Effective 7/1/2017

Part 1
Administration

4-5-101 Title.

This chapter is known as the "Utah Wholesome Food Act."

Renumbered and Amended by Chapter 345, 2017 General Session

4-5-102 Definitions.

As used in this chapter:

(1) "Advertisement" means a representation, other than by labeling, made to induce the purchase of food.

(2)
(a) "Color additive":
(i) means a dye, pigment, or other substance not exempted under the federal act that, when added or applied to a food, is capable of imparting color; and
(ii) includes black, white, and intermediate grays.
(b) "Color additive" does not include a pesticide chemical, soil or plant nutrient, or other agricultural chemical that imparts color solely because of the chemical's effect, before or after harvest, in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of any plant life.

(3)
(a) "Consumer commodity" means a food, as defined by this chapter, or by the federal act.
(b) "Consumer commodity" does not include:
(i) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.;
(ii) a commodity subject to Chapter 16, Utah Seed Act;
(iii) a meat or meat product subject to the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;
(iv) a poultry or poultry product subject to the Poultry Inspection Act, 21 U.S.C. Sec. 451 et seq.;
(v) a tobacco or tobacco product; or
(vi) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

(4) "Contaminated" means not securely protected from dust, dirt, or foreign or injurious agents.

(5)
(a) "Farm" means an agricultural operation, under management by one entity, that grows or harvests crops.
(b) "Farm" does not include an entity that is exempt under 21 C.F.R. 112.4(a) or 21 C.F.R. 112.5.

(6) "Farmers market" means a market where a producer of a food product sells only a fresh, raw, whole, unprocessed, and unprepared food item directly to the final consumer.

(7) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(8) "Food" means:
(a) an article used for food or drink for human or animal consumption or the components of the article;
(b) chewing gum or chewing gum components; or

(c) a food supplement for special dietary use that is necessitated because of a physical, physiological, pathological, or other condition.

(9)

(a) "Food additive" means a substance, the intended use of which results in the substance becoming a component, or otherwise affecting the characteristics, of a food.

(b)

(i) "Food additive" includes a substance or source of radiation intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

(ii) "Food additive" does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical that is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity; or

(C) a substance used in accordance with a sanction or approval granted pursuant to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq. or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.

(10)

(a) "Food establishment" means a grocery store, bakery, candy factory, food processor, bottling plant, sugar factory, cannery, farm, rabbit processor, meat processor, flour mill, cold or dry warehouse storage, or other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(b) "Food establishment" does not include:

(i) a dairy farm, a dairy plant, or a meat establishment, that is subject to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(ii) a farmers market; or

(iii) a food service establishment, as that term is defined in Section 26B-7-401.

(11) "Label" means a written, printed, or graphic display on the immediate container of an article of food.

(12) "Labeling" means a label and other written, printed, or graphic display:

(a) on an article of food or the article of food's container or wrapper; or

(b) accompanying the article of food.

(13) "Official compendium" means the official documents or supplements to the:

(a) United States Pharmacopoeia;

(b) National Formulary; or

(c) Homeopathic Pharmacopoeia of the United States.

(14)

(a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of the consumer commodity to retail purchasers.

(b) "Package" does not include:

(i) a package liner;

(ii) a shipping container or wrapping used solely for the transportation of a consumer commodity in bulk or in quantity to a manufacturer, packer, processor, or wholesale or retail distributor; or

(iii) a shipping container or outer wrapping used by a retailer to ship or deliver a consumer commodity to a retail customer, if the container and wrapping bear no printed information relating to the consumer commodity.

(15)

(a) "Pesticide" means a substance intended:
(i) to prevent, destroy, repel, or mitigate a pest, as defined under Section 4-14-102; or
(ii) for use as a plant regulator, defoliant, or desiccant.
(b) "Pesticide" does not include:
(i) a new animal drug, as defined by 21 U.S.C. Sec. 321, that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by federal regulation establishing conditions of use of the drug; or
(ii) animal feed, as defined by 21 U.S.C. Sec. 321, bearing or containing a new animal drug.
(16) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.
(17) "Produce" means a food that is a:
(a) fruit, vegetable, mix of intact fruits and vegetables, mushroom, sprout from any seed source, peanut, tree nut, or herb; and
(b) raw agricultural commodity.
(18) "Raw agricultural commodity" means a food in the food's raw or natural state, including all fruits that are washed, colored, or otherwise treated in the fruit's unpeeled, natural form before marketing.
(19) "Registration" means the commissioner's issuance of a certificate to a qualified food establishment.
(20) "Sprout" means the shoot of a plant generally harvested when cotyledons are undeveloped or underdeveloped and mature leaves have not emerged.

Amended by Chapter 528, 2023 General Session

4-5-103 Adulterated food specified.
(1) A food is adulterated:
(a) if the food bears or contains a poisonous or deleterious substance in a quantity that may ordinarily render the food injurious to health;
(b) if the food bears or contains an added poisonous or added deleterious substance that is unsafe within the meaning of Subsection 4-5-204(1);
(c) except as provided in Subsection (3), if the food:
(i) is a raw agricultural commodity; and
(ii) bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a;
(d) if the food is, bears, or contains a food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;
(e) if the food consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance;
(f) if the food is otherwise unfit for food;
(g) if the food has been produced, prepared, packed, or held under unsanitary conditions whereby the food may have:
(i) become contaminated with filth; or
(ii) been rendered diseased, unwholesome, or injurious to health;
(h) if the food is, in whole or in part, the product of:
(i) a diseased animal;
(ii) an animal that has died other than by slaughter; or
(iii) an animal that has fed upon the uncooked offal from a slaughterhouse;

(i) if the food's container is composed, in whole or in part, of a poisonous or deleterious substance that may render the contents injurious to health;
(j) if the food is intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption in effect pursuant to Section 4-5-204, or 21 U.S.C. Sec. 348;
(k) if the food:
(i) is a meat or meat product; and
(ii)
(A) is in a casing, package, or wrapper:
(I) through which a part of the casing, package, or wrapper's contents can be seen; and
(II) that is colored or has markings that are colored, so as to be misleading or deceptive with respect to the color, quality, or kind of food to which the color is applied; or
(B) contains or bears a color additive;
(l) if the food is produce and is in violation of 21 C.F.R. Part 112;
(m) if a valuable constituent is, in whole or in part, omitted or abstracted from a product and a substance is substituted wholly or in part;
(n) if damage or inferiority is concealed;
(o) if a substance is added, mixed, or packed with a product so as to:
(i) increase the product's bulk or weight;
(ii) reduce the product's quality or strength; or
(iii) make the product appear better or of greater value; or
(p) if the food:
(i) is confectionery; and
(ii)
(A) has partially or completely imbedded in the food a nonnutritive object, unless the department determines that the nonnutritive object:
(I) is of practical functional value to the confectionery product; and
(II) would not render the product injurious or hazardous to health;
(B) bears or contains alcohol, other than alcohol derived solely from the use of flavoring extracts, that does not exceed .05% by volume; or
(C) bears or contains a nonnutritive substance, unless:
(I) the nonnutritive substance is a safe nonnutritive substance that is in or on the confectionery for a practical functional purpose in the manufacture, packaging, or storing of the confectionery; and
(II) the use of the nonnutritive substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter.
(2) The department may, for the purpose of avoiding or resolving uncertainty as to the application of Subsection (1)(p)(ii)(C), issue rules allowing or prohibiting the use of a particular nonnutritive substance.
(3) Notwithstanding Section 4-5-204, the residue of a pesticide chemical remaining in or on a processed food is not considered unsafe if:
(a) the pesticide chemical is used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. Sec. 346a;
(b) the residue of the pesticide chemical in or on the raw agricultural commodity is removed to the extent possible in good manufacturing practice;
(c) the raw agricultural commodity is subjected to processing such as canning, cooking, freezing, dehydrating, or milling; and

(d) the concentration of the residue in the processed food when ready to eat is no greater than the tolerance prescribed for the raw agricultural commodity.

Amended by Chapter 311, 2020 General Session

4-5-104 Authority to make and enforce rules.

(1) The department may adopt rules to efficiently enforce this chapter, and if practicable, adopt rules that conform to the regulations adopted under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(2) The department or an officer, agent, or employee designated by the department shall conduct a hearing authorized or required by this chapter.

(3)

(a) Except as provided by Subsection (3)(b), pesticide chemical regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the pesticide chemical regulations in this state.

(b) The department may adopt a rule that prescribes tolerance for pesticides in finished foods in this state whether or not in accordance with regulations made under the federal act.

(4)

(a) Except as provided by Subsection (4)(b), food additive regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the food additive regulations in this state.

(b) The department may adopt a rule that prescribes conditions under which a food additive may be used in this state whether or not in accordance with regulations made under the federal act.

(5) Color additive regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the color additive rules in this state.

(6)

(a) Except as provided by Subsection (6)(b), special dietary use regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the special dietary use rules in this state.

(b) The department may, if the department finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use rules whether or not in accordance with regulations made under the federal act.

(7)

(a) Except as provided by Subsection (7)(b), regulations adopted under the Fair Packaging and Labeling Act, 15 U.S.C. Sec. 1453 et seq., shall be the rules in this state.

(b) Except as provided by Subsection (7)(c), the department may, if the department finds it necessary in the interest of consumers, prescribe package and labeling rules for consumer commodities, whether or not in accordance with regulations made under the federal act.

(c) The department may not adopt rules that are contrary to the labeling requirements for the net quantity of contents required according to 15 U.S.C. Sec. 1453(a)(4).

(8)

(a) Except as provided by Subsection (8)(b), the preventive control for human food regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the preventive controls for the state.

(b) The department may adopt a rule that prescribes preventive controls in this state whether or not in accordance with regulations made under the federal act except that the rule may not be more stringent than the federal law.

(9)
(a) Except as provided by Subsection (9)(b), the standards for the growing, harvesting, packaging, and holding of produce for human consumption regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the standards for the state.
(b) The department may adopt a rule that prescribes standards for the growing, harvesting, packaging, and holding of produce for human consumption in this state whether or not in accordance with regulations made under the federal act except that the rule may not be more stringent than the federal law.
(10)
(a) A federal regulation automatically adopted according to this chapter takes effect in this state on the date the federal regulation becomes effective as a federal regulation.
(b) The department shall publish all other proposed rules in publications prescribed by the department.
(c)
(i) A person who may be adversely affected by a rule may, within 30 days after a federal regulation is automatically adopted, or within 30 days after publication of any other rule, file with the department, in writing, objections and a request for a hearing.
(ii) The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the rule.
(d)
(i) If no substantial objections are received and no hearing is requested within 30 days after publication of a proposed rule, it shall take effect on a date set by the department.
(ii) The effective date shall be at least 60 days after the time for filing objections has expired.
(e)
(i) If timely substantial objections are made to a federal regulation within 30 days after the federal regulation is automatically adopted or to a proposed rule within 30 days after the proposed rule is published, the department, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections.
(ii) An interested person or the person's representative may be heard.
(f)
(i) The department shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable.
(ii) The order shall be based on substantial evidence in the record of the hearing.
(g)
(i) If the order concerns a proposed rule, the department may withdraw the proposed rule or set an effective date for the rule as published or as modified by the order.
(ii) The effective date shall be at least 60 days after publication of the order.
(11) Whenever a regulation is made under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., establishing standards for food, the tolerances established by the department under this chapter shall immediately conform to the standards established by the Federal Food and Drug Administration as herein provided and shall remain the same until the department determines that for reasons peculiar to Utah a different rule should apply.

Amended by Chapter 311, 2020 General Session
Amended by Chapter 354, 2020 General Session

4-5-105 Inspection of premises and records -- Authority to take samples -- Inspection results reported.

(1) An authorized agent of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:
  (a) enter at reasonable times a factory, farm, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce or after introduction into commerce;
  (b) enter a vehicle being used to transport or hold food in commerce;
  (c) inspect at reasonable times and within reasonable limits and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling located within the factory, warehouse, establishment, or vehicle;
  (d) obtain samples necessary for the enforcement of this chapter if the department:
    (i) pays the posted price for the sample if requested to do so; and
    (ii) receives a signed receipt from the person from whom the sample is taken; and
  (e) have access to and copy all records of carriers in commerce showing:
    (i) the movement in commerce of food;
    (ii) the holding of food during or after movement in commerce; and
    (iii) the quantity, shipper, and consignee of food.
(2) Evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence was obtained.
(3) A carrier is subject to the other provisions of this chapter by reason of the carrier's receipt, carriage, holding, or delivery of food in the usual course of business as a carrier.
(4) After the inspection of a factory, warehouse, consulting laboratory, or other establishment and before leaving the premises, the authorized agent making the inspection shall give the owner, operator, or agent in charge a written report describing any conditions or practices observed by the agent during the inspection which, in the agent's judgment, indicate that a food in the establishment:
  (a) consists in whole or in part of a filthy, putrid, or decomposed substance; or
  (b) has been prepared, packed, or held under unsanitary conditions whereby the food may have become contaminated with filth or been rendered injurious to health.
(5) A copy of the report required under Subsection (4) shall be sent promptly to the department.
(6) If the authorized agent making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, the agent shall give to the owner, operator, or agent in charge:
  (a) a receipt describing the samples obtained; and
  (b) if an analysis is made of the sample for the purpose of ascertaining whether the food consists in whole or in part of a filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis.

Amended by Chapter 32, 2019 General Session

4-5-106 Publication of reports and information.

(1) The department shall publish reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and its disposition.
(2) The department shall disseminate information regarding food which it considers necessary in the interest of public health and for the protection of consumers against fraud.

(3) Nothing in this section prohibits the department from collecting, reporting, and illustrating the results of investigations made by the department.

Renumbered and Amended by Chapter 345, 2017 General Session