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## State Meat Inspection Laws:

*Delaware*



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**State Meat Inspection Laws: Delaware**

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**Del. Code Ann. tit. 3 ch 87**

*Current through ch. 239 of the 150th General Assembly (2019-2020)*

**§ 8701. Short title**

This chapter may be cited as the “Meat and Poultry Products Inspection Act.”

**§ 8702. Enforcing agency**

This chapter shall be administered by the State Department of Agriculture hereafter referred to as the “Department.”

**§ 8703. Definitions**

When used in this chapter:

- (1) “Secretary” means the Secretary of Agriculture or his delegate.
- (2) “Person” includes any individual, partnership, corporation, association, or other business unit, and any officer, agent or employee thereof.

(3) "Broker" means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for such broker's own account or as an employee of another person.

(4) "Renderer" means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

(5) "Animal food manufacturer" means any person engaged in the business of preparing animal (including poultry) food derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.

(6) "Intrastate commerce" means commerce within this State.

(7) "Livestock" means any cattle, sheep, swine, goats, horses, mules or other equines, whether live or dead.

(8) "Livestock product" means any carcass, part thereof, meat, or meat food product of any livestock.

(9) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Secretary under such conditions as the Secretary may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats.

(10) "Poultry" means any domesticated bird, whether live or dead.

(11) "Poultry product" means any poultry carcass or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Secretary from definition as a poultry product under such conditions as he may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(12) "Capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the Secretary to deter its use as human food, or it is naturally inedible by humans.

(13) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(14) "Adulterated" shall have the meaning set forth in § 8704 of this title.

(15) "Misbranded" shall have the meaning set forth in § 8705 of this title.

- (16) "Label" includes display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.
- (17) "Labeling" includes all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers, or (b) accompanying such article.
- (18) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.
- (19) "Shipping container" includes any container used or intended for use in packaging the product packed in an immediate container.
- (20) "Immediate container" includes any consumer package; or any other container, not consumer package, in which livestock products or poultry products, are packed.
- (21) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584) [21 U.S.C. § 601 et seq.]; the term "federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791) [21 U.S.C. § 451 et seq.]; and the term "federal acts" means these 2 federal laws.
- (22) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040) [21 U.S.C. § 301 et seq.], and acts amendatory thereof or supplementary thereto.
- (23) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 321].
- (24) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Secretary to identify the status of any article or livestock or poultry under this chapter.
- (25) "Official inspection legend" means any symbol prescribed by regulations of the Secretary showing that an article was inspected and passed in accordance with this chapter.
- (26) "Official certificate" means any certificate prescribed by regulations of the Secretary for issuance by an inspector or other person performing official functions under this chapter.
- (27) "Official device" means any device prescribed or authorized by the Secretary for use in applying any official mark.
- (28) "Official establishment" means any establishment as determined by the Secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.
- (29) "Inspector" means an employee or official of the Department authorized by the Secretary or any employee or official of the government of any county or other governmental subdivision of this State, authorized by the Secretary to perform any inspection functions under this chapter under an agreement between the Secretary and such governmental subdivision.
- (30) "Reinspection" includes inspection of the preparation of livestock products and poultry products, as well as reexamination of articles previously inspected.

### **§ 8704. Adulterated products**

“Adulterated” shall apply to any livestock product or poultry product under 1 or more of the following circumstances:

- (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this paragraph, if the quantity of such substance in or on such article does not ordinarily render it injurious to health;
- (2) If it bears or contains (by reason of administration of any substance to the livestock or poultry or otherwise) any added poisonous or added deleterious substance (other than 1 which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food;
- (3) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of § 408 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 346a];
- (4) If it bears or contains any food additive which is unsafe within the meaning of § 409 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 348];
- (5) If it bears or contains any color additive which is unsafe within the meaning of § 706 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 379e]; provided, that an article which is not otherwise deemed adulterated under this subdivision or subdivision (3) or (4) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Secretary in official establishments;
- (6) If it consists in whole or in part of any filthy, putrid or decomposed substance or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;
- (7) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
- (8) If it is, in whole or in part, the product of an animal (including poultry) which has died otherwise than by slaughter;
- (9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
- (10) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to § 409 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 348];
- (11) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(12) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

#### **§ 8705. Misbranded products**

“Misbranded” shall apply to any livestock product or poultry product under 1 or more of the following circumstances:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) Unless it bears a label showing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this paragraph exemptions as to livestock products not in containers may be established by regulations prescribed by the Secretary and provided, further, that under this clause, reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the Secretary;
- (6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If it purports to be or is represented as a food for which a definition and standard of identity of composition has been prescribed by the regulations of the Secretary under § 8708 of this title unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;
- (8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Secretary under § 8708 of this title and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- (9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears (a) the common or usual name of the food, if any, and (b) in case it is fabricated from 2 or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings may, when authorized by the Secretary, be designated as spices, flavorings and colorings without naming each; provided, that, to the extent that compliance with the requirements of this clause is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary after consultation with the Secretary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary; or

(12) If it fails to bear, directly thereon and on its containers, as the Secretary may by regulations prescribe, the official inspection legend and established number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

#### **§ 8706. Purpose**

It is the objective of this chapter to provide for meat, poultry, and egg products inspection programs and for the humane slaughter of livestock that will impose and enforce requirements with respect to intrastate operations and commerce that are least<sup>1</sup> equal to those imposed and enforced under the federal Meat Inspection Act (21 U.S.C. § 601 et seq.), the federal Poultry Products Inspection Act (21 U.S.C. § 451 et seq.), the federal Egg Products Inspection Act (21 U.S.C. § 1031 et seq.), and the federal Humane Methods of Slaughter Act (7 U.S.C. § 1901 et seq.) with respect to operations in interstate commerce. The Secretary is directed to administer this chapter so as to accomplish this purpose and is authorized to promulgate and adopt regulations to accomplish the purpose of this chapter. The Department is designated as the appropriate state agency to cooperate with the Secretary of Agriculture of the United States in administration of this chapter.

#### **§ 8707. Powers of Secretary**

In order to accomplish the objective stated in § 8706 of this title, the Secretary shall:

(1) By regulations require antemortem and postmortem inspections, quarantine, segregation and reinspection with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this State, except those exempted by him under § 8708(13) of this title, at which livestock or poultry are slaughtered or livestock products or poultry products are prepared for human food solely for distribution in intrastate commerce;

(2) By regulations require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Delaware Inspected and Passed" if the products are found upon inspection to be not adulterated and as "Delaware Inspected and Condemned" if they are found upon inspection to be adulterated, and the destruction for food purposes of all such condemned products under the supervision of an inspector;

(3) Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of such articles and other materials into such establishments under such conditions as he deems necessary to effectuate the purposes of this chapter;

(4) By regulations require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, as he may require, all information required under § 8703(16) of this title, and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this chapter;

(5) Investigate the sanitary conditions of each establishment within subdivision (1) of this section and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat;

(6) Prescribe sanitation regulations relating to sanitation for all establishments required to be inspected under subdivision (1) of this section;

(7) By regulations require that the following classes of persons keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and afford to the Secretary and the Secretary's representatives (including representatives of other governmental agencies designated by the Secretary) access to such places of business, and opportunity, at all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor; any persons that engage in or for intrastate commerce (a) in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling (as brokers, wholesalers or otherwise), transporting, or storing any livestock products or poultry products for human or animal food; or (b) in business as renderers or in the business of buying, selling or transporting any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals (including poultry) that died otherwise than by slaughter.

#### **§ 8708. Additional powers of Secretary**

In order to accomplish the objective stated in § 8706 of this title the Secretary may:

(1) Remove inspectors from any establishment that fails to destroy condemned products as required under § 8707(2) of this title;

(2) Refuse to provide inspection service under this chapter with respect to any establishment for causes specified in § 401 of the Federal Meat Inspection Act [21 U.S.C. § 671] or § 18 of the federal Poultry Products Inspection Act [21 U.S.C. § 467];

(3) Order labeling and containers to be withheld from use if he determines that the labeling is false or misleading or the containers are of a misleading size or form;

(4) By regulations prescribe the sizes and style of type to be used for labeling information required under this chapter, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when he deems such action

appropriate for the protection of the public and after consultation with the Secretary of Agriculture of the United States;

(5) By regulations prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intrastate commerce to assure that such articles will not be adulterated or misbranded when delivered to the consumer;

(6) Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;

(7) By regulations require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of livestock products or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals (including poultry) that died otherwise than by slaughter shall register with the Secretary his name and the address of each place of business at which and all trade names under which he conducts such business;

(8) Adopt by reference or otherwise such provisions of the rules and regulations under the federal acts (with such changes therein as he deems appropriate to make them applicable to operations and transactions subject to this chapter) which shall have the same force and effect as if promulgated under this chapter, and promulgate such other rules and regulations as he deems necessary for the efficient execution of this chapter, including rules of practice providing opportunity for hearing in connection with issuance of orders under § 8707(5) of this title or subdivisions (1), (2) or (3) of this section and prescribing procedure for proceedings in such cases; provided, that this shall not preclude a requirement that a label or container be withheld from use, or a refusal of inspection, under § 8707(5) or subdivisions (1) or (3) of this section pending issuance of a final order in any such proceeding;

(9) Appoint and prescribe the duties of such inspectors and other personnel as the Secretary deems necessary for the efficient execution of the provisions of this chapter;

(10) Cooperate with the Secretary of Agriculture of the United States in administration of this chapter to effectuate the purposes stated in § 8706 of this title;

(11) Recommend to the Secretary of Agriculture of the United States for appointment to the advisory committees, provided for in the federal acts, such officials or employees of the Department as the Secretary shall designate;

(12) Serve as the representative of the Governor for consultation with the Secretary of Agriculture of the United States under paragraph (c) of § 301 of the Federal Meat Inspection Act [21 U.S.C. § 661(c)] and paragraph (c) of § 5 of the federal Poultry Products Inspection Act [21 U.S.C. § 454(c)] unless the Governor selects another representative;

(13) Exempt the operations of any person from inspection or other requirements of this chapter if and to the extent such operations would be exempt from the corresponding requirements under the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] if they were conducted in or for interstate commerce or if the State were designated under the federal acts as one in which the federal requirements apply to intrastate commerce;

(14) May exempt the following types of operations from inspection: (a) slaughtering and preparation by any person of livestock and poultry of his own raising exclusively for use by him and members of his household, and his nonpaying guests and employees; and (b) any other operations which the Secretary may determine would best be exempted to further the purposes of this chapter, to the extent such exemptions conform to the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] and the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] and the regulations thereunder.

#### **§ 8709. Licenses**

Every person who owns or operates an official establishment or other facility subject to this chapter shall obtain a license for such establishment or facility. Every application for a license shall be submitted to the department on forms obtained from the department with a \$25 fee. All fees shall be forwarded to the State Treasurer. The license shall be for the fiscal year ending June 30, and shall be renewed annually thereafter. A license may be denied at the time of application or revoked if the official establishment is found violating any section of this chapter or rules and regulations of the department.

#### **§ 8710. Prohibited acts**

(a) No person shall, with respect to any livestock or poultry or any livestock products or poultry products:

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles solely for intrastate commerce, except in compliance with the requirements of this chapter;

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles which are capable of use as human food, and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any articles required to be inspected under this chapter, unless they have been so inspected and passed; or

(3) Do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

(b) No person shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Secretary, except as may be authorized by such regulations.

(c) No person shall violate any provision of the regulations or orders of the Secretary under § 8707 or 8708 of this title.

#### **§ 8711. Additional prohibited acts**

(a) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary.

(b) No person shall:

(1) Forge any official device, mark, or certificate;

(2) Without authorization from the Secretary use any official device, mark or certificate, or simulation thereof, or alter, detach, deface or destroy any official device, mark or certificate;

(3) Contrary to the regulations prescribed by the Secretary, fail to use, or to detach, deface or destroy any official device, mark or certificate;

(4) Knowingly possess, without promptly notifying the Secretary or the Secretary's representative, any official device or any counterfeit, simulated, forged or improperly altered official certificate or any device or label or any carcass of any animal (including poultry), or part or product thereof, bearing any counterfeit, simulated, forged or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Secretary; or

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has not been so inspected and passed, or exempted.

#### **§ 8712. Offenses**

(a) No person shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Secretary to show the kinds of animals from which they were derived.

(b) No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products which are not intended for use as human food, unless they are denatured or otherwise identified as required by the regulations of the Secretary or are naturally inedible by humans.

(c) No person engaged in the business of buying, selling, or transporting in intrastate commerce dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Secretary may prescribe to assure that such animals, or the unwholesome parts of products thereof, will be prevented from being used for human food purposes.

#### **§ 8713. Offenses; penalties**

(a) Any person who shall give, pay, or offer, directly or indirectly, to any officer or employee of this State authorized to perform any of the duties prescribed by this chapter or by the regulations of the Secretary any money or other thing of value, with intent to influence the officer or employee in the discharge of any such duty, shall upon conviction thereof be punished by a fine not less than \$5,000 nor more than \$10,000 and by imprisonment not less than 1 year nor more than 3 years; and any officer or employee of this State authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person, given with intent to influence his or her official action, or who shall receive or accept

from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than \$1,000 nor more than \$10,000 and by imprisonment not less than 1 year nor more than 3 years.

(b) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than \$5,000, or imprisoned not more than 3 years, or both.

#### **§ 8714. Inspection; exception**

Inspection shall not be provided under this chapter at any establishment for: (1) the slaughter of livestock or poultry, or (2) the preparation of any livestock products or poultry products which are not intended for use as human food. Such products shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Secretary to deter their use as human food.

#### **§ 8715. Inspection and seal**

(a) No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

(b) For purposes of any inspection of products required by this chapter, inspectors authorized by the Secretary shall have access at all times, by day or night, to every part of every establishment required to have inspection under this chapter, whether the establishment is operated or not.

#### **§ 8716. Detention of certain goods, products or animals**

Whenever any livestock product or poultry product or any product exempted from the definition of a livestock product and from the definition of a poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by any authorized representative of the Secretary upon any premises where it is held for purposes of distribution, or during or after distribution, or is otherwise subject to the Interstate Commerce Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this chapter or of the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] or the Federal Food, Drug and Cosmetic Act [21 U.S.C. § 301 et seq.], or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under § 8717 of this title or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Secretary that the article or animal is eligible to retain such marks.

#### **§ 8717. Forfeiture of certain goods, products or animals**

(a) Any livestock product or poultry product or any dead, dying, disabled, or diseased livestock or poultry that is being transported in intrastate commerce or is otherwise subject to the chapter,

or is held for sale in this State after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter shall be liable to be proceeded against and seized and forfeited at any time, as provided in this section.

(b) Any property subject to forfeiture under this chapter may be seized by the Department upon process issued by the Superior Court, except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in an injunction or forfeiture proceeding under this chapter;

(3) The Department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or,

(4) The Department has probable cause to believe that the property has been used or intended to be used in violation of this chapter.

(5) In the event of seizure pursuant to paragraph (3) and (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Department subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this chapter, the Department may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it; or

(3) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Whenever property is forfeited under this chapter, the Department may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs. Any remaining proceeds shall be deposited in the General Fund;

(3) Take custody of the property and remove it for disposition in accordance with law; or

(e) The article or animal shall not be sold contrary to the provisions of this chapter, or the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry Products Inspection Act [21 U.S.C. § 451 et seq.] or the Federal Food, Drug and Cosmetic Act [21 U.S.C. § 301 et seq.]; provided, that upon the execution and delivery of a good and sufficient bond conditioned

that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of forfeiture is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal.

(f) This section shall in no way derogate from authority for condemnation, forfeiture, or seizure conferred by other provisions of this chapter, or other laws.

### **§ 8718. Appeal and jurisdiction**

(a) Any order issued under § 8707(5) or 8708(1), (2), or (3) of this title shall be final, unless appealed to the Superior Court within 15 days after service. Review of any such order and the determinations upon which it is based shall be upon the record in the administrative proceeding in which the order was issued.

(b) The Superior Court has jurisdiction of offenses under this chapter, except as otherwise provided in this section.

(c) The Court of Chancery shall have jurisdiction to prevent and restrain violations of this chapter.

(d) All proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of this State. Subpoenas for witnesses who are required to attend a court in any county may run into any other county in such proceeding.

### **§ 8719. Penalties generally**

(a) Any person who commits an offense in violation of this chapter for which no other criminal penalty is provided by this chapter shall, upon conviction, be subject to imprisonment for not more than 1 year, or a fine of not more than \$1,000, or both; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in § 8704(11) of this title) such person shall be subject to imprisonment for not more than 3 years or a fine of not more than \$10,000, or both.

(b) Nothing in this chapter shall be construed as requiring the Secretary to report for prosecution or for the institution of forfeiture or injunction proceedings, minor violations of this chapter whenever the Secretary believes that the public interest will be adequately served by a suitable written notice or warning.

### **§ 8720. Powers of Secretary; investigation; record keeping**

(a) The Secretary shall also have power:

(1) To gather and compile information concerning and to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce and the relation thereof to other persons;

(2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them, to file with the Secretary in such form as the Secretary may prescribe, annual or special, or both annual and special reports or answers in writing to specific

questions, furnishing to the Secretary such information as the Secretary may require as to the organization, business, conduct, practices, management, and relation to other persons, of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Secretary may prescribe, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted in any case by the Secretary.

(b)(1) For the purpose of this chapter the Secretary shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Secretary may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence;

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to the subpoena the Secretary may invoke the aid of any court designated in § 8718 of this title in requiring the attendance and testimony of witnesses and the production of documentary evidence;

(3) Any of the courts designated in § 8718 of this title within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Secretary or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof;

(4) Upon the application of the Attorney General of this State at the request of the Secretary, the Superior Court shall have jurisdiction to issue writs of mandamus commanding any person to comply with this chapter or any order of the Secretary made in pursuance thereof;

(5) The Secretary may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or a person under his or her direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Secretary as provided in this section;

(6) Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts;

(7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements or other documentary evidence before the Secretary or in obedience to the subpoena of the Secretary whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or her or it may tend to incriminate him or her or it or subject him or it to a penalty or

forfeiture; but no individual shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying or contempt after having received immunity from prosecution.

(c)(1) Any person who shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or her or its power to do so, in obedience to the subpoena or lawful requirement of the Secretary shall upon conviction thereof by a court of competent jurisdiction be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment;

(2) Any person who shall wilfully make or cause to be made any false entry or statement of fact in any report required to be made under this chapter, or that shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter or that shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person or that shall wilfully remove out of the jurisdiction of this State, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of any person subject to this chapter or that shall wilfully refuse to submit to the Secretary or to any of the Secretary's his<sup>1</sup> authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in his or her possession or within his or her control, shall be subject, upon conviction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than 3 years, or to both such fine and imprisonment;

(3) If any person required by this chapter to file any annual or special report shall fail so to do within the time fixed by the Secretary for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the General Fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the county where the person has his or her or its principal office or in any county in which he or she or it shall do business. It shall be the duty of the various Deputies Attorney General, under the direction of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of this State;

(4) Any officer or employee of this State who shall make public any information obtained by the Secretary, without his authority, unless directed by a court, or use any such information to his own advantage, shall be punished by a fine not exceeding \$5,000, or by imprisonment, not exceeding 1 year, or by both such fine and imprisonment, in the discretion of the court;

(5) Superior Court shall have jurisdiction over the offenses in this section.

### **§ 8721. Application of chapter**

The requirements of this chapter shall apply to persons, establishments, animals and articles regulated under the Federal Meat Inspection Act [21 U.S.C. § 601 et seq.] or the federal Poultry

Products Inspection Act [21 U.S.C. § 451 et seq.] only to the extent provided for in said federal acts.