

FOOD SAFETY

State and Federal Standards and Regulations

California

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The National Association of State
Departments of Agriculture (NASDA)
1156 15th Street, N.W.
Suite 1020
Washington, D.C. 20005-1704
(202)296-9680
FAX: (202)296-9686
nasda@patriot.net

National Center for Agricultural Law Research
and Information
U of A School of Law - 147 Waterman Hall
University of Arkansas, Fayetteville, AR 72701
(501) 575-7646
FAX: (501) 575-5830

CALIFORNIA

The California Department of Agriculture is charged with the responsibility of meat and poultry inspection as well as the regulation of milk, dairy products and eggs. However, food regulation falls under the Department of Health.

Meat and Poultry Inspection

The Department of Agriculture regulates all establishments where livestock and poultry are slaughtered or processed and where livestock or poultry products are stored or handled.³⁴¹ "Livestock" includes cattle, sheep, swine, goats, horses, mules and other equines.³⁴² Poultry includes any domesticated bird.³⁴³ The regulatory emphasis is to require registration of the above establishments.³⁴⁴ The act, applies to intrastate commerce and specifically exempts any operation subject to federal inspection under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act, is not applicable if the state is designated as one in which federal rules apply to intrastate commerce.³⁴⁵ The regulations adopted by the Department are to conform to the regulations of USDA to the extent possible and are to be at least equal to the federal rules, may be adopted by reference.³⁴⁶

Inspection

³⁴¹ CAL. FOOD & AGRIC. CODE §§ 18669, 18732 (West 1986 & Supp. 1999).

³⁴² § 18663.

³⁴³ § 18675.

³⁴⁴ § 18734.

³⁴⁵ § 18811.

³⁴⁶ §§ 18692, 18693, 18735.

Inspection is required of all livestock and poultry slaughtered, all livestock and poultry products processed, and of the sanitary conditions at establishments.³⁴⁷ It is a violation of the act to sell, transport, offer for sale or transport or receive for transportation any livestock or poultry products which have not been inspected as required.³⁴⁸ Exempt from the inspection requirements is the slaughtering of livestock and poultry by a person of animals of his own raising for use by him, members of his household, and nonpaying guests or employees. Operations exempt under federal law may also be exempt from state requirements.³⁴⁹

Adulteration

It is a violation of the act to adulterate livestock or poultry products or to sell, transport, offer for sale or transportation, or receive for transportation livestock or poultry products capable for use as human food that are adulterated.³⁵⁰ Adulterated is defined consistently with the federal law.³⁵¹

Misbranding

Misbranding is also a violation as is the sale, transport, offering for sale or transport or receiving for transport any misbranded meat or meat products.³⁵² Misbranding is defined consistently with the federal law. The statute sets forth specific labeling requirements which require labels to bear a statement of the manufacturer, packer, or distributor, and the net weight

³⁴⁷ §§ 18721, 18725.

³⁴⁸ § 18842.

³⁴⁹ § 18812.

³⁵⁰ §§ 18751-18759.

³⁵¹ § 18752

³⁵² §§ 18781-18789.

or other measure of contents must conform to standards of identity³⁵³ Sale without an official inspection legend or stamp is prohibited.³⁵⁴

Enforcement

Inspectors may order the destruction of misbranded or adulterated articles intended for human consumption. If the condition is not corrected, the articles may be seized and a court order obtained for their destruction or disposal in a manner consistent with the public interest. Costs and expenses are to be paid by the owner.³⁵⁵

Furthermore, the director may withdraw or refuse to provide inspection services for establishments where the sanitary conditions would render adulterated any livestock or poultry product prepared or handled there.³⁵⁶ Any cause specified in the federal law may also serve as a basis for the refusal to provides inspection services.³⁵⁷

The superior court may enjoin violations of the Act.³⁵⁸ Criminal penalties are available for violations.³⁵⁹ The department is not required to institute proceedings for minor violations but may use suitable notice of warning and compliance.³⁶⁰

Federal/State Cooperation

³⁵³ §§ 18782-18784.

³⁵⁴ § 18848.

³⁵⁵ § 18873.

³⁵⁶ § 18725.

³⁵⁷ § 18729.

³⁵⁸ § 18934.

³⁵⁹ § 18932.

³⁶⁰ § 18935.

In addition to the conformity of regulations between state and federal law, the director is to cooperate with USDA to effectuate the purposes of the state law.³⁶¹

Meat and Poultry Supplemental Inspection Act

California has enacted supplemental provisions for meat processing establishments and custom livestock slaughterhouses which require these businesses to be licensed.³⁶² A meat processing establishment is one where livestock or poultry products are prepared by curing, drying, smoking, or rendering or where swine products are cooked, and the products are sold to household consumers.³⁶³ A custom livestock slaughterhouse is where livestock (cattle, sheep, swine and goats) are slaughtered for the owner of the livestock.³⁶⁴ These establishments prepare specialty meat food products and the purpose of the Act is to assure that these products are wholesome and not adulterated. Thus, an inspection at these establishments is required because they are exempt from federal inspection.³⁶⁵

The regulatory approach also provides for the licensing of meat inspectors who will then conduct inspection and supervise the operations of the licensed establishments.³⁶⁶ Inspections are to be made of the sanitary conditions of each establishment before it is licensed to operate and the department may refuse to provide services at any establishment where the sanitary conditions

³⁶¹ § 18696.

³⁶² § 19010.

³⁶³ § 18947.

³⁶⁴ § 18946.

³⁶⁵ § 18952.

³⁶⁶ §§ 18980-18983, 18990 to 19000.

are such as to render products adulterated.³⁶⁷ It is a violation to operate without a license or to operate in a manner which is not sanitary or in violation of an order of a licensed meat inspector.³⁶⁸

The provisions of the Act do not apply to owners who slaughter animals of their own raising on their own premises for their own use or that of household members or nonpaying guests or employees. Also, the provisions do not apply to mobile slaughter operators who provide services on the animal owner's premises for these same purposes, nor do they apply to those who prepare meats already inspected by USDA.³⁶⁹

Fresh Poultry

In addition to the inspection requirements, California has special legislation dealing with the sale of fresh poultry requiring that it cannot be called "fresh" if it is stored or handled in such a manner as to reach an internal temperature below 26 degrees Fahrenheit.³⁷⁰ The original version of this Act was challenged in federal court and held to be preempted by the federal Poultry Products Inspection Act (PPIA) which preempts labeling requirements "in addition to or different than" those under the PPIA.³⁷¹ The portions of the statute prescribing selling, advertizing, distributing or holding out such poultry as fresh were not considered preempted by the federal law.

Food Regulation

³⁶⁷ § 18971.

³⁶⁸ § 19017.

³⁶⁹ § 19020.

³⁷⁰ § 26661.

³⁷¹ National Broiler Council v. Voss, 44 F.3d 740 (9th Cir. 1994).

The California Food, Drug and Cosmetic Act gives the State Department of Health Services authority to regulate food, that is, any articles used for food or drink, confection, condiment or chewing gum and components of these articles.³⁷² The regulations issued under the state law are to conform to those of federal law.³⁷³ Federal food labeling regulations are adopted as state law.³⁷⁴

Inspection

The Department of Health Services is given access to all factories, warehouses or establishments where food is manufactured, processed, packed or held for introduction into commerce and to any vehicles used to transport food for the purpose of inspecting the premises or vehicle. Also, the Department can take samples for examination and analysis for purposes of enforcing the provisions of the act.³⁷⁵ It is a violation under the act to refuse to permit entry or inspection or refuse the taking of samples.³⁷⁶

Adulteration

The act prohibits the adulteration of food as well as the manufacture, sale, delivery, holding or offering for sale, receipt in commerce, or proffered delivery for pay or otherwise, of any adulterated food.³⁷⁷ Food is deemed to be adulterated under specified circumstances which,

³⁷² CAL. HEALTH & SAFETY CODE § 109935, (1996).

³⁷³ § 110065.

³⁷⁴ § 110100.

³⁷⁵ §§ 110140, 110150.

³⁷⁶ § 110160.

³⁷⁷ §§ 110620-110630.

generally, track the federal definition.³⁷⁸ The California statute adds a special provision with reference to the use of preservatives or other chemical substances, if not approved by USDA, in fresh meat.³⁷⁹ Chopped or ground beef or hamburger must be composed of voluntary striated muscle of beef and cannot contain any substance not approved by the Department or a fat content of in excess of 30%.³⁸⁰ Pork or breakfast sausage must have a total fat content of 50% or less.³⁸¹

Special provisions also apply to pesticide residues. The Department is to cooperate with FDA to identify those pesticides most likely to leave residues in processed foods.³⁸² The Act gives the Department authority to adopt tolerances for pesticides whether or not they are in accordance with the federal act or the Food and Agricultural Code.³⁸³ In light of changes in the federal law by the 1996 Food Quality Protection Act, this authority is likely to be preempted.

Misbranding

Misbranding of food is also prohibited by the act.³⁸⁴ The manufacture, sale, delivery, holding or offering for sale, receipt in commerce or the proffered delivery of any misbranded food is also unlawful.³⁸⁵

Misbranding can occur in a number of specified ways:

³⁷⁸ §§ 110545-110595.

³⁷⁹ § 110600.

³⁸⁰ § 110605.

³⁸¹ § 110610.

³⁸² § 110640.

³⁸³ § 110080.

³⁸⁴ § 110765.

³⁸⁵ §§ 110760, 110770.

- (1) If the labeling is false or misleading;
- (2) If the labeling does not conform to federal nutrition labeling requirements;
- (3) If the labeling does not conform to nutrient content and health claims under the federal act;
- (4) If the label does not include information on the manufacturer, packer, or distributor and the quality of the contents;
- (5) If it does not conform to fair packaging and labeling requirements detailed in other California provisions;
- (6) If it is an imitation of a food for which a standard of identity and definition is established and it is not so labeled;
- (7) If it is in a misleading container;
- (8) If it is a confectionary and contains alcohol in excess of $\frac{1}{2}$ to 1% and it not so labeled;
- (9) If it is potentially hazardous processed food requiring refrigeration of 45 degrees Fahrenheit or lower and it is not labeled as "Perishable Keep Refrigerated;"
- (10) If any required wording or information is omitted or does not properly appear on the label;
- (11) If the label fails to conform to a definition or standard of identity as identified on the label;
- (12) If it fails to conform to the standards of fill prescribed;
- (13) If the label fails to indicate the common or unusual name if no standard of identity exists;

- (14) If it contains two or more ingredients and does not include the name of each;
- (15) If the food purports to be for special dietary purposes and the label does not bear information on vitamin or mineral content or other dietary property;
- (16) If it contains artificial flavoring, coloring or chemical preservatives and the label does not so state;
- (17) If it is a color additive not in conformity with regulations on color additives.

In addition to these requirements, an article intended as a component of another food is misbranded if it could cause the other food to be adulterated or misbranded.³⁸⁶ Specific labeling requirements exist for salmon and other fish or seafood.³⁸⁷ Moreover, retail cuts of meat must clearly identify the species and the kind of cut.³⁸⁸ The fat content of chopped or ground beef or hamburger must be designated.³⁸⁹

Enforcement

The Department is authorized to detain or embargo any article of food believed to be adulterated, misbranded, or falsely advertised and petition the circuit court for an order for condemnation and, if granted, to destroy the condemned food article. If the adulteration or misbranding can be corrected, upon the posting of a bond, the article may be delivered to the owner with costs and expenses to be paid by the owner.³⁹⁰

If the department finds meat, meat products, seafood, poultry, vegetable, fruit or other

³⁸⁶ §§ 110660-110750.

³⁸⁷ § 110795.

³⁸⁸ § 110800.

³⁸⁹ § 110805.

³⁹⁰ §§ 111860-111885.

perishable articles which are unsound, contain any filthy, putrid or decomposed substance, or are poisonous or deleterious to health or otherwise unsafe, the department may destroy the articles immediately. If the owner objects, a detention order may be issued and a condemnation order obtained from the superior or municipal court.³⁹¹

The Attorney General, district attorneys and city attorneys are to render assistance to the Department when called upon.³⁹² Injunctions may be obtained to restrain violations of the act.³⁹³ Criminal and civil penalties are authorized for violations as well.³⁹⁴ The department is not required to report for prosecution minor violations but may issue suitable notices or warnings.³⁹⁵

Enforcement

A primary enforcement tool of the Department is the requirement that every person engaging in the manufacture, packing or holding of processed food must register with the Department.³⁹⁶ A number of exceptions apply primarily to operations holding certificates or licenses under other provisions of state law (e.g. frozen food locker plants, cold storage facilities, retail food facilities, milk products plants, etc.).³⁹⁷

Food Sanitation Act

Sanitation in Food Processing Establishments

³⁹¹ §§ 111890, 111895 (Supp. 1999).

³⁹² § 111840.

³⁹³ §§ 111900-111910.

³⁹⁴ §§ 111855, 111915.

³⁹⁵ § 111845.

³⁹⁶ §§ 110460, 110780.

³⁹⁷ § 110480.

The Department of Health is charged with responsibility of regulating all premises used in the preparation, packing, storage or otherwise processing of food. This does not include restaurants.³⁹⁸ The primary concern is with the sanitary conditions of the premises, the equipment and utensils used in food preparation, and the health and operating methods of all employees and others who handle food.³⁹⁹ The department is given broad authority to seek closure of any such establishment if it constitutes a public nuisance.⁴⁰⁰

Food Containers

The Act has specific provisions related to the cleaning and use of used bottles for packing food. Those engaged in the business of cleaning, sterilizing and reselling bottles to manufacturers or packers must be licensed and must follow specific standards for cleaning and sterilization of bottles.⁴⁰¹

Other requirements related to bottles include those of labeling of nonalcoholic soft drinks and restrictions on the sale at retail of jams, jellies, preserves, marmalades, peanut butter, horseradish, mayonnaise or salad dressings other than in closed containers.⁴⁰²

Cold Storage

A license is required for the operation of a cold storage or refrigerating warehouse for storing articles of food. The sanitary condition of the plant is to be examined before issuance of the license and the Department may, at any time, notify the licensee of the existence of any

³⁹⁸ § 111955.

³⁹⁹ §§ 111965-112035.

⁴⁰⁰ § 112050.

⁴⁰¹ §§ 112060-112120.

⁴⁰² §§ 112120-112125.

unsanitary conditions found on the premises.⁴⁰³

The operator of said facilities is restricted from storing food articles not slaughtered, handled, or prepared for storage in compliance with the applicable laws or which have “keeping qualities” that are impaired by disease, taint or deterioration.⁴⁰⁴

Frozen Food Locker Plants

A license is also required to operate a frozen food locker plant (one which leases space to individuals for the storage of their own food).⁴⁰⁵ Inspection of a plant is required before a license is issued and subsequent inspections can be made when necessary.⁴⁰⁶ Sanitary requirements are specified for both the plant and the equipment and utensils.⁴⁰⁷ Only food may be stored in the frozen food locker plant and it must be wrapped and labeled.⁴⁰⁸

Canneries

Also subject to regulation by the State Department of Health Services are noncommercial canning operations. A canning license is required for all such operations except those operated by community canning centers, schools, churches or other organizations or housewives who can products for their own consumption.⁴⁰⁹ The license may be suspended or revoked for operating

⁴⁰³ §§ 112385-112395, 112415.

⁴⁰⁴ § 112435.

⁴⁰⁵ §§ 1125504, 112505.

⁴⁰⁶ § 112515.

⁴⁰⁷ § 112535.

⁴⁰⁸ § 112585.

⁴⁰⁹ §§ 112665-112750.

an insanitary cannery or wilfully packing canned food rejected by the Department and for other specified causes.⁴¹⁰

Sanitary Control of Shellfish

The statute also sets forth specific provisions dealing with protection from adulterated shellfish grown and harvested in the waters of the state. The purpose is to set uniform sanitation standards for the growing waters, harvesting, shucking, packing, repacking and handling of shellfish intended for human consumption.⁴¹¹ The director may declare areas closed if it is determined that shellfish from the area may be unsafe or unfit.⁴¹² The Department has authority to inspect the growing areas or facilities used for cultivation, production, depuration, processing, transporting or sale of shellfish.⁴¹³ Proper labeling and container requirements must be met.⁴¹⁴

Olive Oil

Olive oil is governed by special provisions related to packaging and distribution as well as the use of artificial coloring or flavoring, mixing or blending with other oil and with the manufacture and sale of imitation olive oil.⁴¹⁵

Retail Food

California also has a detailed regulatory program covering retail food facilities known as

⁴¹⁰ § 112785.

⁴¹¹ § 112150.

⁴¹² § 112160.

⁴¹³ § 112180.

⁴¹⁴ §§ 112210, 112215.

⁴¹⁵ §§ 112875-112935.

the Uniform Retail Food Facilities Law. Its purpose is to establish uniform statewide health and sanitation standards for retail food facilities; however, local governing bodies may still play a role in grading systems for food facilities, employee health certification and employee training along with other narrow functions. Also, local health agencies have a primary role in enforcement of the standards.⁴¹⁶

In order to operate, food facilities are required to have permits.⁴¹⁷ The permit may be suspended or revoked for violation of the various provisions.⁴¹⁸ The most important of the food facilities requirements are the general sanitation requirements for food, for the facilities, and their operation.⁴¹⁹

On the other hand, food establishments, that is, those facilities which store, prepare, serve, manufacture, package, transport, salvage or otherwise handle food at the retail level, are subject to their own set of sanitation requirements.⁴²⁰ These focus principally on the premises itself. Other types of food facilities are also regulated, including open air barbecue facilities, vending machines, vehicles, mobile food preparation units and commissaries, temporary food facilities, produce stands, certified farmers markets, swap meet prepackaged food stands, satellite food distribution facilities, and restricted food service transient occupancy establishments.⁴²¹

California Milk and Milk Products Act

⁴¹⁶ § 113700-113725.

⁴¹⁷ § 113920.

⁴¹⁸ § 113950.

⁴¹⁹ §§ 113975-114070.

⁴²⁰ §§ 114075-114180.

⁴²¹ §§ 114185-114430.

The Department of Agriculture is charged with responsibility for regulating the production and processing of milk and milk products as well as related imitation products such as oleo margarine and imitation ice cream. The major approach to regulation is to require permits for those engaged in the business of producing market milk, or in the business of processing or distributing market milk.⁴²² A license is required for those engaged in receiving, manufacturing, freezing, or processing milk or any product of milk or manufacturing, freezing or processing imitation ice cream or ice milk.⁴²³ The permit or license will not be issued until an investigation is made of the dairy farm, the milk products plant, or place of distribution. The sanitary condition of the milk products plant is of primary concern.⁴²⁴

In addition, product licenses are also required for the business of manufacturing diabetic or dietetic frozen milk products or mixes, for manufacturing, preparing or processing modified sterilized milk, modified sterilized cream, or modified milk; for manufacturing, freezing or processing oleomargarine (or other imitation butter substitutes) and imitation ice cream or imitation ice milk; and for butter distributors.⁴²⁵ Licenses are also required for butter graders, milk, cream or fluid derivative testers, samplers and weighers, pasteurizers, and for nonfat milk solid testers.⁴²⁶

Inspection

The Department of Agriculture is authorized to inspect and take samples from any

⁴²² CAL. FOOD & AGRIC. CODE §§ 33222, 33226.

⁴²³ § 35011.

⁴²⁴ §§ 33224, 33226, 35014.

⁴²⁵ §§ 33541, 35071, 35101, 35132.

⁴²⁶ §§ 35134, 35161, 35163, 35168, 35169.

premises or conveyance where milk or milk products or products resembling milk products are located.⁴²⁷ The testing may be for “inhibitory substances” as well as to see that milk or cream is “impure, tainted, unclean, adulterated or unwholesome.”⁴²⁸ The statute makes it unlawful to sell, give away, deliver or knowingly purchase or receive milk or milk products produced or handled in a location which is in an insanitary condition.⁴²⁹ The milk inspection service is to prevent these violations. Dairy farms are subject to detailed sanitation requirements, as are milk product plants.⁴³⁰ Sanitation requirements also exist for premises and equipment used in pasteurization, and for containers of milk or milk products.⁴³¹

Adulteration

The Act makes it unlawful to sell, give away, deliver or knowingly purchase or receive any “impure, polluted, tainted, unclean, unwholesome, stale or adulterated milk or cream or milk product.”⁴³² The addition of preservatives, coloring, or gelatin to milk or milk products is also restricted except for certain harmless coloring matters in butter or cheese and some additions in ice cream and related products.⁴³³ The addition of fat or oil, except milk fat, is also restricted.⁴³⁴

⁴²⁷ § 32731.

⁴²⁸ §§ 32761, 32761.5.

⁴²⁹ § 32907.

⁴³⁰ §§ 33511-33530, 33761-33782.

⁴³¹ §§ 34031-34032, 34621-34628.

⁴³² § 32906.

⁴³³ § 32909.

⁴³⁴ § 32910.

Misbranding

The California statute outlines a number of specific labeling requirements. These are to be consistent with ingredient labeling requirements of the Federal Food, Drug and Cosmetic Act. Every milk product or product resembling a milk product at the time of retail sale is to be properly labeled with the correct name of the product and the ingredients.⁴³⁵ Nutritional content and dietary values labeling requirements are to be consistent with the federal law.⁴³⁶ Misleading statements in connection with the advertising of any product are prohibited.⁴³⁷

Enforcement

The Department is given broad enforcement powers under the Act. Aside from the inspection and sampling authority mentioned above, the Department may condemn milk or cream which is found to be impure, tainted, unclean, adulterated or unwholesome or produced, handled or kept in an unsanitary place.⁴³⁸ Condemned milk may be returned to the producer (once marked) to be destroyed or used for products other than for human consumption.⁴³⁹

The Department may bring an action in Superior Court to enjoin any violation or threatened violation.⁴⁴⁰ License or permit suspension or revocation, after notice and hearing, is specifically authorized.⁴⁴¹

⁴³⁵ § 32912.

⁴³⁶ § 32912.5 (Supp. 1999).

⁴³⁷ § 32914.

⁴³⁸ § 32765.

⁴³⁹ § 32764.

⁴⁴⁰ § 32702.

⁴⁴¹ §§ 32811-32813.

Egg Regulation

The Department of Agriculture is responsible for the regulation of the sale of shell eggs in California.⁴⁴² The regulatory approach requires the registration of all persons who are engaged in producing, candling, grading, packing or otherwise preparing eggs for market or selling or distributing shell eggs.⁴⁴³

Standards for grades of eggs and size and weight designations are to be consistent with those of USDA.⁴⁴⁴ False, misleading or deceptive statements or representations related to quality, size, weight, condition origin of eggs are unlawful⁴⁴⁵ while injunctive relief may be sought, the primary enforcement mechanism is the authority of the Department to issue” hold orders” for all or any part of products in violation.⁴⁴⁶ Moreover, any eggs or their containers which are found to be a public nuisance may be condemned and destroyed.⁴⁴⁷ Point-of-origin and point-of-destination inspections are authorized to ensure eggs meet all applicable regulations.⁴⁴⁸

⁴⁴² § 27531.

⁴⁴³ § 27541.

⁴⁴⁴ § 27532.

⁴⁴⁵ § 27637.

⁴⁴⁶ §§ 27581, 27592.

⁴⁴⁷ § 27601.

⁴⁴⁸ §§ 27593, 27594.