



Oklahoma State Department of Health
Creating a State of Health

O.S. §63-1-1101 - Definitions

For the purposes of this article:

- (a) The term "food" means (1) articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article.
- (b) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be any, of the retail package of such article, or is easily legible through the outside container or wrapper.
- (c) The term "immediate container" does not include package liners.
- (d) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.
- (e) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates, under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual.
- (f) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.
- (g) The term "contaminated with filth" applies to any food not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.
- (h) The provisions of this article regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food establishment.
- (i) The term "Federal Act" means the Federal Food, Drug, and Cosmetic Act.

O.S. §63-1-1102 - Acts Prohibited

The following acts and the causing thereof within the State of Oklahoma are hereby prohibited:

- (a) the manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded.
- (b) the adulteration or misbranding of any food.
- (c) the receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

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- (d) the sale of food, or the offer to sell it, or its receipt into commerce, in capped glass containers, or perishable or flexible containers such as, but not limited to, paper cardboard containers, when the container has been damaged by fire or water.
- (e) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Section 1-1111 [63-1-1111] of this title.
- (f) the dissemination of any false advertisement.
- (g) the refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by Section 1-1115 [63-1-1115] of this title.
- (h) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food.
- (i) the removal or disposal of a detained or embargoed article in violation of Section 1-1105 [63-1-1105] of this title.
- (j) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being misbranded.
- (k) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification devise authorized or required by reasonable rules and regulations promulgated under the provisions of this title.
- (l) the sale, offer to sell, dispense or release into commerce of any food or confection under a name, label or brand when the name, label or brand either precisely or by slang term or popular usage, is the name, label or brand of a controlled dangerous drug or a controlled dangerous substance by law.

O.S. §63-1-1103 - Injunctions Authorized

In addition to the remedies hereinafter provided, the State Commissioner of Health is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any of the provisions of the preceding section of this article, irrespective of whether or not there exists an adequate remedy at law.

O.S. §63-1-1104 - Violations - Punishment

- (a) Any person who violates any of the provisions of Section 1102 of this article shall be guilty of a misdemeanor, and shall on conviction thereof be subject to imprisonment for not more than thirty (30) days, or a fine of not more than One Hundred Dollars (\$100.00), or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than six (6) months, or a fine of not more than Five Hundred Dollars (\$500.00), or both such imprisonment and fine.
- (b) No person shall be subject to the penalties of subsection (a) of this section for having violated Section 1102(a) or (c) of this article if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radiobroadcast or television licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the State Commissioner of Health or his duly-authorized agent to furnish the Commissioner the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the United States who caused him to disseminate such advertisement.

O.S. §63-1-1105 - Embargo Authorized - Nuisances

(a) Whenever a duly-authorized agent of the State Commissioner of Health finds, or has probable cause to believe, that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this article, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission for a period of fifteen (15) days after such tag or other marking has been affixed thereto.

(b) When an article detained or embargoed has been found by such agent to be adulterated or misbranded, he shall petition the district court in whose jurisdiction the article is detained or embargoed for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the State Commissioner of Health. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner that the article is no longer in violation of this article and that the expenses of such supervision have been paid.

(d) Whenever the State Commissioner of Health or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substances, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the Commissioner, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

O.S. §63-1-1106 - Prosecution for Violations

It shall be the duty of each district attorney to whom the State Commissioner of Health reports any violation of this article to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

O.S. §63-1-1107 - Discretion in Prosecution

Nothing in this article shall be construed as requiring the State Commissioner of Health to report, for the institution of proceedings under this article, minor violations, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

O.S. §63-1-1108 - Rules and Regulations - Definitions - Standards

Whenever in the judgment of the State Board of Health such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate reasonable rules and regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted the Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Act.

O.S. §63-1-1109 - Adulterated Food

A food shall be deemed to be adulterated:

- (a) (1) if 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; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Section 1112 of this article; or (3) 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; or (4) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) 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 from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
- (b) (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.
- (c) if it is confectionery and it bears or contains any alcohol or nonnutritive article of 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; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one percent (1/2 of 1%) of 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.
- (d) 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.

O.S. §63-1-1110 - Misbranding of Food

A food shall be deemed to be misbranded:

- (a) if its labeling is false or misleading in any particular.
- (b) if it is offered for sale under the name of another food.
- (c) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "Imitation" and immediately thereafter the name of the food imitated.
- (d) if its container is so made, formed, or filled as to be misleading.
- (e) if in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by reasonable rules and regulations prescribed by the State Board of Health.
- (f) if any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (g) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by reasonable rules and regulations as provided by Section 1108 of this article, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such reasonable rules and regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.
- (h) if it purports to be or is represented as:
 - (1) a food for which a standard of quality has been prescribed by reasonable rules and regulations as provided by Section 1108 of this article, and its quality falls below such standard, unless its label bears, in such manner and form as such reasonable rules and regulations specify, a statement that it falls below such standard; or
 - (2) a food for which a standard or standards of fill of container have been prescribed by reasonable rules and regulations as provided by Section 1108 of this article, and it falls below the standard of fill or container applicable thereto, unless its label bears, in such manner and form as such reasonable rules and regulations specify, a statement that it falls below such standard.
- (i) if it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by reasonable rules and regulations promulgated by the State Board of Health; and provided, further, that the requirements of clause (2) of this paragraph shall not apply to any carbonated beverage, the ingredients of which have been fully and correctly disclosed to the extent prescribed by said clause (2) to the Board in an affidavit.

(j) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the State Board of Health determines to be, and by reasonable rules and regulations prescribed, as necessary in order to fully inform purchasers as to its value for such uses.

(k) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by reasonable rules and regulations promulgated by the State Board of Health.

O.S. §63-1-1111 - Permits Authorized

(a) Whenever the State Board of Health finds after investigation that the distribution in the State of Oklahoma of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate reasonable rules and regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such reasonable rules and regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the State Commissioner of Health as provided by such reasonable rules and regulations.

(b) The State Commissioner of Health is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the State Commissioner of Health shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

O.S. §63-1-1112 - Adding Substances to Food

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of Section 1109(a) of this article, but when such substance is so required or cannot be so avoided, the State Board of Health shall promulgate reasonable rules and regulations limiting the quantity therein or thereon to such extent as the Board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of Section 1109(a) of this article. While such reasonable rules and regulations are in effect limiting the quantity of any such substance in the case of any food, such food shall not, by

reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of Section 1109(a) of this article. In determining the quantity of such added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

O.S. §63-1-1113 - False Advertising

An advertisement of a food shall be deemed to be false if it is false or misleading in any particular.

O.S. §63-1-1114 - Rules and Regulations - Enforcement

(a) The authority to promulgate reasonable rules and regulations for the efficient enforcement of this article is hereby vested in the State Board of Health. The Board is hereby authorized to make the reasonable rules and regulations promulgated under this article conform, insofar as practicable, with those promulgated under the Federal Act.

(b) Hearings authorized or required by this Article shall be conducted by the State Board of Health or such officer, agent, or employee as the Board may designate for the purpose.

(c) Before promulgating any reasonable rules and regulations contemplated by Section 1108, Section 1110(j), or Section 1111 of this article, the Board shall give appropriate notice of the proposal and of the time and place for a hearing. The reasonable rules and regulations so promulgated shall become effective on a date fixed by the Board (which date shall not be prior to thirty (30) days after its promulgation). Such reasonable rules and regulations may be amended or repealed in the same manner as is provided for their adoption, except that in the case of reasonable rules and regulations amending or repealing any such reasonable rules and regulations the Board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

O.S. §63-1-1115 - Inspections

The State Commissioner of Health or his duly-authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce after notice to the owner, or person in charge of such factory, warehouse, establishment, or vehicle, for the purpose:

(1) of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of this article are being violated, and

(2) to secure samples or specimens of any food after paying or offering to pay for such sample.

It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated; provided, that a copy of the report thereof shall be furnished to the owner of such factory, warehouse, establishment, or vehicle upon written request to the Commissioner; and provided, further, that nothing in this article shall be construed to limit, modify, repeal or affect in any way the powers, duties or functions of the State Board of Agriculture.

O.S. §63-1-1116 - Publication of Reports

(a) The State Commissioner of Health may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The Commissioner may also cause to be disseminated such information regarding food as the Commissioner deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigation of the Commissioner.

O.S. §63-1-1117 - Conformity to Federal Requirements

All reasonable rules, regulations, definitions and standards promulgated and/or adopted by the State Board of Health under the provisions of this article shall conform, insofar as practicable, to the reasonable rules, regulations, definitions and standards of the Federal Food and Drug Administration.