

FOOD SAFETY
State and Federal Standards and Regulations

Tennessee

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TENNESSEE

Tennessee has defined "food" as articles used for food or drink for man or animals; Chewing gum; and Articles used for components of any such article.²⁵¹⁵ This duplicates the Federal Food, Drug and Cosmetic Act's language. The term "labeling" means all labels and other written, printed, or graphic matter, on any article, container or wrapper, or accompanying any article.²⁵¹⁶

Misbranded

In order for an article to be misbranded because the labeling is "misleading," or for an advertisement to be false because it is "misleading," the following must be taken into account: the representations made or suggested by statement, word, design, device, sound, or in any combination thereof; and the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or with respect to consequences may result from the use of the article under the conditions of use prescribed or under the conditions of use as are customary or usual.²⁵¹⁷

Food Additive

A food additive is any substance, the intended use of which results or may be reasonably expected to result, directly, or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food;

²⁵¹⁵ TENN. CODE ANN. § 53-1-102 (11) (1991).

²⁵¹⁶ § 53-1-102 (16).

²⁵¹⁷ § 53-1-102 (17).

and including any source of radiation intended for any such use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, under the conditions of its intended use; except that the term does not include:

- (A) a pesticide chemical in or on a raw agricultural commodity;
- (B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
- (C) a color additive;
- (D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additive Amendment of 1958, pursuant to the Federal Food, Drug and Cosmetic Act; or
- (E) any substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use.²⁵¹⁸

When Food is Deemed Adulterated

The Tennessee statute on adulterated food is verbatim to the Federal Act with a few exceptions. Part four and five are deviations from the Federal adulteration standard. Part four states that a food will be deemed adulterated if it “bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.” Part five deems food that may appear to be of better quality through the use of lights, or other means, to be adulterated. This section also includes adulteration status granted upon food that has packaging

²⁵¹⁸ § 53-1-102 (12).

which may alter its appearance.²⁵¹⁹

Part three is a slight deviation from the federal act which discusses confectionaries. The Tennessee Act is much more specific as it relates to federal glaze, harmless natural wax, harmless natural gum and pectin percentages. Otherwise, Tennessee's Act states that a food is deemed to be adulterated when:

- (1)(A) it "bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health;
- (B) it bears or contains any added poisonous or deleterious substance which is unsafe within the meaning of § 53-1-107;
- (C) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
- (D) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health, or it is potentially hazardous, that is, foods that are capable of rapid infectious or toxic growth. The statute specifically lists certain types of food such as eggs, meat, milk and milk products. The statute further provides specific temperature control guides to ensure that these types of food do not become adulterated;
- (E) it is a product of a diseased animal or an animal that died from other than

²⁵¹⁹ § 53-1-104.

slaughter, or from an animal that has been fed on uncooked offal from a slaughterhouse;

- (F) the container is composed, entirely or partially "of any poisonous or deleterious substance which may render the contents injurious to health;"
- (2)(A) any valuable part has been partially or completely omitted or extracted;
- (B) any part has been partially or completely substituted;
- (C) damage or inferiority has been concealed in any way; or
- (D) anything has been added to increase the bulk or weight, reduce or strengthens its quality, or make it appear falsely to be of greater value than it actually is.²⁵²⁰

When Food is Deemed Misbranded

Again, Tennessee's statute mimics the language of the Federal Act. A food is misbranded when:

- (1) its labeling is false or misleading;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food, unless the label is obvious enough and the word "imitation" appears directly after the name of the food imitated;
- (4) the container is misleadingly made, formed or filled;
- (5) in a package form, 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; however, reasonable variations are permitted;

²⁵²⁰ § 53-1-104.

- (6) any word or statement required on the label is not be conspicuous and easily understood by the ordinary user of the product;
- (7) the food claims to be a defined and standardized food as prescribed by TENN. CODE ANN. § 53-1-205, and
 - (A) it does not conform to the definition and standard, and
 - (B) its label does not contain the name of the defined and standardized food, and if required, the common names of optional ingredients that are in the food;
- (8) it purports to be or is represented as a food defined and standardized under § 53-1-205, but falls below that standard, unless the label indicates that the food, or fill requirements, fall below the standard;
- (9) the food is not subject to part (7) unless its labeling
 - (A) clearly states the common name of the food; and
 - (B) it is 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) it claims to be a dietary use product and the label does not state vitamin, mineral, and other dietary properties so that consumers may be informed as to real value of the product; or
- (11) the labeling does not state the presence of artificial flavoring, artificial coloring, or chemical preservatives. Ice cream, butter, and cheese are specifically excluded

from this requirement.²⁵²¹

Poisonous or Deleterious Substance

Poisonous and deleterious substances include pesticide chemicals, food additives, color additives, and radiation sources which are added to any food. Exceptions include substances which are required in production, substances that cannot be avoided when using good manufacturing practices, or substances that have been proven scientifically to be useful to the health of the consumer. The statute then sets forth limits on the quantity of such substances which may be added to the food for the public well-being.²⁵²²

Labeling Exceptions

Tennessee has exceptions to the labeling requirements of its foods if the food item was made on site, sold at retail on the same site, and is made from commercially available products.²⁵²³

Enforcement

When an authorized agent of the cabinet 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 or is under suspicion of being adulterated or misbranded. They can detain or embargo the item and warn all persons not to dispose of the article by sale or otherwise, until they are given permission to do so. No person shall dispose or sell the item once notified, without

²⁵²¹ § 53-1-105.

²⁵²² § 53-1-107.

²⁵²³ § 53-1-114

permission.²⁵²⁴

If the agent determines that the item in question is misbranded or adulterated, then they must petition the District Court judge in the jurisdiction where the article has been detained or embargoed for condemnation of the article. If it is determined that the article is not adulterated or misbranded, then the agent shall remove the tag or other marking. If the article is deemed adulterated or misbranded, then the article will be destroyed at the expense of the claimant, under the supervision of the agent. All court, storage, and other costs, will be assessed against the claimant. However, if the misbranding or adulteration can be corrected by labeling or processing, then the article will be given to the claimant for such corrections. All of these corrections will take place under the supervision of the agent. The expense of the supervision will be paid by the claimant.²⁵²⁵

Moreover, when any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe are found by the cabinet or its agents in any room, building, or vehicle, the same will be declared to be a nuisance. The Commissioner or authorized agent shall condemn, destroy or render the same unsalable as human food.²⁵²⁶

Prosecution of Violations

Once reported by the Commissioner, the district attorney general or city attorney has an affirmative duty to prosecute violations of the food law. The person charged with a violation of

²⁵²⁴ § 53-1-202

²⁵²⁵ *Id.*

²⁵²⁶ *Id.*

the food law must be given a notice and an opportunity to respond.²⁵²⁷ The Commissioner is not required to prosecute minor violations when belief that a written notice or warning will be sufficient to protect the public interest.²⁵²⁸

Reasonable Standards for Food

The Commissioner is authorized to establish standards for foods and classes of foods, including quality, identity, and ingredients. The definitions and standards must conform to those promulgated under § 401 of the federal act.²⁵²⁹

Contamination of Food with Micro-organisms

The Commissioner may provide for a permitting process for any food that is distributed in Tennessee which may be contaminated with micro-organisms during manufacture, processing, or packing and may be harmful to the health of the public, and the injurious nature of the product cannot be determined until after it has entered the stream of commerce. It is unlawful for anyone to place such a product in the stream of commerce without such a permit. If the provisions of the permit have been violated, then it may be revoked by the Commissioner. Reinstatement shall be allowed. However, in all cases the Commissioner or agent may enter the permit holder's premises to ensure compliance.²⁵³⁰

Regulations by Commissioner, Hearing, Notice

Under the Act, the Commissioner is given the authority to promulgate all necessary

²⁵²⁷ § 53-1-203.

²⁵²⁸ § 53-1-204.

²⁵²⁹ § 53-1-205.

²⁵³⁰ § 53-1-206.

regulations. All regulations must adhere to a notice and hearing requirement, as well as conform to the federal requirements when necessary.²⁵³¹

Inspection-Examination of Specimens

The Commissioner or authorized agent have free access at reasonable times to inspect any factory warehouse, or establishment where food is manufactured, processed, packed, or held for sale, or held after receipt in commerce, or to enter any vehicle being used to transport or hold the food . Moreover, the inspection process provides for the securing of samples or specimens of the food. The Commissioner or their agent must pay for the samples, if required, and must test the sample or specimen to determine if any violation has occurred.²⁵³²

Access to Records of Carriers, Consignees or Holders of Products in Intrastate Commerce

Any carriers involved in intrastate commerce must make their records available to the Commissioner or their agent at reasonably requested times.²⁵³³

Publication of Reports by Commissioner-Dissemination of Information

The Commissioner may publish the findings, judgments and investigations of cases resulting from violation of the Act. The Commissioner may also publicly disclose information that they deem necessary in the interest of public health.²⁵³⁴

Eggs

An adulterated or inedible egg is one that is “filthy, putrid, decomposed, or otherwise

²⁵³¹ § 53-1-207

²⁵³² § 53-1-208.

²⁵³³ § 53-1-209

²⁵³⁴ § 53-1-210

unfit for human food in whole or in part.” Eggs which are unfit for human food are those which are “addled or moldy, contain black rot, white rot, or blood ring; have adherent yolks or bloody, green whites; have incubated beyond the blood ring state; consist to any extent of a filthy decomposed substance; or contain bloody whites, a blood spot, or an aggregation of blood spots more than one-eighth inch in diameter.”²⁵³⁵

Sale of Inedible Eggs is Prohibited

The sale of inedible or adulterated eggs for human consumption is prohibited. Any such eggs put into the Tennessee’s stream of commerce must be denatured so that there will be no possibility of human consumption of the eggs. Inedible eggs must be clearly labeled as such.²⁵³⁶

Commissioner Establishes Rules and Regulations

The Commissioner of Agriculture has the authority to issue regulations and rules with respect to Tennessee’s egg markets, processing, and candling.²⁵³⁷

Fancy Fresh Egg Marketing

Eggs which have been moved through marketing channels since the time of laying and have not been in refrigerated storage for more than 21 days are the only eggs that can be labeled as fancy fresh. There are certain other requirements for such labeling. The Commissioner has the authority to control such grading and labeling.²⁵³⁸

²⁵³⁵ § 53-2-202.

²⁵³⁶ § 53-2-203.

²⁵³⁷ § 53-2-105.

²⁵³⁸ § 53-2-106.

Licensing

A seller, wholesaler, or processor must obtain a license before selling, marketing, or processing eggs. There are a few noted exceptions to the licensing requirement.²⁵³⁹ The licensing requirement also exists for egg-breaking establishments.²⁵⁴⁰

Penalties

Violators of any of the provisions of the Egg Law or of the rules promulgated by the Commissioner is guilty of a Class C misdemeanor.²⁵⁴¹

Dairy Law

The state gives full authority to the Commissioner of Agriculture to adopt rules and regulations regarding all aspects of milk production, including the regulation of samplers, testers, manufacturers, plants, and distributors of milk products.²⁵⁴² The Commissioner has the authority to regulate the licensing, license revocation, and registration of those involved in the milk industry.²⁵⁴³

The Commissioner has the authority to inspect all places where dairy products are made, stored, or served as food for pay and all farms or places where milk cows are kept. There is a requirements for the correction of unsanitary practices and conditions.²⁵⁴⁴ The Commissioner or their agent, may tag and detain, or destroy, if necessary, any dairy product that is unfit for human

²⁵³⁹ §§ 53-2-107, -109.

²⁵⁴⁰ § 53-2-111.

²⁵⁴¹ § 53-2-114.

²⁵⁴² §§ 53-3-104 to 106 (1991 & Supp. 1998).

²⁵⁴³ § 53-3-108.

²⁵⁴⁴ § 53-3-112.

consumption, or that which may pose a threat to the public's health.²⁵⁴⁵

Penalties

The penalty for violating the provisions of this chapter is a Class C misdemeanor.²⁵⁴⁶

Duty to Investigate and Prosecute

The district attorney has a duty to investigate or prosecute violations of this chapter when they deem such an action to be proper.²⁵⁴⁷

Meat and Poultry Inspection

Under the definition section, "adulterated" applies to any livestock or poultry carcass, part, meat food product, or poultry product. The definition of adulterated is the same as found under TENN. CODE ANN. § 53-1-104. "Carcass" means all parts, including viscera of a slaughtered animal, that are capable of being used for human food. "Livestock" includes cattle, sheep, swine, goats, or rabbits. "Poultry" means any live or slaughtered domesticated bird.²⁵⁴⁸

Unwholesome means "unsound, injurious to health, containing any biological residue not permitted by rules or otherwise rendered unfit for human food; consisting in whole or in part of any filthy, putrid, or decomposed substance; processed, prepared, packed, or held under unsanitary conditions whereby any livestock or poultry carcass or part thereof or any meat food product or poultry product may have become contaminated with filth or may have been rendered injurious to health; produced in whole or in part from livestock or poultry which is diseased,

²⁵⁴⁵ § 53-3-114.

²⁵⁴⁶ § 53-3-115.

²⁵⁴⁷ § 53-3-116.

²⁵⁴⁸ § 53-7-202 (1991 & Supp. 1998).

dead, dying, or disabled and which has died otherwise than by slaughter; or packaged in a container composed of any poisonous or deleterious substance which may render the contents injurious to health.”

Ante and Post Mortem Inspections and Quarantine

The Commissioner and their authorized agent have the authority to conduct ante and post mortem inspections of poultry and livestock. The Commissioner also has quarantine authority for any livestock or poultry, or part thereof, or carcass, which is in violation of this chapter. Additionally, the Commissioner has the authority to seize, tag, destroy, or reprocess livestock and poultry which is found to be in violation of this chapter.²⁵⁴⁹

Inspection

The Commissioner has been given full authority to inspect all official establishments where meat or poultry is slaughtered, processed or held for intrastate commerce for sanitary conditions.²⁵⁵⁰ Also to the Commissioner and authorized agent can perform inspectiona for proper labeling purposes.²⁵⁵¹

Prohibited Acts

It constitutes a violation of this chapter if one places into commerce an unwholesome or unadulterated livestock or poultry carcass, meat or poultry product.²⁵⁵² This chapter also delineates prohibitions against false or misleading labeling and unfair marketing practices.²⁵⁵³

²⁵⁴⁹ *Id.*

²⁵⁵⁰ § 53-7-204.

²⁵⁵¹ § 53-7-205.

²⁵⁵² § 53-7-206.

²⁵⁵³ § 53-7-210.

Other Miscellaneous Provisions

Provisions also exist for licensing, license cost, revocation or suspension, cost of inspection, cease and desist orders, notice and hearing requirements, and custom slaughterhouse licensing. The chapter also delineates provisions for the review of orders of the Commissioner, the relation of this part to other laws, and the authority of the Commissioner to promulgate rules and regulations.²⁵⁵⁴

Violations of Provisions

Violations of the Meat and Poultry Inspection Act constitute a Class C misdemeanor. However, there is a knowledge and reasonableness requirement to exculpate innocent offenders.²⁵⁵⁵

Biological Residue

Animals or animal products that contain biological residue that is harmful to human health are prohibited.²⁵⁵⁶ Biological residue is “any substance, including metabolites, remaining in or on any animal or prior to or at the time of slaughter or in or on any of its tissues after slaughter or in or on any animal product as the result of treatment with or exposure of the animal or animal product to any pesticide, organic or inorganic compound, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.”²⁵⁵⁷

²⁵⁵⁴ §§ 53-7-211 to 220.

²⁵⁵⁵ § 53-7-210.

²⁵⁵⁶ § 53-7-303.

²⁵⁵⁷ § 53-7-302.

The Commissioner has the authority to promulgate rules and regulations under this part, as well as to define and set tolerance regulations with respect to biological residue.²⁵⁵⁸ Violation of this part constitutes a Class C misdemeanor.²⁵⁵⁹

The Commissioner, or authorized agent has a right to enter premises to inspect for violations of this statute, and also has the authority to apply for injunctive relief against any violator or proposed violator of this part.²⁵⁶⁰

Refrigerated Locker Regulation

Tennessee has set forth a regulatory scheme for refrigerated food locker plants. The code outlines the procedure for licencing, storage and refrigeration inspection, and the penalties associated with non-compliance of the statues.²⁵⁶¹

Establishments Selling Food

Tennessee's Food, Drug and Cosmetic Act has a section devoted to prescribing proper facilities for storing, handling, and selling food. This section is aimed at food safety by ensuring the safe and clean handling, storage, and service of food.²⁵⁶²

²⁵⁵⁸ §§ 53-7-303, 305.

²⁵⁵⁹ § 53-7-306.

²⁵⁶⁰ §§ 53-7-304, -307.

²⁵⁶¹ § 53-8-101 et seq.

²⁵⁶² §§ 53-8-101 et seq., -201 et seq.