

# **FOOD SAFETY**

## **State and Federal Standards and Regulations**

### *Arkansas*

**1999**

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## ARKANSAS

### Food

“Food” means:

1. Articles used for food or drink for man or other animals;
2. Chewing gum; and
3. Articles used for components of any such article.<sup>296</sup>

### Adulteration

The adulteration of any food is a prohibited act, as is the manufacture, sale, delivery, holding, or offering for sale of any food that is adulterated.<sup>297</sup> A food is adulterated only if there is an added substance and the quantity of the substance in the food does not ordinarily render it injurious to health.<sup>298</sup>

The following is a list of items for which a food will be deemed adulterated:

- ! if the food contains any poisonous or deleterious substance which may be harmful to health;
- ! if the food contains any added poisonous or added deleterious substance that is unsafe within the definition of poisonous or deleterious substances found in Ark. Code Ann. § 20-56-218;
- ! if the food is in whole or part of a diseased, contaminated, filthy, putrid, or

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<sup>296</sup> ARK. CODE ANN. § 20-56-202(3) (1991).

<sup>297</sup> § 20-56-215.

<sup>298</sup> § 20-56-208.

decomposed substance, or otherwise unfit for food;

- ! if it has been produced, prepared, packed, or held under insanitary conditions causing that food to become contaminated;
- ! if it is the product of a diseased animal, an animal that was not slaughtered or has fed upon the uncooked offal of other animals;
- ! if its container is in any way adulterated with any poisonous or deleterious substance that caused the food to be harmful to health;
- ! if any valuable part has been omitted or abstracted;
- ! if any part of it has been substituted in whole or part;
- ! if any damage or inferiority has been concealed; or
- ! if anything has been added, mixed or packed so as to increase the bulk, reduce the quality or strength, or make it appear better or more valuable than it is.

A confection is adulterated if it contains any alcohol or nonnutritive substance.

Exceptions are as follows:

- ! harmless coloring or flavoring;
- ! harmless resinous glaze less than four-tenths of one percent (4/10 of 1%);
- ! harmless wax less than four-tenths of one percent (4/10 of 1%); or
- ! harmless natural gum or pectin.<sup>299</sup>

### **Misbranding**

A food shall be deemed misbranded and prohibited as such if:

- ! its label is false or misleading in any particular way;

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<sup>299</sup> § 20-56-208.

- ! it is offered for sale under the name of another food;
- ! it is an imitation of another food and does not mention that it is such; or
- ! its container is made, formed or filled in a misleading way.<sup>300</sup>

Furthermore, food labels must give a listing of common names of the food's ingredients excepting spices, flavoring, and colorings. If a food is for special dietary purposes, the label must also contain information about the food's vitamin, mineral and other dietary properties. A label must also relay information regarding the use of any artificial flavoring, or colorings or chemical preservatives.<sup>301</sup>

### **Contamination with Microorganisms**

When the State Board of Health (Board) cannot adequately determine the injurious nature of foods contaminated with microorganisms, the state must issue regulations providing for permits which the Board may suspend at any time after issuance. Anyone holding such a permit must allow agents of the Board access to their facility for inspection. Denial of access is grounds for suspension of the permit.<sup>302</sup>

### **Enforcement**

#### **Inspection**

The Board or its agents must have free access to inspect during reasonable hours any factory, warehouse, or establishment or vehicle where any foods are manufactured, processed, packed or held for shipment. Agents of the Board may take samples or specimens of any food

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<sup>300</sup> §§ 20-56-209(1)-(4).

<sup>301</sup> §§ 20-56-209(9)-(11).

<sup>302</sup> § 20-56-217.

after paying or offering to pay for the samples. The samples are then examined by Board.<sup>303</sup>

Then the Board may publish a report with its findings as it deems necessary in the interest of public health.<sup>304</sup>

### **Procedure**

When an agent of the Board has probable cause to believe that a food has been subject to a prohibited act, he must affix a tag or other marking to the food showing that the food is or is suspected of being not safe. The suspect food is then detained or embargoed. The tag or marking must warn all persons not to move, transfer, remove or dispose of the suspect food without written permission or order by the Board or the court. If a person violates that warning, they are subject to criminal prosecution under ARK. CODE ANN. 20-57-101.<sup>305</sup> However, charitable donations may be exempt from prosecution or penalties.<sup>306</sup>

When the agent determines that a suspect food has indeed been adulterated, misbranded or abandoned, the agent petitions the chancery court for condemnation of the food. Upon condemnation, the food is destroyed at the expense of the claimant along with storage fees and other costs.<sup>307</sup>

### **State Cooperation with Federal Authority**

The Board is authorized to cooperate with the Federal Act and its agencies with food

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<sup>303</sup> § 20-56-220.

<sup>304</sup> § 20-56-221.

<sup>305</sup> § 20-56-216(2).

<sup>306</sup> § 20-57-103.

<sup>307</sup> §§ 20-56-216(b)(1), (c)(1).

received in this state from other states, territories or foreign countries.<sup>308</sup>

### **Flour and Bread Enrichment Act**

In order to promote the health and well being of its citizens, Arkansas requires flour and breads to have certain amounts of vitamins and other ingredients.<sup>309</sup> The Board makes the rules and regulations and has the same authority given in the previous enforcement area of this section.<sup>310</sup>

### **Miscellaneous Foods**

#### **Kosher Foods**

A person who intentionally mislabels or falsely represents a food to be kosher when in fact the food is not kosher may be found guilty of a misdemeanor.<sup>311</sup>

#### **Arkansas Egg Marketing Act<sup>312</sup>**

The Arkansas Egg Marketing Act is applicable to all egg retailers. Retailers may sell eggs identified as ungraded if they buy them from producers who own less than two hundred hens.<sup>313</sup>

Retailers of eggs may not sell eggs that are unfit for human consumption including eggs not denatured or eggs that have been incubated.<sup>314</sup> Packers are not liable for the interior quality

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<sup>308</sup> § 20-56-223.

<sup>309</sup> §§ 20-57-306, 307.

<sup>310</sup> § 20-57-305.

<sup>311</sup> § 20-57-40(3).

<sup>312</sup> § 20-58-201.

<sup>313</sup> § 20-58-203.

<sup>314</sup> § 20-58-207.

of the eggs if the retailers have not followed the guidelines of the Arkansas Livestock and Poultry Commission.<sup>315</sup> That Commission has the authority to enter premises to inspect eggs and may impound said eggs.<sup>316</sup>

### **Milk and Dairy Products**

The Division of Sanitarian Services of the Department of Health has administrative and regulatory authority over production and distribution of milk and milk products.<sup>317</sup> If a person attempts to sell, exhibit or offer for sale any adulterated dairy product, they may be subject to criminal prosecution.<sup>318</sup> To accomplish its duties, the State Board of Health may:

- ! inspect plants as often as practicable;
- ! Prohibit production and sale;
- ! condemn for food by denaturing dairy products with harmless coloring;
- ! take samples for testing;
- ! enter, during business hours, all plants or other places where dairy products are manufactured, produced frozen, processed, stored, sold or kept for sale or transportation;
- ! issue subpoenas for witnesses and production of records;
- ! regulate carriers of milk products;
- ! require labeling.

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<sup>315</sup> § 20-58-210.

<sup>316</sup> § 20-58-214(2)(b)(1).

<sup>317</sup> § 20-59-101.

<sup>318</sup> § 20-59-202.

Dairy products from other states must meet the sanitary standards, definitions, and requirements of Arkansas law and abide by the regulations made by the Board.<sup>319</sup>

Dairy plants must be sanitary. To meet sanitary requirements, milk or milk products may not come into contact with corrodible materials or unsterilized surfaces. The floors of plants must be constructed in a way that allows them to be kept free from dirt and properly drained. Plants are also required to be properly ventilated and separated by solid partitions from living quarters or toilet facilities. Further, the premises are required to be kept clean and screens are required on all openings to keep out insects.<sup>320</sup>

Some regulations on milk and dairy products are:

- ! They must be handled in sanitary places only;<sup>321</sup>
- ! They must not have been obtained from diseased or unhealthy animals, or handled by any person exposed to or afflicted with a contagious disease;<sup>322</sup>
- ! They must not contain any preservatives that do not comply with the state's standards;<sup>323</sup>
- ! No one may remove or deface any tags or labels attached by the Department of Health;<sup>324</sup>
- ! They must be pasteurized—with the exception of butter made by a dairy farmer

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<sup>319</sup> § 20-59-213(a).

<sup>320</sup> § 20-59-214.

<sup>321</sup> § 20-59-223.

<sup>322</sup> § 20-59-224.

<sup>323</sup> § 20-59-225.

<sup>324</sup> § 20-59-226.

who produces a majority of the milk or cream he uses,<sup>325</sup>

! No one may sell, keep for sale, expose or offer for sale any milk or dairy product that does not conform to the state's minimum standards.<sup>326</sup>

Arkansas also requires labeling for cheese products and makes it unlawful to remove those labels until the final sale of the product.<sup>327</sup> There are also labeling requirements for all other milk products including renovated butter (which must be pasteurized), ice cream, and ice milk.<sup>328</sup> The state also regulates the acceptable bacteria count in frozen desserts.<sup>329</sup>

### **Enforcement**

Milk and dairy products that do not meet minimum standards or have been adulterated, or misbranded, are subject to seizure and disposition.<sup>330</sup> Criminal penalties also apply.<sup>331</sup>

### **Arkansas Meat and Meat Products Inspection Act**

Meat is defined as any edible part of the carcass of any livestock. Livestock is limited to cattle, sheep, swine, goats, and horses. Meat food products are defined as any article of food, or any article intended for or capable for use as human food, which is derived or prepared, in whole or in part, from any portion of any livestock.<sup>332</sup> Unwholesome foods are considered as follows:

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<sup>325</sup> § 20-59-227.

<sup>326</sup> § 20-59-228.

<sup>327</sup> §§ 20-59-225, -226.

<sup>328</sup> § 20-59-238.

<sup>329</sup> § 20-59-242.

<sup>330</sup> § 20-59-303.

<sup>331</sup> § 20-59-302.

<sup>332</sup> § 20-60-203(5).

- ! unsound, injurious to health, containing any biological residue not permitted or otherwise rendered unfit for human food;
- ! contains filthy, putrid, or decomposed substance;
- ! processed, prepared, packed or held in unsanitary conditions where the food may have become contaminated with filth or rendered injurious to health;
- ! produced from livestock that was not slaughtered;
- ! packaged in a container that is made from any poisonous or deleterious substance that renders the food injurious to health;
- ! is adulterated in any way (adulteration is defined in the same way as food).<sup>333</sup>

### **Exemptions**

Several exceptions regarding livestock include:

1. Farmer's use and consumption of their own livestock but not for public consumption;
2. When the Director of the Board finds an exemption is necessary for effective administration;
3. Religious exemptions;
4. When a city ordinance already regulates the product in conformity with minimum state standards.<sup>334</sup>

The director has discretion but may not exempt any act or transaction already subject to regulation under the Federal Meat Inspection Act. Exempted acts and transactions must be

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<sup>333</sup> § 20-60-203(9)-(10).

<sup>334</sup> § 20-60-204(a)(1)(A)-(D).

marked and kept separate from all other that are inspected. The acts and transactions must also be kept sanitary, unadulterated, labeled correctly, and not misbranded.<sup>335</sup>

### **Penalties**

Penalties for violation of the Act include criminal charges and fines but, carriers and warehousemen are not liable for the acts of the producers.<sup>336</sup>

### **Inspection**

Each official establishment dealing with meats or meat products must be inspected and meet minimum requirements.<sup>337</sup> Inspectors have the right to do antemortem and postmortem inspection in any official establishments. The inspectors may quarantine, segregate and reinspect livestock as they see fit. Inspectors may condemn livestock, and if there is no appeal to the condemnation, the inspectors may have the livestock destroyed. However, the inspector may order the meat or meat product to be reprocessed instead of destroyed.<sup>338</sup>

### **Labeling**

All inspected meats or meat products must be labeled with an inspection mark and approved plant number where it was processed.<sup>339</sup>

### **Fish and Seafood**

Suppliers of fish must provide any distributor or retailer proof that the fish was processed

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<sup>335</sup> §§ 20-60-204(a)(2), (b), (c)(2).

<sup>336</sup> § 20-60-205.

<sup>337</sup> § 20-60-209(a).

<sup>338</sup> § 20-60-210.

<sup>339</sup> § 20-60-213(a)(1).

in sanitary conditions. Suppliers may be in the form of certification from either the Arkansas Department of Health or by the United States Food and Drug Administration. Failure to follow those procedures subjects suppliers to criminal penalties and fines.<sup>340</sup>

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<sup>340</sup> § 20-61-101.