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HEALTH AND SAFETY CODE - HSC

DIVISION 104. ENVIRONMENTAL HEALTH [106500 - 119406] (*Division 104 added by Stats. 1995, Ch. 415, Sec. 6.)*

PART 7. CALIFORNIA RETAIL FOOD CODE [113700 - 114437] (*Part 7 repealed and added by Stats. 2006, Ch. 23, Sec.*

2.)

CHAPTER 4. General Food Safety Requirements [113980 - 114094.5] (*Chapter 4 added by Stats. 2006, Ch. 23, Sec.*

2.)

ARTICLE 8. Consumer Information [114087 - 114094.5] (*Article 8 added by Stats. 2006, Ch. 23, Sec. 2.)*

114087. (a) Food offered for human consumption shall be honestly presented in a way that does not mislead or misinform the consumer.

(b) Food or color additives, colored overwraps, lights or other misleading artificial means shall not be used to misrepresent the true appearance, color, or quality of a food.

(*Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.*)

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

(*Added by Stats. 2012, Ch. 415, Sec. 12. (AB 1616) Effective January 1, 2013.*)

114089. (a) Food prepackaged in a food facility shall bear a label that complies with the labeling requirements prescribed by the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875)), 21 C.F.R. 101-Food Labeling, 9 C.F.R. 317-Labeling, Marking Devices, and Containers, and 9 C.F.R. 381-Subpart N Labeling and Containers, and as specified under Sections 114039 and 114039.1.

(b) Label information shall include the following:

(1) The common name of the food, or absent a common name, an adequately descriptive identity statement.

(2) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food.

(3) An accurate declaration of the quantity of contents.

(4) The name and place of business of the manufacturer, packer, or distributor.

(5) Except as exempted in the Federal Food, Drug, and Cosmetic Act (Section 403(Q)(3)–(5) (21 U.S.C. Sec. 343(q)(3)–(5), incl.)), nutrition labeling as specified in 21 C.F.R. 101-Food Labeling and 9 C.F.R. 317 Subpart B Nutrition Labeling.

(c) Bulk food that is available for consumer self-service shall be prominently labeled with either of the following in plain view of the consumer:

(1) The manufacturer's or processor's label that was provided with the food.

(2) A card, sign, or other method of notification that includes the information specified under paragraphs (1), (2), and (5) of subdivision (b).

(*Amended by Stats. 2009, Ch. 571, Sec. 37. (SB 241) Effective October 11, 2009.*)

114089.1. (a) Except as specified in subdivision (c) of Section 114089, every bakery product shall have a protective wrapping that shall bear a label that complies with the labeling requirements prescribed by the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875)).

(b) Bakery products sold directly to a restaurant, catering service, retail bakery, or sold over the counter directly to the consumer by the manufacturer or bakery distributor shall be exempt from the labeling provisions of this section.

(c) French style, hearth-baked, or hard-crust loaves and rolls shall be considered properly wrapped if contained in an open-end bag that encloses the loaves or rolls.

(Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)

114090. (a) If required by law, consumer warnings shall be provided.

(b) Food facility's or manufacturer's dating information on foods may not be concealed or altered.

(Repealed and added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)

114091. In a licensed health care facility and a public or private school cafeteria, the following shall apply:

(a) Only pasteurized juice may be served.

(b) Only pasteurized fluid and dry milk and milk products complying with Grade A standards as specified in law shall be served.

(c) Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or béarnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages, and, except as specified in subdivision (e), recipes in which more than one egg is broken and the eggs are combined.

(d) (1) Food shall not be reserved where the food was already served to patients or clients who are under contact precautions in medical isolation or quarantine or protective environment isolation.

(2) Food shall not be reserved to a patient or client in protective environment isolation.

(e) The following foods may not be served or offered for sale in a ready-to-eat form:

(1) Raw foods of animal origin such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare.

(2) A partially cooked food of animal origin, such as lightly cooked fish, rare meat, soft-cooked eggs, that is made from raw shell eggs, and meringue.

(3) Raw seed sprouts.

(f) Subdivision (c) does not apply in any of the following instances:

(1) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under Section 114004, and served immediately, such as an omelet, soufflé, or scrambled eggs.

(2) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread.

(3) The preparation of the food is conducted under a HACCP plan that:

(A) Identifies the food to be prepared.

(B) Prohibits contacting ready-to-eat food with bare hands.

(C) Includes specifications and practices that ensure salmonella enteritidis growth is controlled before and after cooking and is destroyed by cooking the eggs to an internal temperature of 145°F.

(D) Contains the information specified under a HACCP plan, including procedures that control cross-contamination of ready-to-eat food with raw eggs, and delineate cleaning and sanitization procedures for food-contact surfaces.

(E) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

(Amended by Stats. 2007, Ch. 96, Sec. 34. Effective July 20, 2007.)

114093. (a) Except as specified in subdivision (c) and paragraph (2) of subdivision (d) of Section 114004 and pursuant to subdivision (e) of Section 114091, if an animal food, including beef, eggs, fish, lamb, milk, pork, poultry, or shellfish, is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming those foods by way of a disclosure pursuant to subdivision (b) and reminder pursuant to subdivision (c), using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

(b) "Disclosure" means a written statement that clearly includes either of the following:

(1) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order)."

(2) Identification of the animal-derived foods marked by an asterisk denoting a footnote that states that the items are served raw or undercooked, or contain or may contain raw or undercooked ingredients.

(c) "Reminder" means a written statement that identifies the animal-derived foods by an asterisk that denotes a footnote that includes either of the following disclosure statements:

(1) Written information regarding the safety of these food items is available upon request.

(2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

(Repealed and added by Stats. 2016, Ch. 195, Sec. 13. (SB 1067) Effective January 1, 2017.)

114093.1. (a) Any food facility that serves or sells over the counter directly to the consumer an unlabeled or nonprepackaged food that is a confectionery that contains alcohol in excess of one-half of 1 percent by weight shall provide written notice to the consumer of that fact.

(b) The notice shall be prominently displayed or be provided in some other manner, as determined by the department.

(c) The department shall adopt regulations to govern the notice required by this section in order to effectuate the purposes of this section.

(Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)

114094. (a) A food facility subject to Section 343(q)(5)(H) of Title 21 of the United States Code or subject to this section as it read on July 1, 2011, shall comply with the requirements of that section of the United States Code and the regulations adopted pursuant thereto.

(b) Notwithstanding the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104), and to the extent permitted by federal law:

(1) Enforcement of this section shall be made pursuant to Section 113713.

(2) (A) A violation of this section is, notwithstanding Section 114395, an infraction, punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). A second violation within a five-year period from a prior violation shall be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). For a third or subsequent violation within a five-year period, the fine shall be not less than two hundred fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500). A food facility shall not be found to have committed a violation under this paragraph more than once during an inspection visit.

(B) Alternatively, the enforcement agency may assess a civil penalty of an amount that is no less than or greater than the amounts specified for fines in this paragraph.

(c) Except for the civil penalties authorized by this section, this section shall not be construed to create or enhance any claim, right of action, or civil liability that did not exist under state law prior to January 1, 2009, or limit any claim, right of action, or civil liability that otherwise existed under state law prior to January 1, 2009. The only enforcement mechanism of this section is the department or local enforcement agency, as set forth in Section 113713.

(d) This section shall become operative only on and after the compliance date specified in the federal regulation implementing Section 343(q)(5)(H) of Title 21 of the United States Code.

(Repealed and added by Stats. 2011, Ch. 415, Sec. 3. (SB 20) Effective January 1, 2012. Added section operative on date prescribed by its own provisions.)

114094.5. (a) A retail food facility shall not sell or offer for sale after the “use by” date, infant formula or baby food that is required to have this date on its packaging pursuant to the federal act, as defined in Section 109930, and federal regulations adopted pursuant to the federal act, including, but not limited to, Section 107.20 of Title 21 of the Code of Federal Regulations.

(b) Notwithstanding Section 114395, any retail food facility that violates this section is guilty of an infraction, punishable by a fine of not more than ten dollars (\$10) per day for each item sold or offered for sale after the “use by” date. The fine shall be calculated based upon the number of days past the “use by” date that the product is either found being offered for sale, or if the product is sold, the date of sale as established by evidence of the proof of purchase, including, but not limited to, a sales receipt.

(c) An enforcement agency may assess administrative penalties on a retail food facility that violates this section in the amount of ten dollars (\$10) per day for each item sold or offered for sale, in addition to other penalties authorized by law.

(d) For purposes of this section, the following definitions shall apply:

(1) “Baby food” shall have the meaning given to “baby foods” in paragraph (c) of Section 407.81 of Title 40 of the Code of Federal Regulations.

(2) “Infant formula” shall have the meaning given in subdivision (z) of Section 321 of Title 21 of the United States Code.

(Added by Stats. 2011, Ch. 681, Sec. 2. (AB 688) Effective January 1, 2012.)