

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES

AGRICULTURAL COMMODITIES INSPECTION

ADMINISTRATIVE CODE

CHAPTER 80-1-22 FOODS, DRUGS AND COSMETICS

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80-1-22-.01 Artificial Preservatives And Coloring Requirements.

(1) All food sold or offered for sale containing artificial coloring or preservatives shall be labeled to conform with the labeling requirements as set out in C.F.R. Chapter 21, Parts 74 and 101.22. Food containing artificial coloring or preservatives not in compliance with the above shall be deemed to be misbranded under the provisions of Code of Ala. 1975, §20-1-25.

(2) Artificial coloring or preservatives used in food sold or offered for sale must have been previously determined by the Food and Drug Administration of the United States Department of Health and Human Services to be safe for use for that specific food product.

(3) The use of any artificial coloring or preservative in food sold or offered for sale must be in compliance with any regulations or restrictions promulgated by the Food and Drug Administration of the United States Department of Health and Human Services.

Author: Charles H. Barnes

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80-1-22-.02 Labeling Of Foods, Drugs, And Cosmetics.

(1) For purposes of this Chapter, the term **label**, as pertaining to foods, drugs and cosmetics that are sold or offered for sale, includes any legend and descriptive matter or design appearing upon

the article or its container, and also includes circulars, pamphlets, and the like which are packed and go with the articles to the purchaser, and such letters, circulars and pamphlets to which reference is made either on the label attached to the package or the package itself.

(2) The label shall bear plainly and conspicuously, without any intervening descriptive matter all the information specifically required by the law and regulations thereunder.

(3) A label in a foreign language shall conform to these rules and shall bear in English, as well as in the foreign language used to describe the article, all the information required by the law.

(4) The label shall be free from any statement, design or device regarding the article or the ingredients or substances contained therein, or quality thereof, or place of origin, which is false or misleading in any particular. The terms **design** and **device** include abbreviations, characters, signs, and pictorial matter of any description.

(5) A food, drug or cosmetic product shall not be labeled or branded in such a manner as to deceive or mislead the purchaser. Direct misstatements and indirect misrepresentation regarding the article or its ingredients are prohibited, whether by means of designs, printed testimonials, devices, or artifices in the arrangement, style or dress of the package, or in the arrangement of the printed or pictorial matter in or upon the label or package.

(6) An article containing more than one food product or active medicinal agent is misbranded if named after a single constituent. In the case of drugs, the nomenclature of the **United States Pharmacopoeia** or **National Formulary** shall be followed.

(7) The statement of the formula is not required on the label except insofar as may be necessary to prevent adulteration or misbranding.

(8) An article of food or drugs which under the law or regulations requires special labeling must carry such label, not only on the original package, but also on all lots removed for display of the goods or for the convenience of handling.

(9) Retail cartons or other outside containers shall be labeled according to the same regulations as are applied to the bottle, can or other receptacle contained therein.

(10) A food product shall be deemed misbranded if the ingredients (where ingredient declaration is required) are not listed by their common or usual name in descending order of predominance by weight.

(11) A drug in package form shall be deemed misbranded if its label fails to bear the name of the product, together with the quantity of the contents in terms of weight, measure or numerical count, and the name and principal address of the manufacturer or other person responsible for placing the product on the market.

(12) If a food offered for sale purports to be or is represented for special dietary use for human consumption by reason of its use as regulating the intake of protein, fat, carbohydrate, or calories for the purpose of controlling body weight, or for the purpose of dietary management with respect to disease, the label shall bear a statement of:

(a) the percent by weight of protein, fat and available carbohydrate in such food; and

(b) the number of available calories supplied by a specified quantity of such food.

(13) The label of dietary foods shall bear the words **FOR DIETARY PURPOSES**, or **DIETETIC**, or words of like import, in letters of a height not less than that of the letters of any other word on the label except the brand, and such word or words shall be marked on the label in juxtaposition with or directly above or below the name of the food.

(14) The portion of the store, display counter, shelving, or other place where dietary foods are displayed or offered for sale shall be clearly and plainly identified by an appropriate sign reading **FOR DIETARY PURPOSES** or words of similar import.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-57.

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80-1-22-.03 Manufacturers' Identification Required On Labels.

(1) The name of the manufacturer, jobber, wholesaler, dealer, agent or distributor appearing on the label must be the true name of the actual manufacturer, producer, jobber, wholesaler, dealer, agent or distributor.

(2) When a person, firm or corporation actually manufactures or produces a food or a drug in two or more places, either place of manufacture or production of each particular package may be stated on the label except when the mention of any place, to the exclusion of

the others, deceives or misleads the buying public.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-57.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.04 Character Of Names.

(1) A simple or unmixed food or drug product shall be sold by its common name in the English language; or, if a drug recognized in the **United States Pharmacopoeia** or **National Formulary**, by the names therein designated.

(2) A geographical name indicating that a food or drug product was manufactured or produced in a specific place shall not be used unless such product was manufactured or produced in that place.

(3) A name which is distinctive or a product of a specific foreign country shall not be used upon an article not manufactured or produced in that country, except as an indication of the type or style of quality or manufacture, and then only when the product possesses substantially the characteristic qualities of the product of that foreign country. Such name shall be so qualified as to remove any impression that the article was manufactured or produced in the country in which the name is distinctive.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-57.

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80-1-22-.05 Bulk Food Labeling Requirements.

(1) For the purposes of this Chapter, **bulk food** means processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn by the consumer.

(2) Bulk food product modules shall be labeled with a counter card, sign, or other appropriate device bearing prominently and conspicuously the common name of the product, a list of ingredients in descending order of predominance, and declaration of artificial color or flavor and chemical preservatives if contained in the product.

(3) Bulk food not labeled as set out above will be considered "misbranded" under Code of Ala. 1975, §20-1-25.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.06 Distinctive Names For Food And Drugs.

(1) A **distinctive name** is a name that distinguishes one kind of food or drug from another.

(2) The expression **own distinctive name** means a name which is purely arbitrary or fanciful and distinguishes a particular food or drug from all other articles of food or drugs. It shall not give a false indication of origin, character, composition, ingredients, or place of manufacture and shall not lead the purchaser to suppose that the product is other than what it is.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.07 Mixtures Or Compounds Bearing Distinctive Names.

(1) The terms **mixture** or **compound** for purposes of this Chapter are interchangeable.

(2) A mixture or a compound offered for sale under its own distinctive name shall not be an imitation of any other article whether simple, mixed or compound. In addition to its own distinctive name, it shall bear on the same label or brand the name of the place of manufacture or production. If the name of the place is one which is found in different states, territories or countries, the name of the state, territory or country, as well as the name of the place, must be stated.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.08 Requirements For Imitations, Compounds And Substitutions.

(1) An imitation food product shall bear on the label the word **imitation** in immediate conjunction equally as prominent and conspicuous as the name of the product.

(2) A compound or blend not offered for sale under its own distinctive name, as defined in Rule 80-1-22-.05(2) and for which no definition or standard has been fixed, shall be labeled with the words "compound" or **blend** as the case may be. When a statement of the list of the ingredients alone may not correct a false or misleading impression, or fails to disclose the true nature and character of the product, the percentage of each ingredient shall be stated on the label.

(3) When a substance of a recognized quality commonly used in the preparation of a food product is replaced in whole or in part by another substance not injurious or deleterious to health, the name of the substitute shall appear on the label.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.09 Rules For Stating Quantity Of Proportion In Drugs.

(1) The quantity of alcohol in a drug shall be stated in terms of the average percentage by volume of absolute alcohol in the finished product. The term **alcohol** without qualification means ethyl alcohol. If any alcohol other than ethyl alcohol is present in a drug, the kind must be stated on the label.

(2) When two or more pills, wafers, tablets, powders, capsules, or the like are put up for sale or distribution in the same container, there shall be stated on the container the quantity present in each pill, wafer, powder, tablet, capsule or other unit of any substance required by law to be declared.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.10 Rules For Fill Of Food Packages.

(1) With the exception of those specific items set out below, the package for all food in package form shall be not less than 95% filled with the food it purports to contain.

(2) Packages of specially processed oat groats, such as oat meal, rolled oats, rolled oat groats and other oat flakes may be filled with not less than 85% of the product and still not be considered slack filled.

(3) Packages of whole or ground spices will not be considered slack filled under the following net weights and minimum percent filled.

Net Weight Minimum Percent Filled

Less than two ounces 70

Two to three ounces 75

Three or more ounces 80

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

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80-1-22-.11 Adoption Of Federal Standards Of Identity And Composition Of Foods. The standards of identity and composition for foods presently adopted and promulgated and as may in the future be adopted and promulgated by the Food and Drug Administration of the United States Department of Health and Human Services, together with those of the United States Department of Agriculture, are hereby adopted as the standards of identity composition for foods for Alabama; except where such federal standards conflict with those food standards established under Alabama law and regulations.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-21.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.12 Rules For Vinegar. In addition to all other requirements, distilled vinegar, sold or offered for sale to which color is added shall be labeled **artificially colored distilled vinegar**, with all words of the name being in the same size and type and given with the same degree of prominence on the label.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.13 Rules For Pecans And Similar Nuts.

(1) Pecans, peanuts, walnuts, almonds, Brazil nuts, chestnuts, filberts or pistachio nuts shall be deemed to be adulterated under the provisions of Code of Ala. 1975, §20-1-22, when the quantity that is sold or offered for sale contains more than 10% of insect infested, moldy, rancid, decayed, decomposed, or otherwise inedible nuts.

(2) The above tolerances shall not be applicable when said nuts are sold to cracking plants.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-93.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.14 Rules For Purchasing And Testing Milk And Cream.

(1) Any person or firm desiring to open a cream station, milk station, receiving station, shipping station, creamery, cheese factory, ice cream factory or condensory for the purpose of purchasing cream or milk on butterfat basis shall, two weeks prior to the opening of any of the above named establishments, notify the Commissioner of Agriculture and Industries in writing of the location and the names and addresses of the operator and tester who will be in charge of the testing and the establishment.

(2) All milk plants, milk stations, ice cream plants, creameries, cheese plants, and condensories that practice composite testing are required to take samples of each shipment of milk which the composite test represents. All plants or stations which practice composite testing shall test at least once every seven days, provided, however, if cheese plants and condensories are equipped with refrigeration facilities and milk samples are kept below a constant temperature of 45° F, and properly preserved, such establishments shall be required to test only once every 15 days, provided further, that such samples shall not be kept out of refrigeration for a period exceeding 20 minutes at any one time.

(3) Each lot of cream or milk delivered to be purchased on butterfat basis shall be accurately sampled by thoroughly mixing and then taking out carefully a representative portion for the test. In case of milk where composite testing is done, the portion representing each lot sampled shall be used in making up the composite sample for the butterfat test.

(4) All licensed receiving stations conducted for the purpose of the purchase of butterfat, either in the form of cream or milk, shall keep a permanent record available at all times, to the agents of the Department of Agriculture and Industries, which records are for checking purposes and shall show the percentage of butterfat obtained by the analysis of the purchaser on all samples representing lots of cream or milk purchased, as well as the total weight of the product represented by the sample.

(5) Licensed milk and cream testers shall report daily the percentage of butterfat obtained in each test on regular forms furnished by the Department of Agriculture and Industries of milk and cream for the purpose of purchasing the milk or cream on butterfat basis to the Commissioner of Agriculture and Industries.

(6) It shall be the duty of testers of milk or cream to post in a conspicuous place frequented daily by patrons a copy of all tests reported to the Commissioner of Agriculture and Industries, and the day the tests are made. These shall remain posted until an agent of the Commissioner shall authorize the removal of same.

(7) It shall be the duty of the tester to see that the percentage of butterfat obtained by him is the figure for the percentage of butterfat used and recorded on a permanent record for the payment of the milk or cream which the sample tested represents.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 2-13-2, 2-13-93.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.15 Rules For Ice Cream And Related Products. In addition to all other statutory and regulatory requirements, ice cream, custard, sherbets and ices sold or offered for sale shall also have the following requirements:

(a) Ice cream shall contain not more than .5% by weight of stabilizer, and not less than 18% total milk solids.

(b) In all cases, ice cream shall contain not less than 1.60 pounds

of total food solids per gallon in the finished product.

(c) Fruit ice creams shall contain not less than 10% by weight of mature, sound, wholesome fruit or fruit juice, and shall conform in name to the fruit and/or fruit juice used in its preparation.

(d) Nut ice cream shall contain not less than 2% by weight of sound, clean, wholesome, nonrancid nut meats.

(e) All frozen custard, ice cream custard, French custard, French ice cream, cooked ice cream, parfait and all similar frozen products and varieties of ice cream shall contain not less than 10% of milk fat, or butterfat, by weight, and not less than 1% of dried egg yolk or its equivalent.

(f) Sherbets shall not contain more than 2.5% by weight of milk fat or butterfat, and not more than 8% by weight of total milk solids, or less than 30% total solids, or less than .35% total acid calculated as lactic acid.

(g) Ices shall contain no milk solids or milk fat, but may contain eggs.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§2-13-2, 20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.16 Adoption Of Federal Definitions And Standards For Low Fat Milk. Regulations of the Food and Drug Administration of the United States Department of Health and Human Resources as adopted under authority of the Federal Food, Drug and Cosmetic Act, which regulations govern the sale of low fat milk as published in 21 CFR 131.135--**Low Fat Milk; Identity**--with respect to the description, addition of vitamins, optional ingredients, methods of analysis, nomenclature and label declaration, are hereby adopted by reference and said federal regulations, as they now exist or may exist in the future, shall regulate the sale or offer for sale of low fat milk in Alabama. Any portion of the above federal regulations, now or in the future, that conflict with Alabama statutes or regulations shall be deemed not to have been adopted.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 2-13-93.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985;

June 19, 1986.

80-1-22-.17 Dairy Product Definitions And Standards. The following dairy products, to be labeled as such, shall meet the following definitions and standards:

(a) **Buttermilk** is the product obtained either by churning milk or cream, or from the souring or treatment by a lactic acid, or other suitable culture, of pasteurized skim milk, pasteurized partially skimmed milk, evaporated milk and water, nonfat dry milk solids and water, or a combination of any of these. It shall contain not less than 8.25% of milk solids not fat.

(b) **Whole milk buttermilk** is the product obtained either by churning milk, or by souring pasteurized milk or its equivalent by means of a suitable culture. It shall contain not less than 8.25% of milk solids not fat and not less than 3.25% of milk fat.

(c) **Skim** (or **skimmed** or **nonfat**) milk is milk from which the fat in excess of .5% has been removed.

(d) **Flavored milk** is a wholesome beverage made from Grade A milk and the appropriate flavoring ingredient, with or without sugar. It shall contain not less than 3% of milk fat, nor less than 7.5% milk solids not fat.

1. In the case of chocolate milk (chocolate flavored milk), the principal flavoring ingredient shall be chocolate and/or cocoa. The product shall be named **chocolate milk** or **chocolate flavored milk**.

2. Approved colors may be used as an ingredient of any flavored milk, but in case an artificial color is used, the label shall declare the presence of artificial color by displaying a plain and conspicuous statement to that effect. Acceptable statements are **artificially colored** and **artificial color added**.

3. Any suitable flavoring may be used as an ingredient of any flavored milk, but when an artificial flavor is used, the label shall declare the presence of artificial flavor by displaying a plain and conspicuous statement to that effect. Acceptable statements are **artificially flavored** or **artificial flavor added**.

(e) **A flavored dairy drink** is a wholesome beverage made from partially skimmed Grade A milk, an appropriate flavoring ingredient with or without sugar; or partially skimmed Grade A milk, condensed skimmed milk, an appropriate flavoring ingredient with or without sugar; or from partially skimmed Grade A milk, nonfat dry milk, water, an appropriate flavoring ingredient with or without sugar; or a combination of any of the above listed ingredients with sufficient

wholesome stabilizer to properly process the beverage. It shall contain not less than 2% milk fat nor less than 7.75% milk solids not fat.

1. Approved colors may be used as an ingredient of any flavored dairy drink, but in case an artificial color is used, the label shall declare the presence of artificial color by displaying a plain and conspicuous statement to that effect. Acceptable statements are **artificially colored** and **artificial color added**.

2. Any suitable flavoring may be used as an ingredient of any flavored dairy drink, but when an artificial flavor is used, the label shall declare the presence of artificial flavor by displaying a plain and conspicuous statement to that effect. Acceptable statements are **artificially flavored** or **artificial flavor added**.

3. The name of each flavored dairy drink shall be _____ **dairy drink** or _____ **flavored dairy drink**, the blank being filled in with the name of the principal flavor.

(f) **Chocolate drink** is any wholesome drink made from any skimmed milk product, chocolate and/or cocoa, sugar, water, additional flavor, if desired and stabilizer, if desired. It shall contain not less than 7.75% of milk solids not fat nor more than .5% milk fat. When an artificial flavor is used, the label shall declare the presence of artificial flavor by displaying a plain and conspicuous statement to that effect. Acceptable statements include **artificially flavored** and **artificial flavor added**. The terms **chocolate drink** or **chocolate flavored drink** shall be used as the name of the product wherever the name is stated.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 2-13-93.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.18 Obscuring Or Covering Up Labels Prohibited.

(1) Price marks, store labels or other similar device which obscures or covers up warning labels, expiration dates, directions for use, dosage, or any other vital information that, if obscured, might result in misuse of any food, drug, or cosmetic sold or offered for sale, is prohibited.

(2) Any food, drug or cosmetic that is obscured or covered up as set out above shall be deemed to be misbranded under the provisions of Code of Ala. 1975, §§20-1-25, 20-1-26 or 20-1-52.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.19 Holding Products In Unsanitary Conditions Prohibited.

(1) Any food or drug sold, offered for sale, or to be offered for sale in the future that has been prepared or packed or is being held in an unsanitary condition whereby the food or drug may become contaminated with filth or rendered injurious to health is prohibited.

(2) Any food or drug, offered for sale, or to be offered for sale in the future, prepared, packed or being held in an unsanitary condition as set out above shall be deemed to be adulterated under the provisions of Code of Ala. 1975, §§20-1-22 and 20-1-24.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.20 Food Storage Requirements. All food that is sold, offered for sale or stored to be sold in the future shall be stored or kept under the following conditions:

(a) Food shall be stored and/or displayed above the floor in such a manner that will protect the food from contamination.

(b) Food shall be stored and/or displayed in such a manner that will protect the food from contamination from toxics, caustics, or pesticides. No toxics, caustics, or pesticides shall be stored or displayed above food items.

(c) Inventory in a food storage facility shall be kept away from the walls and access for human passage shall be provided to the walls. There shall be a white inspection strip on the floor extending out from the walls a minimum of ten inches.

(d) Within a food storage facility, openings to the outside and/or building defects (cracks, holes, expansion joints, etc.) shall be maintained effectively to protect against the entry of rodent, insect, and vermin.

(e) Outside premises of a food storage facility shall be maintained in such a way as to protect against insect, vermin, and rodent harborage near the warehouse facility. That is, the outside premises shall be kept free of litter and debris. Weeds shall be kept cut or killed and any type of rodent, vermin, and insect harborage areas shall be removed from premises.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986. **Amended:** Filed August 27, 1991.

80-1-22-.21 Notification Required After The Occurrence Of An Emergency. Persons in charge of any establishment that stores, distributes, or exposes for sale any food, drugs or cosmetics in the event of a fire, flood, storm, extended power outage, or a similar significant occurrence that creates a reasonable probability that the products involved may become contaminated or adulterated shall immediately, in the event of such emergency, notify the Commissioner of Agriculture and Industries or his agents involved in food, drug or cosmetic regulations of such occurrence. Failure to notify the Commissioner or his authorized agents shall be deemed a violation of this rule.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed April 19, 1982. Reformatted: Filed March 26, 1985; June 19, 1986.

80-1-22-.22 Rules To Determine Adulteration Of Salvage Or Distressed Foods. The following foods, generally defined as salvage foods and/or distressed foods, shall be considered adulterated and unsalvageable under the provisions of Code of Ala. 1975, §20-1-22.

(a) Food in containers with bulging ends or lids, including hard swells, springers, or bulges due to severe dents or retort buckles, with the exception of beer and carbonated beverage containers;

(b) Food in containers with visible evidence of product leakage, or stained labels on containers;

(c) Food in containers showing signs of pitted rust or any sign of rust, with the exception of slight rust which may be removed by buffing prior to being offered for sale;

(d) Food in cans having dents or bends causing any deformation of side seam or end seams;

(e) Food in containers, bags or packages, where the container, bag or package has been torn or damaged, whereby the contained food may have been exposed, except that if the owner of such food can demonstrate that said food was in a clean environment at the time of exposure, the container, bag or package may be repaired or replaced.

(f) Food in containers that reflect evidence of exposure to extreme temperatures except foods required to be kept at extreme temperatures such as frozen foods.

(g) Food in containers that are soiled and noncleanable. Food in containers with screw tops, crimped caps or similar containers with soil around the closure, or containers that have been submerged in water, chemicals or other liquids are specifically defined as soiled and noncleanable.

(h) Foods defiled by rodents except that foods in cans or containers that have received rodent traffic or been in close proximity to rodents shall not be deemed adulterated if the owner or seller of said food is able to demonstrate satisfactory proof that all trace of rodent filth has been removed from said cans or containers;

(i) Foods packaged in jars intended for consumption by infants, the aged or the infirm, in which the lot of said jars has been in an environment in which the jars were subject to heat, dust, moisture, smoke, chemicals, broken glass or other similar conditions, unless the specific manufacturing process required one of the above.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-21.

History: May 28, 1987.

80-1-22-.23 Salvageable Food To Be Segregated From Adulterated Food.

Any food offered for sale to consumers as salvage food or distressed food, otherwise salvageable, shall be deemed adulterated so long as it is mixed with and unsegregated from food deemed adulterated under Rule 80-1-22-.22. It is the intent of this rule to require persons selling or offering to sell to consumers salvage or distressed food to first inspect and remove all adulterated food from the lot of food being offered for sale prior to its being offered for sale.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-21.

History: May 28, 1987.

80-1-22-.24 Adulterated Foods To Be Properly Disposed Of.

(1) Any food determined to be adulterated under Rule 80-1-22-.22 shall be disposed of or destroyed in such a manner as to insure that said food cannot be thereafter salvaged and used for human consumption.

(2) The Commissioner or his authorized agent may require supervision of the disposal required in this rule.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§20-1-2, 20-1-21.

History: May 28, 1987.

80-1-22-.25 Record Keeping Requirement For Salvage And Distressed Food Operators. All persons or firms engaged in the business of selling or offering to sell food commonly known as salvage food or distressed food shall keep accurate records pertaining to the source and history of all shipments of said food received by them and to include records of the disposition of said food that was later disposed of or destroyed as unsalvageable or adulterated. Said records shall be kept for a minimum of three years and be available for inspection and/or copying during business hours by the Commissioner of Agriculture and Industries or his authorized agents.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §§2-2-6, 20-1-2, 20-1-3.

History: May 28, 1987.

80-1-22-.26 Adoption Of Guidelines For Evaluation Of Damaged Food Containers. As much as practical and possible, that publication entitled **Guidelines For Evaluation And Disposition Of Damaged Canned Food Containers**, published by the National Food Processors Association, shall be used for implementation and interpretation of Rules 80-1-22-.22, 80-1-22-.23, 80-1-22-.24 and 80-1-22-.25, insofar as this publication does not conflict with any rule or law.

Author: Charles H. Barnes

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: May 28, 1987.

80-1-22-.27 Special Requirements For Potentially Hazardous Foods.

(1) For the purposes of this Rule, "Potentially hazardous food" shall be as defined in Rule 80-1-22-.34 herein.

(2) The temperature of potentially hazardous food shall be held at an ambient temperature of 45° F or below at all times when being transported, stored or displayed for sale except for brief periods of loading or unloading.

(3) The temperature of potentially hazardous frozen food shall be 0° F or below at all times when being transported, stored or displayed for sale except for defrost cycles and brief periods of loading and unloading.

(4) Potentially hazardous food that is transported, stored or displayed in violation of this rule shall be deemed adulterated under the provisions of Code of Ala. 1975, §20-1-22.

(5) Any person, firm, corporation or association engaged in the business of storing, transporting or displaying for sale potentially hazardous food on the effective day of this rule that is not meeting the requirements of this rule shall be granted a reasonable time not to exceed sixty (60) days after the effective date, to be determined by the Commissioner of Agriculture & Industries, in his discretion, to meet said requirements.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: Filed August 27, 1991. **Amended:** Filed November 15, 2000; effective December 20, 2000.

80-1-22-.28 Special Requirements For Potentially Hazardous Foods Regarding Open Dating. (Repealed 12/20/00)

Author:

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: New Rule: Filed July 21, 1993; effective August 25, 1993.
Repealed: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.29 Adoption Of Federal Regulations For Food Labeling, Food Standards, And Foods Requiring Special Labeling.

(1) Code of Federal Regulations 21 Parts 100 to 169 revised as of April 1, 1993, is hereby adopted by reference. These regulations

include the recently adopted requirements for nutritional labeling, health claims labeling, and nutrient claim labeling. Other regulations in the referenced rules include standards of identity for certain foods and special labeling requirements for foods such as infant formula and other foods for special dietary use.

(2) Copies of CFR 21 parts 100-169 are available from Superintendent of Documents, Attn: New Orders, P. O. Box 371954, Pittsburgh, PA 15250-7954. Charge orders may be telephoned to the Government Printing Office order desk at (202) 783-3238.

Author: Marise Mims Sandidge

Statutory Authority: Code of Ala. 1975, §20-1-2

History: New Rule: Filed: November 21, 1994; effective December 26, 1994.

80-1-22-.30 Special Requirements For Over-The-Counter (OTC) Drugs.

(1) For the purpose of this Rule, Open-Date Statement shall mean the terms "Sell By _____"; "Not to be Sold After _____"; "Best If Used By _____"; "Expiration _____"; or words of similar import; or a date without additional words shall be considered under the jurisdiction of the Rule.

(2) **Code of Federal Regulations** 21 Part 211.137 is hereby adopted for use herein and non-exempt, Over-The-Counter (OTC) drugs shall bear expiration dates as set forth therein.

(3) OTC drugs shall be considered as not meeting requirements for strength and purity once it reaches the expiration date.

(4) OTC drugs are not to be sold or offered for sale at retail or wholesale after the date stated on the product label.

(5) OTC drugs offered for sale in violation of this Rule shall be deemed adulterated under the provision of Code of Ala. 1975, Section 20-1-24.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §§20-1-24; 20-1-25.

History: New Rule: Filed May 14, 1996; effective June 18, 1996.

Amended: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.31 General Provisions. Permits Required for Food Sales Establishment; fee; duration; delinquent penalty; nontransferability

of issued permits.

(1) It shall be unlawful for any person to operate a food sales establishment that sells or offers for sale any Class A food (i.e. baby food, infant formula or potentially hazardous foods) unless such person possesses a valid food safety permit issued by the Commissioner of Agriculture and Industries. A food safety permit will be required for each business location and shall not be transferable with respect to person, food sales establishment, or location. Food sales establishments that are sold will require that the new owner apply for and obtain a new food safety permit.

(2) Any person who operates a food sales establishment shall apply for and obtain from the Commissioner annually a food safety permit on forms furnished for this purpose accompanied with the annual fee of fifty dollars (\$50). Such permit fee shall not be refundable or prorated. All permits shall expire on June 30 and shall be renewed by July 1 upon payment of the annual permit fee and upon compliance with requirements of this chapter and Chapter 1, Title 20, Code of Ala. 1975, as amended. If the permit fee is not paid by August 1 or within 31 days from date on which the fee is due, a delinquent penalty of 15% shall be added to the amount due.

(3) The food safety permit shall be kept posted by the proprietor in a conspicuous place within the food sales establishment but shall remain the property of the Department of Agriculture and Industries.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §20-1-2 and Act #2000-320, Regular Session of the Legislature, 2000.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.32 Classifications Of Violations For Out-Of-Date Class "A" Food And Misbranded Or Adulterated Foods.

(1) An "Equivalent number" shall be determined using a factor that takes into account the number of packages, case lots, containers, such other packaging and the length of time said products have passed an expiration date. The following factors shall be used to determine an "equivalent number":

Penalty

(a) For each package that has passed the expiration date by four to seven days the factor would be 0.75

(b) For each package that has passed the expiration date by eight to fourteen days the factor would be 1

(c) For each package that has passed the expiration date by greater than fourteen and less than 30 days the factor would be 1.5

(d) For each package that has passed the expiration date by 30 days or more the factor would be 2

(2) The equivalent number shall be determined by multiplying the number of out-of-date packages by the appropriate factor as specified in paragraph "(1)" of this rule. An equivalent number shall be determined for each of three primary retail display areas, (Meat, Dairy, Baby Food and Infant Formula), as well as the equivalent number for the aggregate of all three areas. The following criteria shall be used in determining classes of violations for products offered for sale in retail establishments:

(a) **Class I Violations:** If each of the three areas have an "equivalent number" less than 20, and the aggregate of all three areas is less than 35, **no civil penalty is required.** A warning letter may be issued if the "equivalent number" is more than 10 and less than 20 in any of the three categories.

(b) **Class II Violations:** If any of the three areas have an "equivalent number" equal to or greater than 20 and less than 40 the violation is considered a Class II violation. If the total of all three areas result in an "equivalent number" equal to or greater than 35 and less than 105 the violation is considered a Class II violation.

(c) **Class III Violations:** If any of the three areas have an "equivalent number" equal to or greater than 40 and less than 80 the violation is considered a Class III violation. If the total of all three areas result in an "equivalent number" equal to or greater than 105 and less than 130 the violation is considered a Class III violation. Subsequent Class II violations within a one year period shall also result in a Class III violation.

(d) **Class IV Violations:** If any of the three areas have an "equivalent number" equal to or greater than 80 the violation is considered a Class IV violation. If the total of all three areas result in an "equivalent number" equal to or greater than 130 the violation is considered a Class IV violation. Subsequent Class III violations within a one year period shall also result in a Class IV violation. Products deemed misbranded are considered a Class IV violation. More than ten packaged items offered for sale at retail without proper labeling to include ingredient statements and/or cure ingredients is a Class IV Violation and will result in a warning letter. Subsequent labeling violations will result in a penalty administered as a Class IV violation. Obscuring, removing, or extending existing open date statements shall be considered as misbranding and therefore a Class IV violation.

(e) **Class V Violations:** Subsequent Class IV violations within a one year period shall result in a Class V violation. Products found to be adulterated are considered a Class V violation. Adulterated products with food safety concerns of an immediate nature will be subject to penalties on the first violation. If a determination is made by the Department that an establishment is involved in the practice of buying short-dated or date-expired Class A foods and by intent or neglect offers for sale date-expired products the actions by the establishment shall be considered a Class V violation.

(3) The same provisions in paragraph "(1)" of this rule used to determine equivalent numbers shall be used in the assessment of class violations as set forth herein for wholesale packages except that: the unit (package) through which the product is offered for sale shall constitute one package, i.e. case lots, large containers, etc. If the equivalent number is exceeded, the penalty shall be assessed in the appropriate class of violation. The following criteria shall be used in establishing class violations for wholesale packages:

(a) **Class I Violations:** (Wholesale distribution

~~What~~ Warehouse -

packages) If the out-of-date products have an "equivalent number" less than 5, no civil penalty is required. A warning letter may be issued if the "equivalent number" is more than 1 and less than 5.

(b) **Class II Violations:** (Wholesale distribution packages) If the out-of-date products have an "equivalent number" equal to or greater than 5 and less than 20 the violation is considered a Class II violation.

(c) **Class III Violations:** (Wholesale distribution packages) If the out-of-date products have an "equivalent number" equal to or greater than 20 and less than 40 the violation is considered a Class III violation. Subsequent Class II violations within a one-year period shall also result in a Class III violation.

(d) **Class IV Violations:** (Wholesale distribution packages) If the out-of-date products have an "equivalent number" equal to or greater than 40 the violation is considered a Class IV violation. Subsequent Class III violations within a one year period shall also result in a Class IV violation. Products deemed misbranded are considered a Class IV violation. Obscuring, removing, or extending existing open date statements shall be considered as misbranding and therefore a Class IV violation.

(e) **Class V Violations:** Subsequent Class IV violations within a one year period shall result in a Class V violation. Products found to be adulterated are considered a Class V violation. Adulterated products with food safety concerns of an immediate nature will be subject to

penalties on the first violation.

Authors: Reginald L. Sorrells, Robert J. Russell

Statutory Authority: Act #2000-320, Regular Session of Legislature, 2000.

History: New Rule: Filed November 15, 2000; effective December 20, 2000. **Amended:** Filed June 22, 2004; effective July 27, 2004.

80-1-22-.33 Open Date Statement-List Of Additional Descriptive Terms.

(1) In addition to the terms listed in §20-1-20 (definitions) for (14) open-date-statements, the following list of terms and other terms with similar import, shall also be included and considered as open-date statements:

- (a) "For full fresh flavor use by"
- (b) "For best quality purchase and use by date shown"
- (c) "Use/freeze by"
- (d) "Prepare or freeze by"
- (e) "For wholesome great taste, serve before date stamped below"
- (f) "Best when purchase by date"
- (g) "Best if sold by"
- (h) "Best used by"
- (i) "Product expiration"
- (j) "Expiration date"
- (k) "Best by"
- (l) "Best before"
- (m) "Best when purchase by"
- (n) "Use before"
- (o) "Use by"
- (p) "Full freshness until date shown when stored unopened at 40 or below"

- (q) "Prepare by"
- (r) "Fresh until"
- (s) "Use or freeze by"
- (t) "Sell or use by"
- (u) "Freshness through"

Author: Reginald L. Sorrells

Statutory Authority: Act #2000-320, Regular Session of Legislature, 2000.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.34 Definition Of Potentially Hazardous Food Under Alabama Safe Foods Act Of 2000.

(1) Potentially Hazardous Food as defined in subparagraph 1-201.10(B) (61) Food Code, 1999 recommendations of the United States Public Health Service Food and Drug Administration, National technical Information Service Publication PB 99-115925 and the same is hereby adopted and fully set out herein for reference:

(2) "Potentially Hazardous Food.

(a) "Potentially hazardous food" means a FOOD that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

(i) The rapid and progressive growth of infectious or toxigenic microorganisms;

(ii) The growth and toxin production of *Clostridium botulinum*; or

(iii) In raw shell eggs, the growth of *Salmonella Enteritidis*.

(b) "Potentially hazardous food" includes an animal FOOD (a FOOD of animal origin) that is raw or heat-treated; a FOOD of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

(c) "Potentially hazardous food" does not include:

- (i) An air-cooled hard-boil egg with shell intact;
- (ii) A FOOD with an a_w value of 0.85 or less;
- (iii) A FOOD with a pH level of 4.6 or below when measured at 24° C (75° F);
- (iv) A FOOD, in an unopened HERMETICALLY SEALED CONTAINER, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
- (v) A FOOD for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. botulinum* can not occur, such as a FOOD that has an a_w and a pH that are above the levels specified under Subparagraphs (c) (ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
- (vi) A FOOD that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the Food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness."

Author: Reginald L. Sorrells

Statutory Authority: Act #2000-320, Regular Session of Legislature, 2000.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.35 List Of Potentially Hazardous Foods And Exceptions.

(1) The following includes, but for enforcement purposes, is not limited to, a list of examples considered to be potentially hazardous foods, and some exceptions.

(a) All Meat products requiring refrigeration to include but not limited to the following:

1. Fresh or frozen raw meats (poultry, beef, pork, exotics)
2. Ready to eat cooked meats (fresh or frozen) any specie
3. Cured meats that require refrigeration

4. Cooked or heat treated meats that require refrigeration
5. Processed sausage products that require refrigeration
6. Fresh refrigerated or frozen chili products
7. Sandwiches containing meats or other potentially hazardous foods
8. Seafood
9. Shellfish
10. Smoked fish that requires refrigeration
11. Fish (fresh or frozen)
12. Fresh or frozen entrees that contain meat
13. Lunchables (variety packs of meats plus)
14. Meat salads such as chicken salad, tuna salad, ham salad

(b) Dairy Products requiring refrigeration to include but not limited to the following:

1. Yogurt
2. Low fat yogurt
3. Non fat yogurt
4. Milk (all forms)
5. Lactose reduced milk
6. Acidophilus milk
7. Chocolate milk
8. Buttermilk
9. Cream
10. Cottage cheese
11. Sour cream
12. Salad dressing containing dairy products and requiring refrigeration

13. Eggnog
14. Half and half
15. Cream cheese
16. Pimento cheese
17. Pudding that requires refrigeration
18. Ricotta cheese
19. Dips with dairy products or meat products that require refrigeration
20. Butter
21. Ice cream
22. Sherbet
23. Ice milk
24. Frozen dessert that contains dairy items that requires temperature control
25. Frozen yogurt
26. Imitation ice cream
27. Non fat ice cream
28. Shake mix
29. Yogurt mix
30. Non-dairy mix
31. Frozen desert mix
32. Novelty items that contain ice cream type products
33. Pies that contain eggs or dairy products and require refrigeration
34. Cheese cakes
35. Fresh or frozen pastries that contain meat or eggs and require refrigeration

36. Soft cheese (Brie, Camembert, Teleme)

(c) Egg products requiring refrigeration to include, but not limited to the following:

1. In shell raw eggs
2. Egg whites
3. Egg beaters and similar products
4. Egg substitutes
5. Pasta containing eggs that require refrigeration
6. Eggnog

(d) Items of food that may be excluded from a criteria of potentially hazardous foods include but are not limited to the following:

1. Chocolate drinks (no milk fat or significant dairy items)
2. Flavored drinks (no milk fat or significant dairy items)
3. Biscuits
4. Margarine
5. Cookie dough
6. Jello
7. Spreads
8. Cool whip
9. Shelf stable meat items
 - (i) canned meat products that do not require refrigeration
 - (ii) dry cured items that do not require refrigeration
 - (iii) jerky type meat items that do not require refrigeration
 - (iv) fermented meat items that do not require refrigeration
10. Shelf stable ultra pasteurized milk that doesn't require refrigeration

11. Bakery desserts (cinnamon rolls etc. That may be refrigerated)

(e) Items of cheese that may be excluded from a criteria of potentially hazardous foods include but are not limited to the following:

1. Asiago
2. Cheddar
3. Gruyere
4. Parmesan
5. Reggiano
6. Romano
7. Sap Sago
8. Blue
9. Brick
10. Caciocavallo Siciliano
11. Colby
12. Edam
13. Gorgonzala
14. Gouda
15. Limburger
16. Monterey
17. Monterey Jack
18. Pasteurized process cheese
19. Imitation cheese
20. Provolone
21. Swiss
22. Emmentaler

23. Roquefort

Author: Reginald L. Sorrells

Statutory Authority: Act #2000-320, Regular Session of Legislature, 2000.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.36 Prohibitions And Exemptions For Altering Open-Date Statements.

(1) Packages of potentially hazardous foods bearing an open date statement are not to be repacked or relabeled or otherwise altered in a manner that would change the open date statement originally placed on the package. It is not permissible to reprocess products by freezing, slicing, grinding, cubing, dicing, marinating, chopping, or other similar methods unless the original open date statement is maintained on the product label.

(2) In the case of smoking, curing, fully cooking or conversion to a shelf stable product through drying or fermentation of fresh or frozen in-date raw meat products, it may be acceptable to alter the original open date statement that had been listed on the original product. Provided, however, that in these special situations an appropriate date shall be placed on the product after completion of the process.

(3) Any rule in this chapter to the contrary notwithstanding, meat products bearing an open-date statement may be frozen and sold after the original expiration date only if all the following stipulations are met:

(a) The product is a fresh or raw meat product that is frozen prior to the expiration of the open-date statement.

(b) The product is labeled "Frozen on _____," with the month, day, and year the product is frozen in the blank.

(c) The original open-date statement is maintained on the product package.

(d) If offered for sale at retail, the product is frozen and labeled and sold only to a household consumer by the same establishment that originally offered the product for retail sale.

(e) If offered for sale at wholesale (i.e., warehouse, manufacturer, or distributor) the product is frozen and labeled and sold only to

the end user (i.e., consumer, restaurant, or hotel). Provided however that consumer ready packages of fresh or raw meat can be sold to retail establishments if all other provisions of this rule are followed and each package is properly labeled.

(f) Products frozen before the expiration of the open- date statement may not be thawed or further processed in any manner.

(g) All products properly frozen and labeled must also maintain the safe handling labels as mandated through USDA.

(h) Products not properly labeled, re-labeled or exempted as set forth in (a) through (h) of this rule shall be deemed date expired and shall be included in the equivalent number utilized to determine the applicable class of violation as determined by Rule No. 80-1-22-.32.

(i) Nothing in this paragraph (3) of Rule 80-1-22-.36 shall preclude a manufacturer or wholesaler or retailer from having more stringent requirements for their products. Nothing in this paragraph is intended to negate the agreement between sellers of these products concerning guarantees or credit for expired products.

(4) It is not permissible to freeze, sell, or offer for sale any ready-to-eat meat product after the expiration of the open-date statement. It is not permissible to freeze, sell, or offer for sale a product having the appearance of a ready-to-eat meat product (e.g., smoked sausages and smoked hams) after the expiration of the open-date statement unless such product bears labeling to include safe handling statements and proper cooking instructions.

Authors: Reginald L. Sorrells, Robert J Russell

Statutory Authority: Code of Ala. 1975, §20-1-2.

History: New Rule: Filed November 15, 2000; effective December 20, 2000. **Amended:** Filed November 13, 2002; effective December 18, 2002. **Amended:** Filed June 22, 2004; effective July 27, 2004.

80-1-22-.37 Exemptions For Shipping Labels, And Other Non-Official Labels. Information affixed to containers of meat and poultry food products and case lots of other food products that is not a part of the approved label and is not intended to address quality or condition of the product such as pic labels, routing slips, tracking stickers and similar devices that are intended to provide only shipping data are considered exempt from the dating requirements of the Alabama Safe Foods Act of 2000, except when the commissioner determines such information is subject to be displayed at the retail level and may mislead consumers.

Author: Reginald L. Sorrells

Statutory Authority: Act #2000-320, Regular Session of Legislature, 2000.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

NOTE: Only shipping data are considered exempt from the dating requirements of the Alabama Safe Foods Act of 2000.

80-1-22-.38 General Provisions For Hearings On Contested Cases.

(1) These rules apply to the initiation, hearing and resolution of certain contested cases of the State Department of Agriculture and Industries under the Alabama Administrative Procedure Act. These rules apply to actions governed by Code of Ala. 1975, §§20-1-1 through 20-1-37 and rules promulgated thereunder. These rules do not apply to actions governed by Code of Ala. 1975, §2-2-18, or rules promulgated thereunder or actions governed under other specific rules of the State Board of Agriculture and Industries.

(2) Statutory Authority. These rules are promulgated and adopted pursuant to the authority of Code of Ala. 1975, §§20-1-1 through 20-1-37, and §41-22-1, et seq., and other specific enabling statutes.

(3) Administration. The General Counsel of the Department of Agriculture and Industries will coordinate the hearing of contested cases within the purview of the Alabama Administrative Procedure Act, Code of Ala. 1975, §41-22-1, et seq. Said proceedings encompass food safety permit proceedings, and all other hearings required by law to be held pursuant to the provisions of Code of Ala. 1975, §§20-1-1 through 20-1-37, the Department of Agriculture and Industries.

(4) Correspondence. Correspondence and filing or service on the General Counsel shall be at the following address:

1445 Federal Drive, Room 108

Montgomery, Alabama 36107-1100

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.39 Service On Food Safety Permittee Or Other Party.

(1) Service of any document required to be served on a food safety permittee or other party pursuant to the provisions of the Administrative Procedure Act in those contested cases, Code of Ala. 1975, §§41-22-1, et seq., taken under these rules may be made by any of the following methods unless a specific method is required by law:

(a) by certified mail, return receipt requested; or

(b) by any sheriff or another person authorized to make service of process in civil proceedings; or

(c) by any representative of the Department of Agriculture and Industries; or

(d) by any other method allowable under the Alabama Rules of Civil Procedure as such may be amended.

(2) If service of process is refused or unclaimed, and the certified mail receipt or the return of the person serving process so indicates, the Department may serve the document by first-class mail addressed to the permittee or other person at his last known address as shown in the Department records. Service shall be deemed complete three (3) days after the depositing of same in the United States mail.

(3) Where the rule does not require "service," documents may be mailed by first-class mail or hand-delivered.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.40 Time. Time within which an Act must be done under the provisions of these rules shall be computed in the manner prescribed by Code of Ala. 1975, §1-1-4.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-4.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.41 Contested Cases.

(1) A contested case is an action whereby a food safety permittee or

prospective permittee, or other affected person is aggrieved by an action of the staff of the Department of Agriculture and Industries. Such actions include: the granting or denial of food safety permits; the change in status of a permit; or revocation, suspension or modification of a permit.

(2) An action to revoke, suspend, or modify a food safety permit by the Department shall be initiated by the service of a notice of intent to revoke, or modify, or suspend the permit or to take other adverse action on the permittee.

(3) Contested cases initiated by the permittee, or prospective permittee shall be initiated by the filing of a notice of appeal with the Department's General Counsel with filing of a copy upon the Department. The notice of appeal must be filed with the General Counsel within 15 days of the unfavorable determination by the Department. Failure to timely file a notice of appeal with the General Counsel waives the right of appeal and the determination becomes final.

(4) Contested cases initiated by an affected party other than the permittee, or prospective permittee, or the Department shall be so initiated by the filing with the General Counsel of a notice of appeal of an administrative decision by the staff of the Department within 15 days of the issuance of such staff decision. Copies of such notice of appeal shall be served on the permittee or prospective permittee and any other affected parties. Failure to timely file a notice of appeal waives such person's right of appeal.

(5) The General Counsel will schedule a hearing not less than 15 days nor more than 35 days from the filing of the notice of a contested case unless a different time is required by statute or unless the parties agree to a time. Continuances will be granted for good cause.

(6) Upon scheduling the hearing, the General Counsel shall send written notice to all parties. The notice shall include at a minimum, the following:

- (a) a statement of the time, place and nature of the hearing;
- (b) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (c) a reference to the particular sections of the statutes and rules involved; and
- (d) a plain statement of the factual matters asserted.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.42 Evidence In Contested Cases. The only evidence that the Hearing Officer shall consider in making a finding of shall be sworn testimony and exhibits accepted in the hearing or as otherwise agreed upon among the parties.

(a) Hearsay Evidence. Hearsay testimony shall be allowed in any hearing so long as it has probative value as justice required in the opinion of the hearing officer.

(b) Affidavits and other Written Evidence.

1. Affidavits shall be admissible in any hearing so long as they have probative value and the affiant, for reasons of impossibility or impracticality, cannot be present for testimony at the hearing. The burden of impossibility or impracticality shall be upon the offerer of the affidavit.

2. Signed letters from physicians on the physician's letterhead shall be considered as an affidavit.

(c) Depositions. A deposition where all parties have been given notice of the taking of the deposition shall be admitted if any party so requests subject to standard evidentiary objection properly preserved during the deposition.

(d) Official Notice. All statutes of the United States and of the State of Alabama and all published rules and regulations of federal agencies, the State Board of Agriculture and Industries or of other Alabama administrative agencies shall be deemed admissible by mere identification of the statute or published rules or regulations.

(e) Admissibility. All evidence, whether documentary or ore tenus, to be admissible, shall be germane, material and relevant to the issues brought out by the complaint, answer or notice of hearing. Evidence that might otherwise be germane, material or relevant, if found to be repetitious, may, at the discretion of the hearing officer, be disallowed.

(f) Documentary Evidence. Any document or a legible copy of said document shall be admissible if the document or copy shall be proven to be a part of the business or personal records of any party, person, company or other legal entity.

(g) Witnesses. The hearing officer shall upon request of a party

issue subpoenas to compel any person to testify under oath at any hearing in the same manner as in the civil courts. Employees of the State Department of Agriculture and Industries shall be made available for testimony upon timely request of a party. The refusal of any witness to testify may be considered evidence.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.43 Intervention.

(1) Upon timely application therefor filed with the General Counsel, any affected person shall be permitted to intervene in any hearing to contest an administrative action of the Department when a statute confers an unconditional right to intervene, or when the applicant has an individual interest in the outcome of the hearing as distinguished from a public interest and the representation of the interest of the applicant by persons already made parties is inadequate.

(2) An application to intervene shall contain:

(a) the name, mailing address, and telephone number of the applicant;

(b) a short and plain statement identifying the administrative action of the Department being contested and, if possible, the name of the person who filed the request for a hearing to contest such action;

(c) a short and plain statement of the grounds for the application, including reference to any statute which confers an unconditional right to intervene or a statement of the individual interest of the applicant in the outcome of the hearing and a statement of why the representation of the interest of the applicant by persons already parties in the hearing is adequate; and

(d) the name, mailing address, and telephone number of the applicant's attorney, if represented by an attorney.

(3) Within five days after the filing of an application to intervene in any hearing to contest an administrative action of the Department, the General Counsel shall mail a copy of such application to each of the parties.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §§20-1-2, 41-22-12, 41-22-14.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.44 Consolidation Of Hearings. The Commissioner of Agriculture and Industries may order consolidation, in whole or in part, of two or more hearings to contest an administrative action of the Department whenever it appears that such consolidation would expedite or simplify consideration of the issues and no party would be prejudiced thereby.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.45 Informal Settlement Conferences. Informal settlement conferences before the staff of the Department of Agriculture may be held in an attempt to resolve contested cases. Such informal settlement conferences shall not be of record and shall not be adversarial in nature but shall be utilized to resolve the contested case prior to formal hearings for the record.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.46 Hearing Procedures.

(1) A hearing officer appointed by the Commissioner of Agriculture and Industries shall preside at contested food safety case hearings. The hearing officer shall serve as trier of fact.

(2) All parties will be afforded an opportunity to respond and present witness and evidence and argument on all material issues involved and to be represented by counsel at their own expense. The Department will be represented by the General Counsel or his designee.

(3) If a party fails to appear in a contested case proceeding after proof of proper service of notice, the hearing officer may proceed with the hearing and make a decision in the absence of the party.

(4) The hearing officer shall conduct the evidentiary hearing substantially as follows:

- (a) open the record and receive appearances;
- (b) direct the giving of oaths;
- (c) receive testimony and exhibits presented by the parties;
- (d) interrogate witnesses, if deemed necessary;
- (e) rule on motions and objections;
- (f) require oral arguments and submission of briefs and other authority when necessary;
- (g) close the proceedings; and
- (h) prepare written findings of fact and conclusions of law and present them, with a recommendation and proposed order, together with the complete record, to the Commissioner of Agriculture and Industries.

(5) The burden of going forward with the evidence shall be upon the party initiating the contested case proceedings who may open and close the evidentiary portion of the proceedings.

(6) The proceedings of the evidentiary hearing shall be recorded and transcribed by a certified court reporter. Such record shall be submitted by the hearing officer to the Commissioner of Agriculture and Industries as a part of the record of the hearing.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.47 Resolution Of Contested Cases.

(1) On presentation of the hearing officer's findings of fact and conclusions of law, recommendation and proposed order, the General Counsel will mail copies to each party.

(2) The parties will have 15 days from the date of mailing in which to present to the Commissioner of Agriculture and Industries written objections to the proposed order, alternative language or briefs. The Commissioner of Agriculture and Industries, in his discretion, may

permit oral argument.

(3) Upon receiving the hearing officer's findings of fact and conclusions of law, recommendation, proposed order and the complete hearing record, and the parties' objections, alternative language, briefs and oral argument, if allowed, the Commissioner of Agriculture and Industries will enter his order which may accept, reject, or modify the proposed order of the hearing officer.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §41-22-12.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.

80-1-22-.48 Proceedings For Adverse Permit Actions. The Department of Agriculture and Industries shall utilize the contested case procedure in this chapter to take any adverse action on any food safety permit.

(a) Such adverse permit actions shall be initiated by notices served on the affected permittee as provided in Rule 420-1-3-.02 except that revocation and suspension actions shall be served only by registered or certified mail, return receipt requested. Such notice shall include the charges and specifications including a description of the grounds for the proposed action and the date, place and time of the meeting at which such proposed adverse action shall be heard. Notices shall be served at least 30 days prior to the date of the hearing.

(b) Permittees shall be provided an opportunity to respond in writing and/or orally. Permittees may be represented by legal counsel and may present evidence in their defense. The staff of the State Department of Agriculture and Industries and the permittee may present and cross-examine witnesses and the hearing officer may examine and cross-examine witnesses.

(c) The burden of proof rests with the staff of the Department of Agriculture and Industries.

(d) Revocation and suspension proceedings shall be recorded by a certified court reporter. All other proceedings may, but shall not necessarily be recorded by a certified court reporter. Such proceedings may, as an alternative, be recorded by tape recorder or other electronic means or by stenographic notes or summaries prepared by the staff, so long as such summaries adequately and accurately reflect the testimony before the hearing officer.

(e) The hearing officer shall, upon completion of such hearing, make findings of fact on all adverse action and shall make recommendations

to the Commissioner of Agriculture and Industries which shall consider such recommendations and shall reverse, affirm, or modify the recommendations of the hearing officer.

1. Any permittee aggrieved by an order of the Commissioner of Agriculture and Industries who desires to have the same modified or set aside may, within 15 days after the entry of the order, file an application for rehearing, which shall specify in detail the grounds for the relief sought therein and the authorities in support thereof.
2. The filing of such an application for rehearing shall not extend, modify, suspend or delay the effective date of the order, and said order shall take effect on the date fixed by the Commissioner of Agriculture and Industries and shall continue in effect unless and until said application shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.
3. Such application for rehearing will lie only if the final order is:
 - (i) In violation of constitutional or statutory provisions;
 - (ii) In excess of the statutory authority of the Commissioner of Agriculture and Industries;
 - (iii) In violation of a rule of the State Board of Agriculture and Industries;
 - (iv) Made upon unlawful procedure;
 - (v) Affected by other error of law;
 - (vi) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
 - (vii) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.
4. Copies of such application for rehearing shall be served on all parties of record, who may file replies thereto.
5. Within 30 days from the filing of an application, the Commissioner of Agriculture and Industries may in his or her discretion issue an order:
 - (i) Setting a hearing on the application for a rehearing which shall be heard as soon as practicable; or
 - (ii) With reference to the application without a hearing; or

(iii) Granting or denying the application.

6. If the Commissioner of Agriculture and Industries enters no order whatsoever regarding the application within the 30-day period, the application shall be deemed to have been denied as of the expiration of the 30-day period.

7. In no event shall a party be required to file an application for rehearing as a condition of applying for judicial review.

Author: Reginald L. Sorrells

Statutory Authority: Code of Ala. 1975, §§20-1-1, 20-1-2, 41-22-12, 41-22-17, 41-22-20.

History: New Rule: Filed November 15, 2000; effective December 20, 2000.
