

RULES AND REGULATIONS PERTAINING TO IMPORTED FOODS

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SECTION I. AUTHORITY

The following Rules and Regulations Pertaining to Imported Foods are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas, Ark. Code Ann. §§ 20-56-201 – 223 and Ark. Code Ann. § 20-7-109.

SECTION II. PURPOSE

A. Arkansas consumers enjoy one of the safest food supplies in the world. Enhancing the safety of the food supply is a high priority of the Board of Health and actions to improve the safety of the food supply are necessary. While most imported foods are safe, reasonable testing requirements are necessary to ensure that imported foods in Arkansas comply with United States food safety requirements. The Board is directing the Department of Health to take all actions available to:

B. Prevent the distribution and sale of imported unsafe foods by means such as requiring suspected foods to be tested to ensure purity;

C. Destroy imported food that poses a serious public health threat;

D. Review the procedures relating to the collection and analysis of suspected adulterated imported foods by private laboratories; and

E. Enhance enforcement against violations of Arkansas law, including the imposition of civil monetary penalties.

SECTION III. DEFINITIONS

A. “Adulterated” means

1. A food is deemed to be adulterated:

- a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;
- b) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Ark. Code Ann. § 20-56-218;
- c) If 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) If 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;
- e) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal of other animals;
- f) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
- g) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;
- h) If any substance has been substituted wholly or in part therefor;
- i) If damage or inferiority has been concealed in any manner;
- j) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;
- k) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent (4/10 of 1%), harmless natural wax not in excess of four-tenths of one percent (4/10 of 1%), harmless natural gum, and pectin. However, this subdivision shall not apply to any confectionery by reason of its containing less than one-half of one percent (1/2 of 1%) by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;
- l) If it bears or contains a coal tar color other than one from a batch which has been certified under authority of the federal Food, Drug, and Cosmetic Act; or
- m) If it meets the definition as stated in the federal Food, Drug, and Cosmetic Act.

- B. "Board" means the State Board of Health
- C. "Department" means the Department of Health
- D. "Direct retail sale" means the sale of food directly to the consumer

E. "Distributor" means any person offering for sale, exchange, or barter any food product destined for direct retail sale in Arkansas;

F. The term "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;

G. The term "person" includes an individual, partnership, corporation, or association;

H. "Retailer" means any person offering for sale food to individual consumers and representing the last sale prior to human consumption.

SECTION IV. GENERAL REQUIREMENTS

A. Whenever the State Health Officer is satisfied that there is good reason to believe that any importation originating from any foreign country is being made, or is about to be made into Arkansas, of any article used for human food or drink that is adulterated to an extent dangerous to the health or welfare of the citizens of Arkansas, or any of them, he may issue an order requiring the distributor and/or the retailer to test a representative sample of the article by utilizing a private laboratory to ensure its safety and purity.

1. This rule will apply to all distributors and retailers that deliver food in Arkansas for human consumption.
2. The State Health Officer shall direct in his order the food article to be tested, the substances to be tested for, the sampling methodology to be used to ensure an adequate representative sample is tested, and additional directives as determined by the State Health Officer.
3. To the extent practicable, sampling methodology shall be consistent with the methodology utilized by the Food and Drug Administration
4. Private laboratories shall utilize testing methodologies equivalent to those testing procedures utilized by the Food and Drug Administration.
5. Any food found to contain a substance in a quantity that would deem it adulterated by the standards adopted by the Food and Drug Administration shall not be distributed, sold, or moved until the Department allows such activity.
6. The private laboratory shall certify the sample to be pure and unadulterated before the food is released for distribution in Arkansas.
7. All test results that indicate a substance in a quantity that would deem the sample adulterated by the standards adopted by the Food and Drug Administration shall be forwarded to the Department within 3 business days.
8. Quality Control procedures employed by the private laboratory shall be made available to the Department upon request.

B. Upon the finding that it is necessary because of the imminent peril to the public health, safety or welfare, the State Health Officer may suspend the retail sale of food articles from any country and for such period of time as he may think necessary to prevent the sale of adulterated foods in Arkansas; and during such period it shall be unlawful to sell the designated food articles until adequate assurances are documented that the food is safe for consumption.

SECTION V. VIOLATIONS AND PENALTIES

A. In addition to any criminal penalties that are allowable under Ark. Code Ann. § 20-56-205, every person who violates the provisions of these Rules may be assessed a civil penalty by the Board. The penalty shall not exceed one thousand dollars (\$1,000) for each violation.

B. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

C. However, no penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing.

SECTION VI. EFFECTIVE DATE

The effective date of these Rules and Regulations shall be December 1, 2007.

SECTION VII. SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared to be severable.

SECTION VIII. REPEAL

All Regulations and parts of Regulations in conflict herewith are hereby repealed.

CERTIFICATION

This is to certify that the foregoing Rules and Regulations Pertaining to Imported Foods in Arkansas were adopted by the Arkansas State Board of Health at a regular session of said Board held in Paris, Arkansas on the 1st day of November, 2007.

Paul Halverson, Dr.P.H.
Secretary, Arkansas State Board of Health

The foregoing Rules and Regulations, copy having been filed in my office, are hereby approved on this ___ day of _____, 2007.

Mike Beebe
Governor