

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY

CHAPTER 37. FOOD SAFETY

SUBCHAPTER 1. EGGS

35:37-1-2. Methods of grading

Methods of egg grading shall be the same as those described in USDA "Regulations Governing the Voluntary Grading of Shell Eggs 7 CFR Part 56" (~~2021 Version~~).

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

35:37-3-1. Incorporation by reference of federal meat inspection regulations

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2021 Revision~~), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; 392; 439; and 590 (~~2021 Revision~~).

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISION

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2021 Revision~~), Parts 381; 416; 417; 418; 424; 430; 441; 442; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate, or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate, or seal shall be substituted.

(b) All words and terms defined or used in the federal regulations incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

(c) The following terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

- (1) **"Act"** means the Oklahoma Poultry Products Inspection Act.
- (2) **"Director"** means the Director of Meat Inspection.
- (3) **"Poultry"** means any domesticated bird, whether live or dead, including chickens,

turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty (30) days of age).

(4) **"Poultry product"** means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part that can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.

(5) **"Poultry byproduct"** means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

35:37-5-2. Deleted regulations and exemptions

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381; 416; 417; 418; 424; 441; 442; and 500), (~~2021 Revision~~) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers who slaughter their own poultry raised on their farm, and each of the following apply:

- (1) The producers slaughter no more than two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;
- (2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;
- (3) The poultry and poultry products do not move in commerce. Producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the producer;
- (4) The producers submit a certificate of registration to the Department;
- (5) The poultry is healthy, slaughtered, and processed under sanitary standards, practices, and procedures that result in the preparation of poultry products that are sound, clean, and fit for human food, and each carcass, part, or poultry product bears a label that lists the customer's name, the producer's name, and the following statement, "This poultry product has not been inspected and passed";
- (6) The poultry is sold directly to the household consumer and transported by either the household consumer or the producer without third-party intervention or intervening transfer or storage, and is maintained in a safe and unadulterated condition during transportation; and
- (7) The producers allow an authorized agent of the Department access to their facilities and an opportunity to examine records at all reasonable times, upon notice.

(c) The provisions of this Act and rules do not apply to poultry producers who slaughter their own poultry raised on their farm, and each of the following apply:

- (1) The producers slaughter no more than two thousand five hundred (2500) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;
- (2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

- (3) The poultry is sold by the producer, or other person for distribution by the producer, solely within the producer's jurisdiction, directly to household consumers, restaurants, hotels, and boardinghouses for use in their own dining rooms or in the preparation of meals for sales directly to consumers;
- (4) The producers submit a certificate of registration to the Department;
- (5) The poultry is healthy, slaughtered, and processed under sanitary standards, practices, and procedures that result in the preparation of products that are sound, clean and fit for human food, and each carcass, part or poultry product bears a label that lists the producer's name and address and the following statement, "This poultry product has not been inspected and passed" and the products are not otherwise misbranded;
- (6) The producers meet the sanitation requirements as provided in 9 CFR 416.1-5 and allow the Department to inspect sanitation at least two (2) times each year;
- (7) The producers allow an authorized agent of the Department access to their facilities and an opportunity to examine records at all reasonable times, upon notice; and
- (8) The producers do not engage, within the same calendar year, in the business of buying or selling any poultry or poultry products or engage in any other poultry exemptions, or operate an inspected poultry establishment, unless approved by the Department.

SUBCHAPTER 13. MILK AND MILK PRODUCTS

35:37-13-2. Incorporations by reference

(a) Adopted references.

- (1) PMO. "Grade A Pasteurized Milk Ordinance with Administrative Procedures - 2019 Recommendations," including Appendices A through T thereto, hereinafter referred to as the "PMO," as published in the Grade A Pasteurized Milk Ordinance, 2019 Revisions, by the Department of Health and Human Services, Public Health Service/Food and Drug Administration, Washington, D.C. is hereby incorporated by reference.
- (2) Code of Federal Regulations. Where mention is made to any section or sections of the Code of Federal Regulations in the PMO, that section or sections shall be incorporated by reference. The State Board of Agriculture declares that, by incorporating the PMO by reference, it does not intend to create any inconsistency with the Oklahoma Milk and Milk Products Act, in the event there may be any inconsistency.
- (3) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program on the National Conference on Interstate Milk Shipments (Procedures), 2019 Revision.
- (4) Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers (MMSR), 2019 Revision.
- (5) Evaluation of Milk Laboratories (EML), 2019 Revision.

(b) Exceptions.

- (1) Section 16, "Penalty" is not incorporated by reference.
- (2) Section 17, "Repeal and Date of Effect" is not incorporated by reference.
- (3) Section 5, "Certified Industry Inspection" is not incorporated by reference.
- (4) Appendices E, "Examples of 3-out-of-5 Compliance Enforcement Procedures" is not incorporated by reference.

35:37-13-7. Inspection and permit fees

(a) The Department shall conduct inspections of milk tankers associated with milk transportation company permits pursuant to 2 O.S. § 7-408(B)-

~~(b) The Department and shall charge a fee of \$75.00 per milk tanker inspected.~~

(b) The Department shall charge a \$100.00 minimum permit fee for dairy farms along with milk and milk products processing facilities. If a dairy farm or milk and milk products processing facility exceeds \$100.00 in production or processing fees, the permit fee shall be waived.

35:37-13-8. Incidental sales

(a) Incidental sales of raw milk shall be limited to monthly sales of two hundred (200) gallons of bovine raw milk and one hundred (100) gallons of raw milk from all other species of hooved animals.

(b) For the purposes of this section, "incidental sales" shall mean sales that are negligible in relation to the overall sales of the facility.

(c) Except for incidental sales of raw milk from goats, incidental sales of raw milk shall not be advertised to the public in any manner.

SUBCHAPTER 15. ORGANIC PRODUCTS

35:37-15-2. The Adoption of NOP Standards

The Department adopts or incorporates by reference the following parts of the official rules and regulations of the NOP, 7 CFR Part 205 (~~2021 Revision~~), except for OAC 35:37-15-1, or as the Department designates otherwise in specific cases:

- (1) Subpart A - Definitions, except for those designated otherwise by this subchapter;
- (2) Subpart B - Applicability;
- (3) Subpart C - Organic Production and Handling Requirements;
- (4) Subpart D - Labels, Labeling, and Market Information;
- (5) Subpart E - Certification;
- (6) Subpart F - General Requirements for Accreditation; and
- (7) Subpart G - Administrative.
 - (A) Sections 205.600 through 205.607.
 - (B) Sections 205.660 through 205.663.
 - (C) Sections 205.670 through 205.672.
 - (D) Sections 205.680 through 205.681.

SUBCHAPTER 17. PRODUCE SAFETY

35:37-17-3. Incorporation by reference of federal produce safety regulations

The Department incorporates by reference Title 21 of the Code of Federal Regulations, Part 112 (~~2021 Revision~~) regarding standards for the growing, harvesting, packing, and holding of produce for human consumption.

SUBCHAPTER 19. HOMEMADE FOOD

35:37-19-2. Definitions

The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food service establishment or food processing

plant, and does not offer the food for resale;

"Delivered" means transferred to the customer, either immediately upon sale or at a time thereafter;

"Home food establishment" means a business on the premises of a home, apartment, or other dwelling in which a producer resides and in which homemade food products are created for sale or resale if the business has gross annual sales of prepared food of less than Seventy-five Thousand Dollars (\$75,000.00). A home food establishment shall be limited to one business per premises, but gross annual sales of the business shall include all sales of prepared food produced by the business at any location;

"Homemade food product" means food, including a beverage, which is produced and, if packaged, packaged at a residence; provided, however, homemade food product shall not mean alcoholic beverages, unpasteurized milk, cannabis or marijuana products and shall not contain seafood, including, but not limited to, all fish, shellfish, and fishery products, meat, meat by-products, or meat food products as defined by Section 301.2 of Title 9 of the Code of Federal Regulations or poultry, poultry products, or poultry food products as defined for purposes of the federal Poultry Products Inspection Act;

"Non-time-or-temperature-controlled-for-safety" means food that does not require time or temperature control for safety to limit the rapid and progressive growth of infectious or toxigenic microorganisms, including foods that have a pH level of four and six-tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less;

"Produce" means to prepare a food product by cooking, baking, drying, mixing, cutting, canning, fermenting, preserving, dehydrating, growing, raising, or other process;

"Producer" means the person who produces a homemade food product in a home food establishment; and

"Time-or-temperature-controlled-for-safety" means a food that requires time or temperature control for safety to limit infectious or toxigenic microorganisms and is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; provided, however, time or temperature controlled for safety shall not include foods that have a pH level of four and six-tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less.

35:37-19-3. Sale and delivery requirements

(a) Non-time-or-temperature-controlled-for-safety homemade food products shall be sold:

(1) By the producer directly to the consumer, either in person or by remote means, including, but not limited to, the internet or telephone; or

(2) By a producer's designated agent or a third-party vendor, including, but not limited to, a retail or grocery store, farm, farm stand, farmers market, membership-based buying club, craft fair, or flea market, to the consumer; provided, the third-party vendor shall display a placard where homemade food products are displayed for sale with the following disclosure: "This product was produced in a private residence that is exempt from government licensing and inspection. This product may contain allergens."

(b) Non-time-or-temperature-controlled-for-safety homemade food products shall be delivered:

(1) By the producer or producer's designated agent directly to the consumer or a third-party vendor; or

(2) By a third-party vendor or a third-party carrier, such as a parcel delivery service, to the consumer or a third-party vendor.

(c) Time-or-temperature-controlled-for-safety homemade food products shall be sold by the producer directly to the consumer, either in person or by remote means, including, but not limited

to, the internet or telephone.

(d) Time-or-temperature-controlled-for-safety homemade food products shall be delivered by the producer directly to the consumer.

(e) Before a producer begins to produce and sell time-or-temperature-controlled-for-safety homemade food products and thereafter, the producer shall satisfactorily complete and maintain food safety training from a list of providers, including the ServSafe Food Handler Training, approved by the Oklahoma Department of Agriculture, Food, and Forestry. Food safety training shall be available online and shall not exceed eight (8) hours in length.

(f) Homemade food products that are packaged and distributed in interstate commerce shall be sold in accordance with federal law.

(g) The production date of a homemade food product shall be displayed where the product is sold directly to the consumer. If the product is prepared for delivery by a third-party, the production date shall be located on the food package or on a card included with the food package.

35:37-19-6. Registration fee

(a) A homemade food product producer shall be assigned a registration number upon the payment of a fee of Ten Dollars (\$10.00) to the Department.

(b) A homemade food product producer may use an assigned registration number on product labels to comply with the provisions of OAC 35:37-19-4(a)(2).