and to hear all cases arising under the Act.²⁴⁷¹

²⁴⁶⁴ § 39-5-39.

²⁴⁶⁵ § 39-5-29.

²⁴⁶⁶ § 39-5-27.

²⁴⁶⁷ § 39-5-26.

²⁴⁶⁸ § 39-5-38.

²⁴⁶⁹ § 39-5-37.

²⁴⁷⁰ § 39-5-42.

²⁴⁷¹ § 39-5-43.

Foods

The Department of Commerce and Regulation, Division of Commercial Inspection and Regulation, has authority to deal with adulterated and misbranded foods.²⁴⁷² “Food” is defined as “all substances used as food, drinks, confectionery or condiment by man or other animals, whether simple, mixed, or compound, and all substances or ingredients to be added to foods for any purpose.”²⁴⁷³ The statute prohibits the manufacture, intrastate transportation (including delivery for shipment or the receipt of), sale, keeping for sale or offering for sale of any adulterated or misbranded foods.²⁴⁷⁴ As a related matter, it is also a violation to manufacture, sell, offer or expose for sale food, products to which a number of specified food additives have been added (such as formaldehyde, borax, formic acid or other “injurious or unhealthful” substances.²⁴⁷⁵

Adulteration

A number of conditions institute adulteration of food. These include:

- (1) mixing substances with it to reduce, lower, or injuriously affect quality or strength;
- (2) substitution of any substance wholly or in part for it;
- (3) abstracting any valuable constituent wholly or in part;
- (4) concealing damage or inferiority;

²⁴⁷² § 39-1-1.1.

²⁴⁷³ § 39-4.1.

²⁴⁷⁴ §§ 39-4-18, -19.

²⁴⁷⁵ § 39-4-4.

- (5) if it contains any poisonous or deleterious ingredient, added or natural, which may render it injurious to health;
- (6) if it consists, in whole or part, of filthy, decomposed or putrid animal or vegetable matter or is a product of a diseased animal or one that died otherwise than by slaughter or one fed uncooked offal from a slaughterhouse or other substance unfit for animal food; or
- (7) if, in the manufacture, sale or distribution or transportation, it is not protected from filth, flies, dust, contamination or other unclear, unhealthful or unsanitary conditions.²⁴⁷⁶

Confectionary may be considered adulterated if it contains certain specified ingredients or others considered deleterious or detrimental to health.²⁴⁷⁷

Misbranding

Misbranding, generally, consists of including on the package or label a false, deceptive or misleading statement, design or device.²⁴⁷⁸ This includes any such statement regarding the ingredients.²⁴⁷⁹

Specific labeling requirements include conspicuous statements showing the presence and amount of preservatives,²⁴⁸⁰ specified narcotics,²⁴⁸¹ quantity of contents by weight, measure or

²⁴⁷⁶ § 39-4-2.

²⁴⁷⁷ § 39-4-3.

²⁴⁷⁸ § 39-4-7.

²⁴⁷⁹ § 39-4-13.

²⁴⁸⁰ § 39-4-5.

²⁴⁸¹ § 39-4-10.

count, the manufacturer or person responsible for placing the food on the market,²⁴⁸² and if represented to be for special dietary uses, the vitamin, mineral and other dietary properties.²⁴⁸³

Misbranding may also occur if the food product is an imitation of, or is offered for sale under the distinctive name of another food product, or if it is labeled or branded purporting to be a foreign product when not so, or if it does not contain the products represented to be in the package.²⁴⁸⁴

Enforcement

Food products that are adulterated or misbranded may be seized for condemnation by action of the circuit court. Destruction or sale may be ordered with the proceeds (less legal costs and charges) if any, paid to the state treasury. A bond may be posted to assure that the product will not be disposed of by sale or otherwise contrary to the law and, if so, the product may be delivered to the owner.²⁴⁸⁵

The Department of Commerce and Regulation is also charged with the responsibility for the regulation of the manufacture, sale and possession of alcoholic beverages and beverage concentrates as flavors (not including flavoring extracts for general culinary use, milk and milk products or fruit juices and water sold directly by the producer or manufacturer to the consumer).²⁴⁸⁶

Alcoholic beverages are subject to regulation and cannot be manufactured, sold or

²⁴⁸² § 39-4-11.

²⁴⁸³ § 39-4-14.

²⁴⁸⁴ §§ 39-4-8, - 9.

²⁴⁸⁵ § 39-4-21.

²⁴⁸⁶ §§ 39-13-1, - 2.

possessed if adulterated, misbranded, or improperly labeled (under federal requirements).²⁴⁸⁷

Nonalcoholic beverages or concentrates cannot be manufactured, sold or possessed if adulterated, misbranded or improperly labeled.²⁴⁸⁸

Milk and Milk Products

The Department of Agriculture is in charge of the administration and enforcement of provisions related to milk, milk products, artificial dairy products, frozen desserts and butter.²⁴⁸⁹

The Secretary is to issue regulations for Grade A milk and milk products related to: standards for adulterated and misbranded milk; permits to produce or process; labeling and packaging; inspections; examinations; animal health requirements; containers; uninspected milk; farm and plant construction; personal health standards; sanitation standards; production, processing and distribution standards; certification of shippers; and method of making sanitation ratings of milk supplies.²⁴⁹⁰ Sale of milk other than Grade A for human consumption is prohibited except occasional farm sales to consumers for personal use and producers who sell and deliver their own production, labeled as “raw milk” directly to consumers only.²⁴⁹¹

Permits are required for use of a Grade A label,²⁴⁹² for importation of Grade A milk,²⁴⁹³

²⁴⁸⁷ §§ 39-13-3, -11.

²⁴⁸⁸ § 39-13-10.

²⁴⁸⁹ § 39-1-1.

²⁴⁹⁰ § 39-6-9.

²⁴⁹¹ §§ 39-6-2, -3.

²⁴⁹² § 39-6-7.

²⁴⁹³ § 39-6-10.

and for processors performing field service.²⁴⁹⁴ The Department provides an inspection force for inspection of premises and plants where milk and milk products are produced, handled and processed.²⁴⁹⁵ Municipalities may enact ordinances for the establishment of a system of continuous inspection of dairy products and dairy products plants if at least equal to the rules of the Department of Agriculture.²⁴⁹⁶

The statute prohibits the knowing manufacture, sale, exchange or possession of artificial dairy products which are not properly labeled indicating that the product is an “artificial dairy product.”²⁴⁹⁷ These products must also comply with the Federal Food Drug and Cosmetic Act, and its regulations.²⁴⁹⁸ “Artificial dairy products” are foods whose composition, intended use, sensory qualities, physical properties, or package or label descriptions purports to resemble or imitate any dairy product.²⁴⁹⁹

Also regulated by the statute are “frozen desserts” such as ice cream, ice milk, frozen custard, milk sherbet, ices and similar products.²⁵⁰⁰ The manufacturing, freezing, selling, offering for sale, exposing for sale or having in possession with intent to sell any such product which is adulterated or misbranded is prohibited.²⁵⁰¹ Labeling requirements are included and standards of

²⁴⁹⁴ § 39-6-13.

²⁴⁹⁵ § 39-6-11.

²⁴⁹⁶ § 39-6-17.

²⁴⁹⁷ §§ 39-7-4.1, -4.2.

²⁴⁹⁸ § 39-7-4.3.

²⁴⁹⁹ § 39-7-2.

²⁵⁰⁰ § 39-8-1.

²⁵⁰¹ § 39-8-13.

identity, quality and fill are to be developed by the Department as regulations.²⁵⁰²

Adulteration occurs if the frozen dessert or mix bears or contains any poisonous or deleterious substance which may render it injurious to health; if any valuable constituent has been omitted or abstracted or any other substance substituted, or if it does not conform to the standards.²⁵⁰³

The Act also requires the Department to promulgate rules relating to minimum standards of sanitation for frozen dessert plants. These standards are to relate to cleanliness of the equipment and premises, health and cleanliness of personnel, waste disposal and insect and rodent control.²⁵⁰⁴

The Department is to develop regulations relating to the grading and labeling of butter.²⁵⁰⁵ Sale of ungraded or misbranded butter is a violation²⁵⁰⁶

Eggs and Egg Products

The regulation of eggs and egg products is through a licensing requirement for those who engage in the business of buying, selling, processing, handling, grading, packaging or distributing eggs in the state.²⁵⁰⁷ The Secretary of Agriculture is to promulgate rules relating to grading and standards for production, processing and distribution.²⁵⁰⁸ The USDA specifications for grades

²⁵⁰² §§ 39-8-5, -6, -8, -10.

²⁵⁰³ § 39-8-12.

²⁵⁰⁴ § 39-8-4.

²⁵⁰⁵ §§ 39-9-1, -7.

²⁵⁰⁶ §§ 39-9-4, -8.

²⁵⁰⁷ § 39-11-2.

²⁵⁰⁸ § 39-11-7.

and weight classes and standards of quality are to serve as guidance.²⁵⁰⁹

All eggs delivered by producers for sale are to be candled²⁵¹⁰ and eggs may be deemed unfit for human food if they are filthy, decomposed or putrid and if they exhibit a variety of unfavorable conditions upon candeling.²⁵¹¹ Possession of eggs which have been candled and graded as unfit for human consumption is prohibited (except when denatured or decharacterized as to be sold for animal foods).²⁵¹²

The Department may issue stop-sale orders to prohibit the marketing of any lot of eggs or egg products in violation.²⁵¹³ License revocation is authorized for violations.²⁵¹⁴

²⁵⁰⁹ § 39-11-8.

²⁵¹⁰ § 39-11-9.

²⁵¹¹ § 39-11-11.

²⁵¹² § 39-11-14.

²⁵¹³ § 39-11-16.

²⁵¹⁴ § 39-11-17.