

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 48.**  
**FOODS AND DRUGS.**

**CHAPTER 1.**  
**ADULTERATION.**

**2001 Edition**

# DISTRICT OF COLUMBIA OFFICIAL CODE

## CHAPTER 1. ADULTERATION.

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### TABLE OF CONTENTS

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§ 48-101. Possession or disposition of adulterated articles prohibited.

§ 48-102. Definitions--"Drug"; "food".

§ 48-103. Definitions--"Adulterated article" defined.

§ 48-104. Enforcement measures; rules and regulations.

§ 48-105. Complaints to be investigated.

§ 48-106. Furnishment of samples for analysis.

§ 48-107. Portion of sample analyzed to be sealed and retained.

§ 48-108. Interference with officials prohibited.

§ 48-108.01. Administrative remedies for enforcement.

§ 48-109. Prosecutions; violations.

§ 48-110. Inconsistent acts repealed; certain Acts preserved.

# CHAPTER 1. ADULTERATION.

## **§ 48-101. POSSESSION OR DISPOSITION OF ADULTERATED ARTICLES PROHIBITED.**

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter.

(Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 33-101.

1973 Ed., § 33-101.

## **§ 48-102. DEFINITIONS--"DRUG"; "FOOD."**

For the purposes of this chapter, the term:

- (1) "Condemnation" means an administrative restriction or exclusion on the use of specific equipment, utensils, or linens.
- (2) "Drug" shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics.
- (3) "Embargo" means an administrative restriction or exclusion on the distribution of food or food products.
- (4) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption, or chewing gum.
- (5) "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
  - (A) The term "food establishment" includes:
    - (i) A restaurant; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer, or to a conveyance used to transport people; a market; a vending location; an institution; or a food bank;
    - (ii) An establishment that relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or a delivery service that is provided by common carriers;
    - (iii) An establishment that includes an element of the operation of an establishment, such as a motorized vehicle or cart, or a central preparation facility that supplies vending locations or satellite feeding locations, unless the vending locations are licensed by the Mayor pursuant to Chapter 1A of Title 37, or the feeding locations are licensed by the Mayor;
    - (iv) An establishment that includes an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption is on or off the premises, regardless of whether there is a charge for the food;
    - (v) All private clubs, employer-sponsored cafeterias or restaurants, schools, churches, residential treatment facilities, and similar facilities, with the exception of those described in subparagraphs (B)(v) through (B)(viii) of this paragraph;
    - (vi) An eating and drinking establishment as set forth in § 7-2701; and
    - (vii) A food processing plant.

(B) The term "food establishment" shall not include:

- (i) An establishment that offers only prepackaged foods that are not potentially hazardous;
- (ii) A produce stand that only offers whole, uncut, fresh fruits and vegetables;
- (iii) Repealed.
- (iv) An ordinary kitchen in a private home that prepares food for sale or service at a function such as a religious or charitable organizations' bake sale where the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Mayor.
- (v) An area where food that is prepared as specified in sub- subparagraph (iv) of this subparagraph is sold or offered for human consumption;
- (vi) A kitchen in a private home, including a child development facility; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner-occupied, the number of available guest bedrooms does not exceed 3, breakfast is the only meal offered, the number of guests served does not exceed 9, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the Mayor;
- (vii) A private home that receives catered or home-delivered food; and
- (viii) A private club or a church, which serves occasional meals at not more than 24 events during a 12-month period.

(Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2; May 2, 2002, D.C. Law 14-116, § 2(a), 49 DCR 1945; Mar. 13, 2004, D.C. Law 15-105, § 14, 51 DCR 881; Oct. 22, 2009, D.C. Law 18-71, § 12(d), 56 DCR 6619.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 33-102.

1973 Ed., § 33-102.

##### *Effect of Amendments*

D.C. Law 14-116 rewrote the section which had read as follows:

"The term 'drug,' as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term 'food,' as used in this chapter, shall include confectionery, condiments, and all articles used for food or drink by man, and if there be more than one quality of any article of food or drug known by the same name the best quality thereof shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered."

D.C. Law 15-105, in par. 5, made nonsubstantive changes in sub-subpars. (v) and (vi) of subpar. (A), added sub-subpar. (vii) to subpar. (A), and repealed sub-subpar. (iii) of subpar. (B). Prior to repeal, sub-subpar. (iii) of subpar. (B) of par. (5) had read as follows:

"(iii) A food processing plant;"

D.C. Law 18-71, in subsec. (5)(A)(iii), substituted "unless the vending locations are licensed by the Mayor pursuant to Chapter 1A of Title 37" for "unless the vending locations are authorized by the Council pursuant to § 1- 303.01".

##### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(a) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

For temporary (225 day) amendment of section, see § 2 of Food Regulation Temporary Amendment Act of 2003 (D.C. Law 15-46, December 9, 2003, law notification 51 DCR 1781).

For temporary (225 day) amendment of section, see § 11(d) of Extension of Time to Dispose of the Old Congress Heights School Temporary Amendment Act of 2008 (D.C. Law 17-172, June 5, 2008, law notification 55 DCR 7258).

For temporary (225 day) amendment of section, see § 10(d) of Vending Regulation Temporary Act of 2009 (D.C. Law 18-4, April 30, 2009, law notification 56 DCR 4255).

##### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(a) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(a) of Food Regulation Legislative Review Emergency

Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

For temporary (90 day) amendment of section, see § 2 of Food Regulation Emergency Amendment Act of 2003 (D.C. Act 15-124, July 29, 2003, 50 DCR 6639).

For temporary (90 day) amendment of section, see § 2 of Food Regulation Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-212, November 7, 2003, 50 DCR 10007).

For temporary (90 day) amendment of section, see § 2 of Food Regulation Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-324, January 28, 2004, 51 DCR 1588).

For temporary (90 day) amendment of section, see § 10(d) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) amendment of section, see § 10(d) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) amendment of section, see § 10(d) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

#### *Legislative History of Laws*

Law 14-116, the "Food Regulation Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-154, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 2001, and February 5, 2002, respectively. Signed by the Mayor on February 25, 2002, it was assigned Act No. 14-268 and transmitted to both Houses of Congress for its review. D.C. Law 14-116 became effective on May 2, 2002.

Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Law 18-71, the "Vending Regulation Act of 2009", as introduced in Council and assigned Bill No. 18-257, which was referred to the Committee on Public Services and Consumer Affairs. The bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-167 and transmitted to both Houses of Congress for its review. D.C. Law 18-71 became effective on October 22, 2009.

## **§ 48-103. DEFINITIONS--"ADULTERATED ARTICLE" DEFINED.**

An article shall be deemed to be adulterated within the meaning of this chapter:

(1) In the case of drugs: (A) if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; (B) if, when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; (C) if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture; provided, that if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution; provided, further, that an offense shall not be deemed to be committed under this section in the following cases:

(A) Where the order calls for a drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package;

(B) Where the drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such drug is delivered to the purchaser it is made known to him that such drug is so mixed;

(2) In the case of food, if:

(A) It bears or contains any poisonous or deleterious substance which may render it injurious to health; except that, if the poisonous or deleterious substance is not an added substance and the quantity of the poisonous or deleterious substance in the food does not ordinarily render it injurious to health, the food is not adulterated for the purpose of this chapter;

(B) It bears or contains any added poisonous or added deleterious substance (other than a substance that is a pesticide chemical residue in or on a raw agricultural commodity or processed

food, a food additive, a color additive, or a new animal drug) that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1049; 21 U.S.C. § 346);

(C) It bears or contains a pesticide chemical residue that is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

(D) It bears or contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act, or a new animal drug (or conversion product thereof) that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act;

(E) It consists, in whole or in part, of any filthy, putrid, or decomposed substance, or is otherwise unfit for food;

(F) 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;

(G) It, in whole or in part, is the product of a diseased animal or of an animal which has died otherwise than by slaughter;

(H) It is in a container that is composed, in whole or in part, of any poisonous or deleterious substance, which may render the contents injurious to health;

(I) It intentionally has been subjected to radiation, unless the radiation was used in conformity with a rule or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(J) Any valuable constituent has been omitted or abstracted, in whole or in part;

(K) Any substance has been substituted, in whole or in part;

(L) Damage or inferiority has been concealed in any manner;

(M) Any substance has been added, mixed, or packed to increase the food's bulk or weight, reduce the food's quality or strength, or make the food appear better or of greater value;

(N) It is, bears, or contains a color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act;

(O) It is a confectionery:

(i) Within which any nonnutritive object is partially or completely imbedded, except that the confectionery shall not be adulterated for purposes of this chapter if the Secretary of the US Department of Health and Human Services determines, by rule, that the nonnutritive object that is partially or completely imbedded in the confectionery has a practical, functional value to the confectionery that does not render the confectionery injurious or hazardous to health;

(ii) That bears or contains more than 0.5% of alcohol by volume, which is derived solely from flavoring extracts, except that the confectionery shall not be adulterated for purposes of this chapter if the confectionery is introduced, delivered for introduction, received, or held for sale;

(iii) That bears or contains any nonnutritive substance, except that the confectionery shall not be adulterated for purposes of this chapter if the nonnutritive substance is a safe substance that is in or on a confectionery product because the nonnutritive substance serves a practical, functional purpose in the manufacture, packaging, or storage of the confectionery product and use of the nonnutritive substance does not promote deception of the consumer or violate any other provision of this chapter;

(P) It is oleomargarine, margarine, butter, or any of the raw material in oleomargarine, margarine, or butter, which contains or consists, in whole or in part, of any filthy, putrid, or decomposed substance, or if the oleomargarine, margarine, or butter is otherwise unfit for food; or

(Q) It is a dietary supplement or contains a dietary ingredient:

(i) That presents a significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling or, if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use;

(ii) That is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that the ingredient does not present a significant or unreasonable risk of illness or injury;

(iii) That is or contains a dietary ingredient that renders the food adulterated under paragraph (1) of this subsection under the conditions of use recommended or suggested in the labeling of the dietary supplement; or

(iv) That has been prepared, packed, or held under conditions that do not comply with current, good manufacturing practice rules, including rules that require expiration date labeling.

*HISTORICAL AND STATUTORY NOTES*

*Prior Codifications*

1981 Ed., § 33-103.

1973 Ed., § 33-103.

*Effect of Amendments*

D.C. Law 14-116, in par. (1), added "provided, further, than an offense shall not be deemed to be committed under this section in the following cases:" at the end of the paragraph; added pars. (1)(A) and (1)(B); and rewrote par. (2) which had read as follows:

"(2) In the case of food: (A) in the case of cheese, if it is not made exclusively from milk or cream, or both, with or without common salt; (B) in the case of coffee, if it is not composed entirely of the seed of the *Coffea arabica*; (C) in the case of lard, if it is not made exclusively from the rendered fat of the healthy hog; (D) in the case of tea, if it is not composed entirely of the genuine leaf of the tea plant not exhausted; (E)(i) in the case of all kinds of vinegar, if it contains an acidity equivalent to the presence of less than 4% of absolute acetic acid; and (ii) cider vinegar, if it is not made from the pure apple juice and contains less than 1.5% of total solids; (F)(i) in the case of cider, if it is not made from the legitimate product of pure apple juice; and (ii) in the case of wines and fruit juices, if not made from the pure fruit as represented; and (iii) in the case of cider, wines, fruit juices, and malt liquors, if not free from salicylic acid or other preservatives; and (iv) in the case of malt liquors, if not free from piric acid, *coccus indicus*, *colchicine*, *colocynth*, *aloes*, and *wormwood*; (G) in the case of glucose, if it contains more than .05% of ash; (H) in the case of flour, if it is not composed entirely of one single ground cereal; (I) in the case of bread, if there is any addition of *alum*, *sulphate of copper*, *borax*, or *sulphate of zinc*, or other poisonous or harmful ingredient, and if it contains more than 31% of moisture, more than 2% of ash, and less than 6.25% of *albuminoids*; (J) in the case of olive oil, if it is not made exclusively from the olive berry (*Olea europaea*), and its specific gravity at 15.6° Centigrade (60° Fahrenheit) 'actual density' to be not more than 900.017 nor less than 900.014; provided, that an offense shall not be deemed to be committed under this section in the following cases, that is to say:

"(A) Where the order calls for an article of food or drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package;

"(B) Where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to him that such article of food or drug is so mixed."

D.C. Law 15-105, in pars. (1) and (2), validated previously made technical corrections.

*Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

*Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

*Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

For Law 15-105, see notes following § 48-102.

*References in Text*

Section 408 of the Federal Food, Drug, and Cosmetic Act, referred to in par. (2)(B), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 408, which is classified to 21 U.S.C.A. § 346a.

Section 409 of the Federal Food, Drug, and Cosmetic Act, referred to in pars. (2)(D) and (2)(I), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 409, which is classified to 21 U.S.C.A. § 348.

Section 512 of the Federal Food, Drug, and Cosmetic Act, referred to in par. (2)(D), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 512, which is classified to 21 U.S.C.A. § 360b.

Section 721 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(14), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 721, which is classified to 21 U.S.C.A. § 379e.

**§ 48-104. ENFORCEMENT MEASURES; RULES AND REGULATIONS.**

(a) It shall be the duty of the Mayor to adopt such measures as may be necessary to facilitate the enforcement of this chapter with regard to the proper method of collecting and examining drugs and articles of food in the District of Columbia.

(b) The Mayor of the District of Columbia, with the approval of the Council, is authorized to adopt the United States Food and Drug Administration's Model Food Code, with any necessary amendments, to:

- (1) Control and regulate the retail sale, commercial and institutional service, and vending of food;
- (2) Establish standards for employee food safety practices and training;
- (3) Regulate food sources, preparation, holding temperatures, and protection;
- (4) Regulate equipment, utensils, and linens, their design, construction, number and capacity, location and installation, maintenance and operation, cleaning, and sanitization;
- (5) Regulate the use of water and the treatment of liquid and solid wastes;
- (6) Regulate facilities construction and maintenance, storage and use of poisonous and toxic materials;
- (7) Establish license requirements for the operation of food establishments;
- (8) Restrict or exclude employees;
- (9) Examine, embargo, and condemn food or food products, equipment, utensils, and linens to protect the public health.

(c) The Mayor shall submit the United States Food and Drug Administration's Model Food Code, with any necessary amendments, to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or in part, by resolution, within this 45-day review period, the proposed regulations shall be deemed disapproved.

(Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; May 2, 2002, D.C. Law 14-116, § 2(c), 49 DCR 1945.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 33-104.

1973 Ed., § 33-104.

##### *Effect of Amendments*

D.C. Law 14-116 rewrote the section which had read as follows:

"It shall be the duty of the Director of Public Health of the District of Columbia, under the direction of the Mayor of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and of the Council of the District of Columbia to prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District."

##### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(c) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

##### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(c) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(c) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

##### *Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

##### *Change in Government*

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(258) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by



the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 207.14(a)), appropriate changes in terminology were made in this section.

#### *Delegation of Authority*

Delegation of Authority Pursuant to the Food Regulation Amendment Act of 2002, see Mayor's Order 2002-103, June 28, 2002 (49 DCR 6000).

#### *Resolutions*

Resolution 14-613, the "Food Code Approval Resolution of 2002", was approved effective November 22, 2002.

#### *Miscellaneous Notes*

Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions stated in Organization Order No. 141 were transferred to the Department of Environmental Services by Commissioner's Order 71-255, dated July 27, 1971, as amended by Commissioner's Order 72-96, dated April 18, 1972. Functions stated in Commissioner's Order 71-255 were transferred to the Director of Consumer and Regulatory Affairs by § III B. (9) of Reorganization Plan No. 1 of 1983.

## **§ 48-105. COMPLAINTS TO BE INVESTIGATED.**

It shall be the duty of the Mayor to investigate a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaints.

(Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; May 2, 2002, D.C. Law 14-116, § 2(d), 49 DCR 1945.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 33-105.

1973 Ed., § 33-105.

##### *Effect of Amendments*

D.C. Law 14-116 substituted "Mayor" for "Director of Public Health".

##### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(d) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

##### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(d) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(d) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

##### *Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions stated in Organization Order No. 141 were transferred to the Department of Environmental Services by Commissioner's Order 71-255, dated July 27, 1971, as amended by Commissioner's Order 72-96, dated April 18, 1972. Functions stated in Commissioner's Order 71-255 were transferred to the Director of Consumer and Regulatory Affairs by § III B. (9) of Reorganization Plan No. 1 of 1983.

## **§ 48-106. FURNISHMENT OF SAMPLES FOR ANALYSIS.**

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any analyst or other officer or agent of the Mayor a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. The Mayor may collect, without cost, and examine samples of food sufficient to analyze in order to determine compliance with this chapter.

(Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6; May 2, 2002, D.C. Law 14-116, § 2(e), 49 DCR 1945.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 33-106.

1973 Ed., § 33-106.

#### *Effect of Amendments*

D.C. Law 14-116 substituted "Mayor" for "Director of Public Health", deleted ", who shall apply to him for the purpose and shall tender him the value of the same," preceding "a sample sufficient", and added the last sentence.

#### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(e) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

#### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(e) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(e) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

#### *Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

### *Miscellaneous Notes*

Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning,

implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

## **§ 48-107. PORTION OF SAMPLE ANALYZED TO BE SEALED AND RETAINED.**

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed, the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period of 30 days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 33-107.

1973 Ed., § 33-107.

## **§ 48-108. INTERFERENCE WITH OFFICIALS PROHIBITED.**

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the Department of Health in the performance of his duty in carrying out the provisions of this chapter.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8; May 2, 2002, D.C. Law 14-116, § 2(f), 49 DCR 1945.)

### *HISTORICAL AND STATUTORY NOTES*

#### *Prior Codifications*

1981 Ed., § 33-108.

1973 Ed., § 33-108.

#### *Effect of Amendments*

D.C. Law 14-116 substituted "Department of Health" for "Health Department".

#### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(f) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

#### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(f) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(f) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

#### *Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

#### *Miscellaneous Notes*

Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning,

implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

## **§ 48-108.01. ADMINISTRATIVE REMEDIES FOR ENFORCEMENT.**

(a) The Mayor may take action to enforce this chapter or any rule promulgated pursuant to this chapter, if any person:

- (1) Operates a food establishment without a valid license;
- (2) Violates any term or condition of a food establishment license;
- (3) Does not correct serious violations of this chapter or rule promulgated pursuant to this chapter within time frames established by the Mayor or repeatedly violates this chapter or its rules;
- (4) Does not comply with an order of the Mayor concerning an employee suspected of having a disease that can be transmitted by an infected person;
- (5) Does not comply with an embargo or condemnation order issued by the Mayor;
- (6) Does not comply with an order issued as a result of an administrative hearing under this chapter; or
- (7) Does not comply with a summary suspension order by the Mayor.

(b) The Mayor may grant a variance from food establishment license requirements if the applicant or licensee shows that compliance with the requirements of this chapter, or the rules promulgated pursuant to this chapter, would result in an unreasonable financial hardship, and that the public health and welfare would not be endangered.

(c) The Mayor may suspend or revoke a license issued to a food establishment for violation of the provisions of this chapter or rules implementing this chapter, and may summarily suspend or restrict the license if the Mayor determines, through inspection, or examination of employees, food, records, or other means as specified in this chapter or rules implementing this chapter, that an imminent health hazard exists. The Mayor may summarily suspend a food establishment's license by providing written notice to the licensee or person in charge, without prior warning, notice of a hearing, or hearing. If the Mayor restricts the activities of an employee of the food establishment, notice shall be given to that employee, who shall have a right to a hearing after the restriction is implemented.

(d)(1) The Mayor may, without prior notice, embargo and forbid the sale of, or cause to be destroyed, any food that :

- (A) May be unsafe, adulterated, or not honestly presented;
- (B) Is not prepared, processed, handled, packaged, transported, or stored in compliance with the requirements of this chapter, or the rules promulgated pursuant to this chapter;
- (C) Originated from an unapproved source;
- (D) Is not labeled according to law or properly tagged; or
- (E) Is otherwise not in compliance with this chapter.

(2) The Mayor shall provide the licensee or person in charge of the food establishment with a written notice at the same time the embargo action is taken, stating the action that is being taken, the basis for the action, and the right of the licensee or person in charge to request a hearing.

(e) The Mayor may, without prior notice, condemn and cause to be removed any equipment, utensils, or linens found in a food establishment, the use of which does not comply with this chapter or rules implementing this chapter, or that is being used in violation of this chapter or rules implementing this chapter, or that is unfit for use because of dirt, filth, extraneous matter, insects, corrosion, open seams, or chipped or cracked surfaces. The Mayor shall provide the licensee or person in charge of the food establishment with a written notice at the same time the condemnation action is taken, stating the action that is being taken, the basis for the action, and the right of the licensee or person in charge to request a hearing.

(f) The Mayor may suspend a license issued in accordance with §§ 47-2801 and 47-2827 if the licensee is in violation of this chapter, or of the rules promulgated pursuant to this chapter. The Mayor shall serve upon

the affected party or the party's designated agent a written notice of suspension stating the action that is being taken, the basis for the action, and the right of the affected party or party's designated agent to request a hearing.

(g) If a licensee has previously violated this chapter, or the rules promulgated pursuant to this chapter, or if the person's license has been previously suspended, the Mayor may revoke the license upon the commission of another violation. The Mayor shall provide the affected party, or the party's designated agent, with written notice of the intent to revoke the license and with an opportunity for a hearing prior to revocation. A person whose license has been revoked pursuant to this section may reapply for a food establishment license. The Mayor may grant a new license if the person is able to demonstrate an ability and willingness to comply with the license, the provisions of this chapter, and the rules implementing this chapter.

(h) A licensee, person in charge, or employee shall have the right to request a hearing within 15 days after service of the notice of an adverse action under this section. A request for a hearing shall not stay a summary suspension, an embargo, or a condemnation order. The Mayor shall hold a hearing within 72 hours of a timely request for a hearing following a summary suspension, an embargo, or a condemnation order, and shall issue a decision within 72 hours after the hearing.

(i) Each hearing shall be held in accordance with the contested case provisions of § 2-509, and judicial review shall be in accordance with § 2-510.

(j) The Mayor is authorized to conduct necessary examinations and tests to determine whether any food employee has a disease in a communicable form, or is a carrier of a communicable disease. A food employee shall submit to examinations and tests, including providing access to medical history, at the request of the Mayor when there is reason to believe that the employee has a disease in a communicable form, or is a carrier of a communicable disease.

(k) For the purpose of enforcing this chapter or any rule issued pursuant to this chapter, the Mayor may, at any reasonable time, upon the presentation of proper credentials to the owner, operator, or agent in charge, enter into or upon any food establishment for the purpose of making inspections and tests.

(l) The Mayor may request that the Corporation Counsel commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief from the court, to enforce this chapter or rules issued pursuant to this chapter.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8a, as added May 2, 2002, D.C. Law 14-116, § 2(g), 49 DCR 1945.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Temporary Addition of Section*

For temporary (225 day) addition, see § 2(g) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

##### *Emergency Act Amendments*

For temporary (90 day) addition of this section, see § 2(g) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) addition of this section, see § 2(g) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

##### *Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

## **§ 48-109. PROSECUTIONS; VIOLATIONS.**

(a) Whenever the Mayor has reason to believe that there has been a violation of this chapter or the rules promulgated pursuant to this chapter, the Mayor shall give written notice of the alleged violation to the licensee, person in charge, or employee. The notice shall state the nature of the violation and shall allow a reasonable time for the performance of the necessary corrective measures. Failure to comply shall result in penalties as set forth in subsection (b) of this section.

(b) A person who violates any of the provisions of this chapter, or the rules promulgated pursuant to this chapter, shall be liable for a civil penalty in an amount not to exceed \$10,000 for each violation. Each day of a violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense.

(c) Any person who knowingly violates any of the provisions of this chapter, or the rules promulgated pursuant to this chapter, shall be punished by a fine not to exceed \$10,000, or imprisonment not to exceed one year, or both. Each day of a violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense. Prosecutions for violations of this subsection shall be brought in

the Superior Court of the District of Columbia by the Corporation Counsel for the District of Columbia.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules issued under the authority of this chapter, pursuant to Chapter 18 of Title 2.

(e) Any person who contests a final order of the Mayor issued pursuant to this chapter, after exhaustion of all administrative remedies, is entitled to judicial review of the final order upon filing a written petition for review in the District of Columbia Court of Appeals.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 476, 32 DCR 4450; May 2, 2002, D.C. Law 14-116, § 2(h), 49 DCR 1945.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 33-109.

1973 Ed., § 33-109.

##### *Effect of Amendments*

D.C. Law 14-116 rewrote the section which had read as follows:

"All prosecutions under this chapter shall be in the Superior Court of the District of Columbia on information brought in the name of the District of Columbia and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$5 nor more than \$100. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules and regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2."

##### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(h) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

##### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(h) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(h) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

##### *Legislative History of Laws*

Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

For Law 14-116, see notes following § 48-102.

## **§ 48-110. INCONSISTENT ACTS REPEALED; CERTAIN ACTS PRESERVED.**

(a) The Mayor shall issue rules in accordance with subchapter I of Chapter 5 of Title 2, to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or part, by resolution, within this 45-day review period, the proposed regulations shall be deemed disapproved.

(b) The Mayor shall establish, by rule, a license application fee for a food establishment. The fee shall be set in an amount to recoup some or all of the costs to the District of Columbia for reviewing the application. The regulations may also provide for interest to be charged on late payments of any charges imposed pursuant to this chapter.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10; May 2, 2002, D.C. Law 14-116, § 2(i), 49 DCR 1945.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Prior Codifications*

1981 Ed., § 33-110.

1973 Ed., § 33-110.

#### *Effect of Amendments*

D.C. Law 14-116 rewrote the section which had read as follows:

"All acts and parts of acts inconsistent with this chapter are hereby repealed; provided, that nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of 'An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine,' approved August 2, 1886, or of 'An Act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of 'filled cheese,'" approved June 6, 1896."

#### *Temporary Amendments of Section*

For temporary (225 day) amendment of section, see § 2(i) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

#### *Emergency Act Amendments*

For temporary (90 day) amendment of section, see § 2(i) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(i) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

#### *Legislative History of Laws*

For Law 14-116, see notes following § 48-102.

#### *Delegation of Authority*

Delegation of Authority Pursuant to the Food Regulation Amendment Act of 2002, see Mayor's Order 2002-103, June 28, 2002 (49 DCR 6000).

#### *Resolutions*

Resolution 14-613, the "Food Code Approval Resolution of 2002", was approved effective November 22, 2002.

Resolution 18-150, the "District of Columbia Food Processing Operations Code Approval Resolution of 2009", was approved effective June 2, 2009.