

Title 20, Chapter 61 Fish and Seafood

Subchapter 1 -- General Provisions

20-61-101. Foreign fish.

(a) No fresh, cold storage, or frozen fish produced outside this state or in any foreign country and imported into the United States shall be sold or offered for sale in this state by any food establishment unless:

(1) The package or container containing the food bears a statement in writing naming thereon the country of origin, the date of packaging, and the common name of all fish contained therein; and

(2) The fish has been packaged and processed under sanitary conditions equal to the standards required by the laws and regulations of this state for fish processing plants.

(b) (1) Outlets serving cooked, fresh, cold storage, or frozen fish at retail which display on the menu or in some conspicuous public place in the outlet the identity of the country of origin and the common name of all fish as reflected on the menu or sold in the outlet shall be deemed as having satisfied the requirements of subdivision (a)(1) of this section.

(2) All suppliers of any fresh, cold storage, or frozen fish shall furnish to the distributor or retailer to which the products are sold in this state an affidavit that all products are properly labeled, as required in this section, with respect to the country of origin of and the contents of any foreign imported fish. This affidavit shall include a certificate that the supplier has caused each of the products to be properly labeled in conformance with the requirements of this section.

(3) (A) The Director of the Arkansas Bureau of Standards and enforcement personnel of the bureau are authorized to enforce the requirements of subsection (a) and subdivisions (b)(1) and (2) of this section.

(B) The director is authorized to promulgate rules and regulations necessary to enforce subsection (a) and subdivisions (b)(1) and (2) of this section.

(4) In addition, all suppliers of any fresh, cold storage, or frozen fish shall furnish to any distributor or retailer to which the product is sold in this state proof that the fish has been packaged and processed under sanitary conditions equal to the sanitary conditions required of fish processing plants in this state. The proof may be upon certification by the Department of Health or certification by the Food and Drug Administration or other appropriate federal agency that the processing plant in which the fish was packaged or processed meets sanitary conditions within at least the minimum requirements of the laws and regulations of this state for fish processing plants, or proof may be upon the certification of the supplier that the fish packaged or processed outside this state or in a foreign country was packaged or processed in a fish processing plant that meets at least the minimum requirements of the laws and regulations of this state for sanitary conditions for fish processing plants.

(c) Any supplier of fresh, cold storage, or frozen fish or any distributor or retailer who sells any fish in this state in violation of the provisions of this section shall each be individually

and severally subject to the civil penalties as provided in subsection (d) of this section.

(d) (1) A violator of this section shall be assessed by the State Plant Board a civil penalty of:

(A) Not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) for a first violation;

(B) Not less than four hundred dollars (\$400) nor more than six hundred dollars (\$600) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000) for a third violation within three (3) years after the date of the first violation.

(2) For a violation to be considered as a second or subsequent offense, it must be a repeat violation of a requirement enumerated in subsection (a) and subdivisions (b)(1) and (2) of this section.

(3) (A) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(B) The board is authorized to conduct the hearing after giving appropriate notice, and its decision shall be subject to judicial review.

(4) (A) If a violator has exhausted the administrative appeals and the civil penalty is upheld, the violator shall pay the civil penalty within twenty (20) calendar days after the date of the final decision.

(B) If the violator fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(C) Any civil penalty collected under this section shall be transmitted to the State Plant Board Fund.

(e) The provisions of this section shall not be applicable to shellfish.

HISTORY: Acts 1971, No. 367, §§ 1-3; 1973, No. 519, § 1; A.S.A. 1947, §§ 82-982 -- 82-984; Acts 2003, No. 1024, § 1.

Subchapter 2 -- Arkansas Catfish Marketing Act of 1975

20-61-201. Title.

This subchapter shall be known as the "Arkansas Catfish Marketing Act of 1975".

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 1; A.S.A. 1947, § 82-987; reen. Acts 1987, No. 1005, § 1.

20-61-202. Definitions. [Effective January 1, 2016.]

As used in this subchapter, unless the context otherwise requires:

(1) "Capable of use as human food" shall mean and shall apply to any catfish, catfish-like species, or part or product of catfish or a catfish-like species unless it is denatured or otherwise identified as required by regulations prescribed by the Director of the Arkansas Bureau of Standards to deter its use as human food or unless it is naturally inedible by humans;

(2) "Catfish" means any species of the scientific family Ictaluridae;

(3) "Catfish-like" means any species of the scientific genus Pangasius, family Claridae, or family Siluridae;

(4) "Director" means the Director of the Arkansas Bureau of Standards;

(5) "Direct retail sale" means the sale of catfish or catfish-like products individually or in small quantities directly to the consumer;

(6) "Distributor" means any person offering for sale, exchange, or barter any catfish or catfish-like product destined for direct retail sale in Arkansas;

(7) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a catfish or catfish-like product is offered for direct retail sale;

(8) "Labeling" means all labels and other written, printed, or graphic matter upon a catfish or catfish-like product, or any of its containers or wrappers, offered for direct retail sale;

(9) "Pay pond" means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit;

(10) "Person" shall include any individual, partnership, corporation, and association or other legal entity;

(11) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish or catfish-like products;

(12) "Producer" means any person engaged in the business of harvesting catfish or catfish-like species, by any method, intended for direct retail sale;

(13) "Product" means any catfish or catfish-like product capable of use as human food which is made wholly or in part from any catfish, catfish-like species, or portion of catfish or catfish-like species, except products which contain catfish or catfish-like species only in small proportions or which in the judgment of the director historically have not been considered by consumers as products of the commercial catfish industry and which are exempted from definition as a catfish or catfish-like product by the director under such conditions as he or she may prescribe to assure that the catfish, catfish-like species, or portions of catfish or catfish-like species contained therein are not adulterated and that the products are not represented as catfish or catfish-like products;

(14) "Product name" means the name of the catfish or catfish-like item intended for retail

sale which identifies it as to kind, class, or specific use; and

(15) "Retailer" means any person offering for sale catfish or catfish-like products to individual consumers and representing the last sale prior to human consumption.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 3; A.S.A. 1947, § 82-989; reen. Acts 1987, No. 1005, § 3; 2003, No. 1024, §§ 2, 3; 2015, No. 1191, § 1.

20-61-203. Penalties -- Injunction. [Effective January 1, 2016.]

(a) (1) (A) Any person who violates any provision of this subchapter for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than five hundred dollars (\$500).

(B) However, no person shall be subject to penalties under this section for receiving for transportation any article in violation of this subchapter if the receipt was made in good faith unless the person refuses to furnish on request of a representative of the Director of the Arkansas Bureau of Standards the name and address of the person from whom he or she received the article and copies of all documents, if there are any, pertaining to the delivery of the article to him or her.

(2) All distributors, processors, wholesalers, or retailers who are distributing or selling species of fish as catfish or catfish-like that are not within the definition of "catfish" or "catfish-like" under § 20-61-202 shall be in violation of this subchapter and shall be assessed a civil penalty of:

(A) Not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for a first violation;

(B) Not less than eight hundred dollars (\$800) nor more than two thousand dollars (\$2,000) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than one thousand five hundred dollars (\$1,500) nor more than two thousand five hundred dollars (\$2,500) for a third violation within three (3) years after the date of the first violation.

(3) For a violation to be considered as a second or subsequent violation, it must be a repeat of the violation in subdivision (a)(2) of this section.

(4) (A) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(B) The State Plant Board is authorized to conduct the hearing after giving appropriate notice, and its decision shall be subject to judicial review.

(5) (A) If a violator has exhausted the administrative appeals and the civil penalty is upheld, the violator shall pay the civil penalty within twenty (20) calendar days after the date of the final decision.

(B) If the violator fails to pay the penalty, a civil action may be brought by the board in

any court of competent jurisdiction to recover the penalty.

(C) Any civil penalty collected under this section shall be transmitted to the State Plant Board Fund.

(b) Nothing in this subchapter shall be construed as requiring the director to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c) (1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the distributor or other affected person to present his or her views to the director.

(d) (1) The director is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7; 2003, No. 1024, § 4; 2005, No. 1994, § 136; 2015, No. 1191, § 2.

20-61-204. Administration of subchapter by Director of the Arkansas Bureau of Standards.

This subchapter shall be administered by the Director of the Arkansas Bureau of Standards.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 2; A.S.A. 1947, § 82-988; reen. Acts 1987, No. 1005, § 2.

20-61-205. Rules and regulations.

(a) The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this subchapter.

(b) (1) Before the issuance, amendment, or repeal of any rule or regulation authorized by this subchapter, the director shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time.

(2) After consideration of all views presented by interested persons, the director shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 6; A.S.A. 1947, § 82-992; reen. Acts 1987, No. 1005, § 6.

20-61-206. Labeling. [Effective January 1, 2016.]

(a) A catfish or catfish-like product shall not be offered for direct retail sale for human consumption by a processor, distributor, or retailer unless the catfish or catfish-like product name is specifically labeled in the following manner:

(1) "Farm-Raised Catfish", if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture;

(2) "River or Lake Catfish", if the product has been produced in any freshwater lake, river, or stream of the state but has not been produced according to the usual and customary techniques of commercial aquaculture;

(3) "Imported", provided the catfish or catfish-like species is produced from freshwater, either according to the usual and customary techniques of aquaculture, or from freshwater lakes, rivers, or streams of a country other than the United States; and

(4) "Ocean Catfish", provided the catfish product is produced from marine or estuarine waters in the United States.

(b) Any person selling river or lake catfish or catfish-like species exclusively and directly to the consumer may have on his or her premises a sign reasonably visible to the consumer which identifies the product as river or lake catfish or catfish-like species, rather than labeling each individual container or package of catfish or catfish-like product, as provided in subsection (a) of this section.

(c) Any retailer selling catfish or catfish-like products not wrapped or in a container may comply with this subchapter by placing a sign on the display case or refrigeration unit so that the sign is reasonably visible to the consumer, giving notice that the catfish or catfish-like species is either farm-raised catfish or catfish-like species, river or lake catfish or catfish-like species, imported catfish or catfish-like species, or ocean catfish, as the products are defined in subsection (a) of this section.

(d) Any advertising as to any catfish or catfish-like product shall state whether the catfish or catfish-like product is farm-raised catfish or catfish-like species, river or lake catfish or catfish-like species, imported catfish or catfish-like species, or ocean catfish, as defined in subsection (a) of this section.

(e) Subsections (a)-(d) of this section shall not apply to catfish or catfish-like products exported from the United States.

(f) All distributors, processors, or wholesalers of catfish or catfish-like products distributing or selling catfish or catfish-like products shall provide information to each person, firm, or corporation to whom they distribute or sell catfish or catfish-like products for resale as to whether the catfish or catfish-like product is farm-raised catfish or catfish-like species, river or lake catfish or catfish-like species, imported catfish or catfish-like species, or ocean catfish, as these terms are defined in subsection (a) of this section.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, §§ 4, 5; A.S.A. 1947, §§ 82-990, 82-991; reen. Acts 1987, No. 1005, §§ 4, 5; 2015, No. 1191, § 3.

20-61-207. Authority to enter into certain agreements.

The Director of the Arkansas Bureau of Standards may cooperate with and enter into agreements with governmental agencies of this state, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this subchapter.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 8; A.S.A. 1947, § 82-994; reen. Acts 1987, No. 1005, § 8.

20-61-208. Publication of data. [Effective January 1, 2016.]

The Director of the Arkansas Bureau of Standards shall publish at least biannually, in such form as he or she may deem proper, information concerning the sale of catfish or catfish-like products, together with such data about their production and use as he or she may consider advisable, provided that the information concerning production and sales of catfish or catfish-like products shall not disclose the operation of any person.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 9; A.S.A. 1947, § 82-995; reen. Acts 1987, No. 1005, § 9; 2015, No. 1191, § 4.

20-61-209. Judicial review.

(a) Any person adversely affected by an act, order, or ruling made by the Director of the Arkansas Bureau of Standards pursuant to the provisions of this subchapter may, within forty-five (45) days thereafter, bring action in the Pulaski County Circuit Court for judicial review of the actions.

(b) The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

HISTORY: Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7.

Subchapter 3 -- Catfish -- Identification by Restaurants

20-61-301. Penalty -- Injunction.

(a) Any person who knowingly violates any provision of this subchapter for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500) for the second and subsequent offenses.

(b) Nothing in this subchapter shall be construed as requiring the Director of the Arkansas

Bureau of Standards to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c) (1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the affected person to present his or her views to the director.

(d) (1) The director is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

HISTORY: Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4; Acts 2005, No. 1994, § 137.

20-61-302. Identification required. [Effective January 1, 2016.]

(a) A catfish or catfish-like product shall not be offered for direct retail sale for human consumption by a restaurant or other eating establishment unless the catfish or catfish-like product name is identified on the menu in the following manner:

(1) "Farm-Raised Catfish", if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture;

(2) "River or Lake Catfish", if the product has been produced in any freshwater lake, river, or stream of the state, but has not been produced according to the usual and customary techniques of commercial aquaculture;

(3) (A) "Imported", if the catfish or catfish-like product is produced from fresh water, either according to the usual and customary techniques of aquaculture, in or from freshwater lakes, rivers, or streams of a country other than the United States.

(B) The label "Imported" shall be identified on the menu next to the fish offered for sale in a similar type size and font as the fish offered for sale; and

(4) "Ocean Catfish", if the catfish product is produced from marine or estuarine waters in the United States.

(b) A restaurant serving a catfish or catfish-like product that is required to be labeled as "Imported", upon the request of the customer, shall disclose the specific source of the catfish or catfish-like product.

(c) As used in this subchapter, "catfish" and "catfish-like" mean the same as defined under the Arkansas Catfish Marketing Act of 1975, § 20-61-201 et seq.

HISTORY: Acts 1981, No. 77, § 1; A.S.A. 1947, § 82-995.1; Acts 2003, No. 1024, § 5; 2015, No. 1191, § 5.

20-61-303. Administration of subchapter by Director of the Arkansas Bureau of Standards.

This subchapter shall be administered and enforced by the Director of the Arkansas Bureau of Standards.

HISTORY: Acts 1981, No. 77, § 2; A.S.A. 1947, § 82-995.2.

20-61-304. Rules and regulations.

The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this subchapter.

HISTORY: Acts 1981, No. 77, § 3; A.S.A. 1947, § 82-995.3.

20-61-305. Judicial review.

(a) Any person adversely affected by an act, order, or ruling made by the Director of the Arkansas Bureau of Standards pursuant to the provisions of this subchapter may, within forty-five (45) days thereafter, bring action in the circuit court of the county wherein the violation occurred for judicial review of the action.

(b) The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

HISTORY: Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4.