

FOOD SAFETY

State and Federal Standards and Regulations

Virginia

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VIRGINIA

The Commissioner of Agriculture and Consumer Services is charged with responsibility of administering the Virginia Meat and Poultry Products Inspection Act and the Virginia Food Act, and for instituting the regulatory programs related to milk, milk products, dairies, eggs and egg products. As appropriate, the Commissioner is to cooperate with relevant federal agencies in carrying out the state programs.

Meat and Poultry Products Inspections

Inspection

The Virginia Meat and Poultry Products Inspection Act is designed to provide for meat and poultry products inspection programs that will make intrastate operations and commerce at least equal to the federal programs. Cooperation with the USDA is mandated to carry out the purposes of the Act.²⁶⁹⁹ “Livestock” is defined as cattle, sheep, swine, goats, horses, mules, or other equines.²⁷⁰⁰ “Poultry” means any domesticated bird.²⁷⁰¹

The Commissioner is to develop programs for antemortem and postmortem inspection of livestock and poultry prepared for human food. Inspection under the state program or under the federal program is required for all livestock and poultry products. In addition, sanitary conditions of establishments at which inspection services are provided must be such that no adulteration of livestock or poultry products occurs.²⁷⁰² The Commissioner may refuse

²⁶⁹⁹ VA. CODE ANN. § 3.1-884.19 (Michie 1994).

²⁷⁰⁰ § 3.1-884.18(8).

²⁷⁰¹ § 3.1-884.18(11).

²⁷⁰² § 3.1-884.20.

inspection services for any causes specified in the federal law. The Commissioner may exempt from inspection or other requirements any operation that would be exempt under federal law if conducted for interstate commerce.²⁷⁰³ The regulation or inspection developed by the Commissioner may reference federal regulation and any adopted regulation must be no less stringent than the federal.²⁷⁰⁴

It is a violation of the Act to sell, transport, offer for sale or transportation any articles required to be inspected, unless they have been inspected and passed.²⁷⁰⁵ If products, upon inspection, are found to be not adulterated they are to be marked as “Virginia Inspected and Passed.”²⁷⁰⁶

Adulteration

The Act specifically prohibits the sale, transport, offering for sale or transportation or receiving for transportation, articles capable of use as human food which are adulterated.²⁷⁰⁷ Adulteration is defined in language identical to the federal law for meat and poultry.²⁷⁰⁸

Misbranding

Likewise, the sale, transport, offering for sale or transportation or receiving for sale or transportation of misbranded articles, capable for use as human food, is prohibited.²⁷⁰⁹

²⁷⁰³ § 3.1-884.21.

²⁷⁰⁴ § 3.1-884.21:1.

²⁷⁰⁵ § 3.1-884.22(1)(b).

²⁷⁰⁶ § 3.1-884.20(2).

²⁷⁰⁷ § 3.1-884.22(1)(b).

²⁷⁰⁸ § 3.1-884.18(15).

²⁷⁰⁹ § 3.1-884.22(1)(b).

Misbranded is also defined consistently with the federal law.²⁷¹⁰ Consistent with the federal standards, the Act authorizes the Commissioner to prescribe the size and style of type for labeling information as well as definitions and standards of identity, composition and standards of fill of container.²⁷¹¹ The Commissioner may order labeling of containers to be withheld from use if the labeling is false or misleading or if the containers are of a misleading size or form.²⁷¹² Labeling and containers are to be approved to assure compliance.²⁷¹³

Enforcement

Aside from the inspection programs conducted at establishments where slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained, the Act provides that all persons engaged in business as brokers, wholesalers or public warehousemen of livestock products or poultry products register with the Commissioner.²⁷¹⁴

Livestock products, poultry products or animals held for sale, prepared for sale, transport or otherwise distributed in violation of any of these provisions of the Act or of federal law (e.g. adulterated, misbranded, not inspected) may be seized and condemned.²⁷¹⁵ Detention by an authorized representative of the Commissioner is followed by notice to the Commonwealth Attorney who is to file an action in circuit court. The sheriff or city official is to seize the property and hold it until proper disposition is determined. If the article is condemned, following

²⁷¹⁰ § 3.1-884.18(16).

²⁷¹¹ § 3.1-884.20(8).

²⁷¹² § 3.1-884.21(3).

²⁷¹³ § 3.1-884.20(4).

²⁷¹⁴ § 3.1-884.20(10).

²⁷¹⁵ §§ 3.1-884.28, .29.

a hearing, it may be destroyed or sold (with costs charged to the owner). The owner may post a bond and receive the property subject to compliance with the applicable law.²⁷¹⁶

Violation of the provisions of the Act may also result in criminal penalties.²⁷¹⁷ The Commissioner may seek injunctive relief to restrain a person from violating or continuing to violate the Act.²⁷¹⁸ The Commissioner may require reports and have access to records or other documentary evidence related to requirements under the Act.²⁷¹⁹

Virginia Food Act

The Commissioner of Agriculture and Consumer Services is empowered to make rules and regulations related to food quality and sanitary requirements. The Act deals with general sanitary requirements for articles used for food (“food, drink, confectionary or condiment”).²⁷²⁰ In addition, the Commissioner enforces the provisions of the Virginia Food Act dealing with adulteration and misbranding. These are to be in conformity with federal regulations and the Commissioner is to coordinate with federal agencies to avoid unnecessary or unjustified conflict.²⁷²¹ Regulations as to food definition, standard or quality, fill of container and standard of identity are also to conform as far as practicable with federal standards and definitions.²⁷²²

²⁷¹⁶ § 3.1-884.29.

²⁷¹⁷ § 3.1-884.31.

²⁷¹⁸ § 3.1-884.33.

²⁷¹⁹ § 3.1-884.32.

²⁷²⁰ § 3.1-364.

²⁷²¹ § 3.1-398.

²⁷²² § 3.1-394.

Sanitary Requirements

Virginia's section on general sanitary requirements sets out those requirements for buildings, premises and personnel. The approach is to focus on keeping premises in clean, healthful and sanitary condition by requiring removal of refuse, dirt and waste products, protection from flies, dust and dirt, and washing and cleaning of the area, instruments and equipment.²⁷²³ Persons employed in the facilities are also subject to sanitary requirements.²⁷²⁴

Adulteration

The Act prohibits the sale or delivery or holding or offering for sale or receipt in commerce any food that is adulterated. Adulteration itself is likewise prohibited.²⁷²⁵ Adulteration is defined in a manner consistent with the federal regulations.²⁷²⁶ Specific restrictions apply to the addition of any poisonous or deleterious substance. Tolerance limits are applicable where the substance is required or cannot be avoided in the production by good manufacturing practices.²⁷²⁷ Specific limits also apply to alcohol or nonnutritive substances added to confectionary and to the use of coal tar color.²⁷²⁸

Misbranding

The sale or delivery, holding or offering for sale or receipt in commerce of misbranded food is prohibited. Dissemination of false advertisement concerning food is likewise

²⁷²³ §§ 3.1-365 to 385.

²⁷²⁴ §§ 3.1-371, 3.1-375 to 379.

²⁷²⁵ § 3.1-388.

²⁷²⁶ § 3.1-395.

²⁷²⁷ § 3.1-397.

²⁷²⁸ § 3.1-395(c) - (d).

prohibited.²⁷²⁹ If food is alleged to be misbranded because it is misleading or if an advertisement is alleged to be false because it is misleading, not only are the representations actually made concerning the food taken into account but also the extent to which the label or advertisement fails to reveal material facts.²⁷³⁰ Food is deemed misbranded under provisions consistent with the federal rules.²⁷³¹

Inspections

The Virginia Act specifically requires that food manufacturing plants, food storage warehouses and retail food stores be inspected.²⁷³² Duly authorized agents of the Commissioner are given free access at all reasonable hours to inspect factories, warehouses, establishments and vehicles and to secure samples of food.²⁷³³

Enforcement

The Commissioner has the duty of making complaints against a manufacturer or vender of food, drink or dairy products that are “adulterated, impure or unwholesome.”²⁷³⁴ If a determination is made that premises where food or drink products are manufactured, stored or deposited, or sold are unsanitary, the proprietor is to be notified and warned to place the premises in sanitary condition. If the same violation occurs within 90 days, no second warning is

²⁷²⁹ § 3.1-388.

²⁷³⁰ § 3.1-387(7).

²⁷³¹ § 3.1-396.

²⁷³² § 3.1-398.1.

²⁷³³ §§ 3.1-399, -405.

²⁷³⁴ § 3.1-404.

necessary.²⁷³⁵ Failure to correct the conditions after the warning is a violation.²⁷³⁶

The Commissioner is authorized to seize food and dairy products in violation of the Act.²⁷³⁷ Samples are to be taken and analyzed and if adulterated, substituted, misbranded or imitated a judgment of forfeiture may be obtained. The goods may be destroyed or sold for use other than as food. If the owner presents a “guarantee of purity” from the person from whom they purchased the articles, the proceeds (less costs and expenses) may be remitted to the owner.²⁷³⁸

In addition to the authority of the Commissioner in enforcement of these provisions, specific duty is given to the Commonwealth attorney to prosecute violations.²⁷³⁹ Moreover, judges may bring adulteration or misbranding violations to the attention of grand juries and indictments may be sought.²⁷⁴⁰

Milk, Milk Products and Dairies

The Commissioner of Agriculture and Consumer Services has broad authority to take action aimed at improving the quality and creating and maintaining uniformity of dairy products.²⁷⁴¹ The agents of the Commissioner are given free access to areas subject to the law and it is unlawful for anyone to hinder, obstruct, or interfere with these agents in the performance

²⁷³⁵ § 3.1-406.

²⁷³⁶ § 3.1-407.

²⁷³⁷ § 3.1-408.

²⁷³⁸ §§ 3.1-411 to 413.

²⁷³⁹ § 3.1-415.

²⁷⁴⁰ § 3.1-401.

²⁷⁴¹ § 3.1-420.

of their duties.²⁷⁴²

The Board of Agriculture and Consumer Services is empowered to adopt regulations relating to the definitions, standards of quality and identity, issuance of permits, production, importation, processing, grading, and labeling of sanitary standards for milk and milk products.²⁷⁴³ These regulations are to be guided by the federal rules.²⁷⁴⁴

The State Health Commissioner is also given a role relating to the issuance of permits for all plants which process and distribute grade A milk and milk products and in the enforcement of regulations in all plants from the point of delivery at the plant to the consumer.²⁷⁴⁵ Local supervision of all milk and milk products, including ice cream and similar products, is superceded.²⁷⁴⁶

Licensing of creameries, cheese plants, condensed milk plants, milk distributing plants, and milk and cream buying stations is required.²⁷⁴⁷ Specific mention is made in the statute regarding sanitary requirements for the receptacles used in transporting milk, cream, or ice cream.²⁷⁴⁸ The statute also specifically prohibits the adulteration of milk and milk products.²⁷⁴⁹

In carrying out the regulatory functions, the Commissioner is required to notify and warn

²⁷⁴² § 3.1-530.3.

²⁷⁴³ § 3.1-530.1.

²⁷⁴⁴ § 3.1-530.2.

²⁷⁴⁵ § 3.1-530.4

²⁷⁴⁶ §§ 3.1-530.5, 562.4.

²⁷⁴⁷ § 3.1-563.

²⁷⁴⁸ § 3.1-424.

²⁷⁴⁹ § 3.1-423.

milk producers of any unsanitary or filthy conditions which contribute to impure or unwholesome milk or cream. If they fail to obey the warning, it is a violation to continue to sell the impure or unwholesome articles.²⁷⁵⁰ Similarly, if unsanitary conditions exist at any buying station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, a notice and warning is to be given before any proceeding to find a violation.²⁷⁵¹

When violations of any of the regulations relative to standards of quality, identity, grading, sanitation and labeling occur, either the Commissioner of Agriculture and Consumer Services or the Commissioner of Health is authorized to seek an injunction in any appropriate court.²⁷⁵² For ice cream and similar products, detention of adulterated or misbranded products is authorized with condemnation following a detailed procedure outlined in the statute.²⁷⁵³

Eggs

The Virginia Board of Agriculture and Consumer Services enforces provisions relating to the sale of eggs to consumers.²⁷⁵⁴ The Board sets standards, grades and size-weight classes for eggs and all eggs sold or offered for sale must conform to these standards.²⁷⁵⁵ Eggs that are cracked or checked may be sold only by producers or processors directly to non-institutional consumers or for further processing.²⁷⁵⁶ Inedible eggs may not be sold or offered for sale for

²⁷⁵⁰ § 3.1-421.

²⁷⁵¹ § 3.1-422.

²⁷⁵² §§ 3.1-530.8, -562.7.

²⁷⁵³ §§ 3.1-562.8 to 562.9..

²⁷⁵⁴ § 3.1-769.4.

²⁷⁵⁵ §§ 3.1-763.16, - 768.

²⁷⁵⁶ § 3.1-763.16(b).

human consumption.²⁷⁵⁷ Eggs marked as “fresh eggs” must meet standards of grade A quality or better.²⁷⁵⁸

The statute contains specific sanitary requirements for keeping, processing, transporting and selling of eggs, as well as temperature and humidity limits.²⁷⁵⁹ Producers selling a total of 150 dozen eggs or less per week and produced by their own hens or purchased from other producers, not to exceed 60 dozen per week, are exempt from the provisions to long as the eggs are edible and of represented quality.²⁷⁶⁰

The Commissioner is authorized to use stop-sale orders followed by seizure of eggs which are offered, developed, stored, processed or transported in violation of the Act or regulations.²⁷⁶¹ Injunctive relief may be sought to enforce the Act as well.²⁷⁶²

²⁷⁵⁷ § 3.1-767.

²⁷⁵⁸ § 3.1-764.

²⁷⁵⁹ § 3.1-769.1.

²⁷⁶⁰ § 3.1-765.

²⁷⁶¹ § 3.1-769.2.

²⁷⁶² § 3.1-770.1.