

CHAPTER 7
FOOD AND DRUGS

ARTICLE 1
IN GENERAL

- 35-7-101. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-102. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-103. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-104. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-105. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-106. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-107. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-108. Repealed by Laws 1987, ch. 173, § 4.
- 35-7-109. Short title.

This act may be cited as the "Wyoming Food, Drug and Cosmetic Safety Act".

35-7-110. Definitions.

(a) As used in this act:

(i) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing the purchase of food, drugs, devices or cosmetics;

(ii) "Color" includes black, white and intermediate grays;

(iii) "Color additive" means a material, other than a material exempt under the federal act, which:

(A) Is a dye, pigment or other substance from a vegetable, animal, mineral or other source; or

(B) When added or applied to a food, drug or cosmetic, or to the human body or any part thereof, is capable

(alone or through reaction with other substance) of imparting color thereto.

(iv) "Consumer commodity" means any food, drug, device or cosmetic as those terms are defined by this act or by the federal act;

(v) "Cosmetic" means articles other than soap which are:

(A) Intended to be rubbed, poured, sprinkled or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(B) Intended for use as a component of any articles under subparagraph (A) of this paragraph.

(vi) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device, or any likeness therefor, of a drug manufacturer, processor, packer or distributor other than the person who in fact manufactured, processed, packed or distributed the drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer or distributor;

(vii) "Department" means the department of agriculture;

(viii) "Device" means instruments, apparatus and contrivances, including their components, parts and accessories, intended:

(A) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or

(B) To affect the structure or any function of the body of man or other animals.

(ix) "Director" means the director of the Wyoming department of agriculture or his duly authorized representative;

(x) "Drug" means:

(A) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any supplement to any of them; and

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(C) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) Articles intended for use as a component of any article specified in subparagraph (A), (B) or (C) of this paragraph but does not include devices or their components, parts or accessories.

(xi) "Establishment" means and includes any place or any area of any establishment in which foods, drugs, devices and cosmetics are displayed for sale, manufactured, processed, packed, held or stored. "Establishment" does not include a home kitchen where food is prepared and stored for family consumption, or any other place equipped for the preparation, consumption and storage of food on the premise by employees or nonpaying guests;

(xii) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended, (Title 21 U.S.C. § 301 et seq.) and regulations promulgated under the act;

(xiii) "Food" means:

(A) Articles used for food or drink for humans including meat and ice intended for human consumption;

(B) Chewing gum;

(C) Beverages subject to the Federal Alcohol Administration Act, as amended, (Title 27 U.S.C. § 201 et seq.);

(D) Articles used for components of any article under subparagraphs (A), (B) and (C) of this paragraph.

(xiv) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or

otherwise affecting the characteristics of any food within the meaning of the federal act;

(xv) An "imitation food" is any food which is in physical characteristics such as taste, flavor, color, texture or appearance which resembles or purports to be or is represented as a food for which a definition and standard of identity has been prescribed and does not conform to such standard;

(xvi) "Immediate container" does not include package liners;

(xvii) "Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under this act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if there is any, of the retail package of the article, or is easily legible through the outside container or wrapper;

(xviii) "Labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers, or accompanying the article;

(xix) "Local board of health" means a county or city board of health established pursuant to W.S. 35-1-301 et seq.;

(xx) "Local health department" means a health department established by a county, municipality or district pursuant to W.S. 35-1-301 et seq.;

(xxi) "New drug" means any drug considered to be a new drug under the federal act;

(xxii) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any supplement to any of them;

(xxiii) "Package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers as interpreted by the federal act;

(xxiv) "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one (1) or more other substances is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 through 136y) which is used in the production, storage or transportation of raw agricultural commodities;

(xxv) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale;

(xxvi) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing;

(xxvii) "Regulatory authority" means the authority which issued the license or promulgated the rule or regulation being enforced including the department of agriculture or local health department;

(xxviii) "Farmers market" means a common facility or area where several vendors may gather on a regular, recurring basis to sell a variety of fresh fruits and vegetables, locally grown farm products and other items directly to consumers;

(xxix) "Function" means any official ceremony or organized social occasion;

(xxx) "Not potentially hazardous food" means any food which does not require time or temperature control for safety to limit pathogenic microorganism growth or toxin formation. The natural pH or the final pH of acidified food must be 4.6 or less;

(xxxi) "Commercial food establishment" means and includes any place or any area of any establishment that is a wholesale or retail business where foods, drugs, devices and cosmetics are displayed for sale, manufactured, processed, packed, held or stored. "Commercial food establishment" shall not include:

(A) Any farmers market; or

(B) Any producer or informed consumer engaged in transactions pursuant to W.S. 11-49-103.

(xxxii) "This act" means W.S. 35-7-109 through 35-7-127.

35-7-111. Prohibited acts.

(a) No person shall:

(i) Violate this act or any rules promulgated under it;

(ii) Introduce or deliver for introduction into commerce of any food, drug, device or cosmetic that is adulterated or misbranded;

(iii) Adulterate or misbrand any food, drug, device or cosmetic in commerce;

(iv) Knowingly receive in commerce of any food, drug, device or cosmetic that is adulterated or misbranded;

(v) Refuse to permit entry, inspection or access to records as authorized by this act;

(vi) Manufacture any food, drug, device or cosmetic that is adulterated or misbranded;

(vii) Give a false guaranty or undertaking under this act except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device or cosmetic;

(viii) Forge, counterfeit or without proper authority use any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under this act;

(ix) Make, sell or possess any punch, die, plate, stone, or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drugs a counterfeit drug;

(x) Alter, mutilate, destroy, obliterate or remove any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if done while the article is held for sale (whether or not the first sale) after shipment in commerce and which results in the article being adulterated or misbranded;

(xi) Repealed By Laws 2000, Ch. 37, § 4.

(xii) Use in labeling, advertising or other sales promotion of any reference to any report or analysis furnished by the director in compliance with this act.

(b) No person shall remove or dispose of a detained or embargoed article in violation of W.S. 35-7-114.

(c) In determining whether labeling or an advertisement is misleading under this act, the following shall be considered:

(i) Representations made or suggested by statement, word, design, device, sound or in any combination thereof;

(ii) The extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or facts material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

35-7-112. Cease operations order; injunction proceedings.

(a) If the director or the director of the department of health pursuant to W.S. 35-7-123(b)(vi) has probable cause to believe that an imminent hazard to the public health exists from a violation of this act, he may order any person to immediately cease the practice believed to be a violation and shall provide the person an opportunity for a hearing pursuant to the Wyoming Administrative Procedure Act within ten (10) days after issuing the order.

(b) In addition to any other remedies, the director may apply to the district court for injunctive relief from any person who violates W.S. 35-7-111.

35-7-113. Penalties and guaranty.

(a) Any person who knowingly and intentionally violates W.S. 35-7-111 is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both. Upon a subsequent conviction under W.S. 35-7-111, the person may be punished by imprisonment for not more than one (1) year, a fine of not more than one thousand five hundred dollars (\$1,500.00), or both.

(b) No person may be convicted under W.S. 35-7-111 if he established a guaranty or undertaking signed by, and containing the name and address of, the person from whom he received the article in good faith, to the effect that the article is not adulterated or misbranded within the meaning of this act and if he furnishes on request of the director the name and address of the person from whom he purchased or received the article in good faith and copies of all documents pertaining to the delivery of the article to him.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, may be punished under W.S. 35-7-111 for the dissemination of the false advertisement.

35-7-114. Embargo.

(a) If the director has probable cause to believe that any food, drug, device, cosmetic or consumer commodity is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this act, he shall affix a tag or other appropriate marking to the article giving notice that the article is or is suspected of being adulterated or misbranded and has been embargoed. The director shall release all other articles.

(b) If the director finds an article embargoed under subsection (a) of this section to be adulterated or misbranded, the director may immediately petition the district court for the county in which the article is embargoed to condemn the article, otherwise the tag or other marking shall be removed by the director or his agent.

(c) If the court finds that an embargoed article is adulterated or misbranded, the article, after entry of the decree, shall be destroyed at the owner's expense, under the supervision of the director or his agent. All court costs and

fees, transportation costs, and storage and other proper expenses, shall be taxed against the owner of the article or his agent unless the adulteration or misbranding can be corrected by proper labeling or processing of the article. If so, the court, after entry of the decree and after costs, fees and expenses have been paid and a good and sufficient bond, conditioned that the article shall be correctly labeled or processed, has been executed, may by order direct delivery of the article to the owner for labeling or processing under the supervision of the director. The expense of supervision shall be paid by the owner. The article shall be returned to the owner and the bond shall be discharged on the representation to the court by the director that the article is no longer in violation of this act and that the expenses of supervision have been paid. Nothing in this section prevents the director from authorizing the owner of an adulterated or misbranded article from destroying it as the director prescribes.

35-7-115. Food; definitions and standards.

(a) Definitions and standards of identity, quality and fill of container under the federal act or its regulations are the definitions and standards of identity, quality and fill of container in this state. However, when the action will promote honesty and fair dealing in the interest of consumers, the director may promulgate regulations establishing definitions and standards of identity, quality and fill of container for foods where no federal regulations exist. In addition, in conjunction with W.S. 35-7-127, the director may promulgate amendments to any federal or state regulations which set definitions and standards of identity, and may promulgate amendments to any federal or state regulations which set standards of quality and fill of container for foods.

(b) Temporary permits now or hereafter granted for interstate shipment of experimental packs of food under the federal act are automatically effective in this state.

35-7-116. Food, drugs and cosmetics; adulteration and misbranding.

A food, cosmetic or a drug or device is adulterated if it is adulterated under the federal act. A food, cosmetic or a drug or device is misbranded if it is misbranded under the federal act.

35-7-117. Food; tolerances for added poisonous ingredients.

Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, is unsafe with respect to any particular use or intended use if it is deemed unsafe under section 406 of the federal act.

35-7-118. New drugs.

(a) No person shall sell, offer for sale, hold for sale or give away any new drug unless an application with respect thereto has been approved and the approval has not been withdrawn under section 505 of the federal act.

(b) This section does not apply to a drug intended solely for investigational use by physicians pursuant to W.S. 35-7-1802(a)(i)(C).

35-7-119. Fair packaging and labeling provisions.

(a) All labels of consumer commodities, as defined by this act, shall conform with the requirements for the declaration of net quantity of contents of section 4 of the Fair Packaging and Labeling Act (15 U.S.C. § 1451, et seq.) and the regulations promulgated pursuant thereto as of the effective date of this act. Consumer commodities exempted from the requirements of section 4 of the Fair Packaging and Labeling Act are also exempt from this subsection.

(b) The label of any package of a consumer commodity which bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity (in terms of weight, measure or numerical count) of each serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this section prohibits supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents. Supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure or count

that tends to exaggerate the amount of the commodity contained in the package.

(d) If the director determines that regulations containing prohibitions or requirements other than those prescribed by subsection (a) of this section are necessary to prevent the deception of consumer or to facilitate value comparisons as to any consumer commodity, the director shall promulgate rules and regulations with respect to that commodity in conjunction with W.S. 35-7-127.

(e) Every retailer and every wholesaler who sells or offers for sale in this state through an establishment or otherwise any meat, which is the product of any country foreign to the United States, shall clearly label the meat as "imported," naming the country of its origin. The department shall promulgate rules and regulations with respect to labeling. As used in this subsection:

(i) "Meat" means the edible part of the muscle of animals, which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying or overlying fat, and the portions of bone, skin, sinew, nerve and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing, but shall not include the muscle found in the lips, snout or ears, nor any edible part of the muscle which has been manufactured, cured, smoked, cooked or processed;

(ii) "Retailer" means a person regularly engaged in the business of selling meat at retail to the public, and selling only to the user or consumer and not for resale;

(iii) "Wholesaler" means a person regularly engaged in the business of selling meat at wholesale to retailers for subsequent sale at retail to the public.

(f) Subsections (a) and (c) of this section shall not apply to the preparation, service, use, consumption or storage of foods at a traditional event or activity pursuant to W.S. 35-7-1703. The definitions in W.S. 35-7-1702 shall apply to this subsection.

35-7-120. Regulations.

(a) The director may promulgate regulations necessary for the efficient enforcement of this act.

(b) The director may promulgate regulations necessary to ensure that appropriate sanitary conditions and water quality standards are met by any person engaged in the distribution of bulk quantities of water for sale for human consumption.

35-7-121. Inspections; examinations.

(a) For purposes of enforcement of this act, the director or a local health department official may, upon presenting appropriate credentials to the owner, operator or agent in charge:

(i) Enter at reasonable time any factory, warehouse or establishment in which food, drugs, devices or cosmetics are manufactured, processed or packed or held for introduction into commerce or after introduction or to enter any vehicle being used to transport or hold the food, drugs, devices or cosmetics in commerce; and

(ii) Inspect at any reasonable times and within reasonable limits and in a reasonable manner any factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein, and to obtain samples necessary to the enforcement of this act, except that paragraph (i) of this subsection and this paragraph do not permit the director to inspect any establishment solely because it holds prepackaged food, drugs or cosmetics for retail sale by that establishment. The frequency of inspections shall be based on the relative food safety risk that the factory, warehouse, establishment or vehicle presents to the public, with no such facility receiving less than one (1) inspection per year;

(iii) Have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, drugs, devices or cosmetics, or holding thereof during or after movement, and the quantity, shipper and consignee thereof.

(b) Upon completion of any inspection under this section but before leaving the premises, the director shall give to the owner, operator or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food, drug, device or cosmetic in the establishment:

(i) Consists in whole or in part of any filthy, putrid or decomposed substance; or

(ii) Have been prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health. A copy of the report shall be sent promptly to the director.

(c) If the director obtains any sample during an inspection under this section, he shall give to the owner, operator or agent in charge a receipt describing the samples obtained before leaving the premises.

(d) If the director obtains a sample of any food during an inspection under this section and an analysis is made of the sample, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

(e) Repealed By Laws 2000, Ch. 37, § 4.

(f) Any person conducting an inspection of an establishment for the department or any local health department shall demonstrate their qualifications by being a Wyoming or nationally registered environmental health specialist or sanitarian, a registered food safety specialist or hold an in-training status and be working toward registration, be standardized by the federal food and drug administration or meet qualifications set forth by the director in conjunction with the food safety council. Only a registered environmental health specialist or a registered food safety specialist shall be authorized to recommend the summary suspension of an establishment license by a regulatory authority pursuant to W.S. 35-7-125.

(g) Any inspector hired by a regulatory authority prior to July 1, 2000, shall have two (2) years from July 1, 2000 to meet the qualifications set forth in subsection (f) of this section. Any inspector hired by a regulatory authority after July 1, 2000, shall have one (1) year to meet the qualifications set forth in subsection (f) of this section.

(h) Subsection (a) of this section shall not apply to food prepared for, served, consumed, stored or sold at a traditional event or activity pursuant to W.S. 35-7-1703. The definitions in W.S. 35-7-1702 shall apply to this subsection.

35-7-122. Publicity.

(a) The director may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(b) The director may also cause to be disseminated any information regarding food, drugs, devices and cosmetics as the director deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section prohibits the director from collecting, reporting and illustrating the results of his investigations, except that the director shall not disclose any information acquired under this act such as customer lists, manufacturing volumes and information concerning any method or process which as a trade secret is entitled to protection.

35-7-123. Establishment of food safety system.

(a) The director of the department of agriculture shall establish and maintain a food safety program located within the department. The director shall carry out the provisions of the food safety program and shall be assisted by the director of the department of health. A local department of health, if established according to law, may establish and maintain its own local food safety program so long as the program meets the requirements of this act. The director of the department of agriculture or his designee shall:

(i) Gather food safety information and disseminate the information to the public, food industry and to local departments of health with a food safety program;

(ii) On a voluntary basis, provide food safety training for the food industry in this state, work with other state, local and federal agencies to coordinate food safety educational efforts;

(iii) Regulate the safety of foods and work together with the department of health and the governor's food safety council established pursuant to W.S. 35-7-127 to promulgate rules and regulations necessary to carry out the provisions of this act. In any area which does not have a local food safety program established pursuant to law, the department shall issue licenses, conduct inspections, hold hearings to enforce any legal provision or rule promulgated under this act;

(iv) Maintain a statewide database of food licenses and inspection results;

(v) Work with federal, state and local agencies to coordinate food safety efforts and activities, and coordinate with all other agencies to maintain consistency in inspection and enforcement activities;

(vi) Establish food safety priorities for this state based on risk and information provided by the department of health;

(vii) Provide laboratory support for the analysis of routine food and water samples used to support inspection activities and to monitor safety;

(viii) Report each year to the department of health on how the food safety activities have addressed the epidemiological data provided by the department of health;

(ix) Assist the department of health, or any local jurisdiction, when requested to investigate possible food borne and water related illness;

(x) Establish and maintain a meat inspection program for this state. However, nothing in this act shall be construed to grant authority in the director of the department of agriculture or his designee for the inspection or regulation of live animal production or the processing and storage of meat by a producer of live animals for nonprofit consumption.

(b) The director of the department of health or his designee shall:

(i) Carry out the surveillance of food borne illness with assistance from the department of agriculture and report each year to the department of agriculture and local jurisdictions on the leading causes of food borne illness;

(ii) Participate with the department of agriculture and the governor's food safety council established pursuant to W.S. 35-7-127 in a joint food safety rulemaking process;

(iii) Ensure the department of health is the lead agency for the investigation of possible food borne illness and outbreaks and to request assistance from the department of

agriculture and local jurisdictions as determined to be necessary by the department of health;

(iv) Provide laboratory support for and conduct analysis of samples connected with disease outbreak investigations;

(v) Provide support for local food safety programs as authorized by the legislature;

(vi) Take appropriate action against any person holding a food license for the purpose of protecting the public health and preventing the transmission of infectious disease;

(vii) Provide consultation and advice on food borne illness to local jurisdictions and to the department of agriculture as requested.

(c) Duties of a local board of health shall include:

(i) Issuing licenses, conducting inspections, holding hearings and taking enforcement actions as necessary to carry out the provisions of the food safety program;

(ii) Promulgating rules containing provisions for inspections which may differ from state food safety regulations promulgated under this act so long as direct food safety and disease transmission requirements including cooking temperatures, hot and cold holding temperatures, reheating times and temperatures, cooling times and temperatures, and such other requirements as determined by the department of agriculture, do not differ;

(iii) Coordinating activities with the department of agriculture in order to provide for statewide consistency;

(iv) Providing the department of agriculture with a quarterly report providing information on any food licenses issued and the results of any food inspections;

(v) Reporting to the department of health any food borne outbreak of illness and assist the department of health in any outbreak investigations, if requested.

(d) A local jurisdiction may provide laboratory support for food safety and drinking water inspection and accompanying monitoring activities.

35-7-124. License required; exemptions; electronic transmittals.

(a) Any person processing, distributing, storing or preparing any food for sale shall obtain a license from the department of agriculture or a local health department. The license is not transferable, shall be renewed on an annual basis and shall be prominently displayed in the establishment. No food establishment shall serve, hold for sale or sell food to the public without a valid license. An agricultural producer shall be exempt from the licensure requirement in this section for processing, distributing, storing or sale of any raw agricultural commodity he produces.

(b) Written application for a new license shall be made on a form approved by the department of agriculture and provided by the department of agriculture or the local health department and shall be signed by the applicant. License requirements and fees for temporary food events operated by nonprofit organizations shall be waived. Licenses shall expire one (1) year after the date of issuance unless suspended or revoked. Licenses may be renewed each year upon application to the department or local health department. The director shall establish license categories and fees by rule and no fee shall exceed one hundred dollars (\$100.00).

(c) Fees collected under this section shall be distributed as follows:

(i) In any county, city or district without a local health department established pursuant to W.S. 35-1-301 et seq., the department of agriculture shall receive ninety percent (90%) of the amount of the fee collected and the department of health shall receive ten percent (10%). The revenues shall be deposited into a special account and shall be used to defer the cost associated with the food safety program;

(ii) In any county, city or district with a local health department established pursuant to W.S. 35-1-301 et seq., the local health department shall receive eighty-five percent (85%) of the amount of the fee collected, the department of agriculture shall receive ten percent (10%) and the department of health shall receive five percent (5%). The revenues shall be deposited into a special account and shall be used to defer the cost associated with the food safety program.

(d) Before approving an application, the department of agriculture or the local health department shall determine that the establishment is in compliance with this act and any regulations promulgated hereunder.

(e) The provisions of subsection (a) of this section shall not apply to food operators or kitchens in private homes that prepare food that is not potentially hazardous and prepared for sale or use at farmers' markets, roadside stands, private homes and at functions including, but not limited to those operated by not for profit charitable or religious organizations.

(f) The director may allow the permitting, registration, licensing, testing, inspection and reporting requirements of this chapter to be conducted electronically as provided by the Uniform Electronic Transaction Act, W.S. 40-21-101 through 40-21-119 and any applicable federal electronic requirements.

(g) Subsection (a) of this section shall not apply to food prepared for, served, consumed, stored or sold at a traditional event or activity pursuant to W.S. 35-7-1703. The definitions in W.S. 35-7-1702 shall apply to this subsection.

(h) The provisions of subsection (a) of this section shall not apply to a producer selling food directly to the informed end consumer at a farmers market or through ranch, farm or home based sales pursuant to W.S. 11-49-103. The definitions in W.S. 11-49-102 shall apply to this subsection.

35-7-125. Summary suspension of a license.

(a) A regulatory authority may summarily suspend a license to operate a food establishment if it determines through consultation with a health officer, inspection, examination of food, employees, records or other authorized means that an imminent health hazard exists including, but not limited to, fire, flood, extended interruption of electrical or water service, or sewage backup.

(b) The regulatory authority may summarily suspend a person's license by providing written notice of the summary suspension to the license holder or person in charge, without prior warning, notice of a hearing or a hearing.

(c) The regulatory authority shall conduct an inspection of the establishment or food processing plant for which the license was summarily suspended within forty-eight (48) hours

after receiving notice from the license holder stating that the conditions cited in the summary suspension order no longer exist.

(d) A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and the elimination of the conditions has been confirmed by the regulatory authority through inspection or other means as appropriate. A suspended license shall be reinstated immediately if the regulatory authority determines that the imminent health hazard no longer exists. A notice of reinstatement shall be provided to the license holder or person in charge of the establishment.

(e) Temporary food events where no admission fee is charged and where no fee is charged for food shall not be subject to the license suspension provisions of this section.

35-7-126. License revocation.

(a) The regulatory authority may initiate revocation proceedings for an establishment license:

(i) Repealed By Laws 2003, Ch. 38, § 2.

(ii) Repealed By Laws 2003, Ch. 38, § 2.

(iii) Repealed By Laws 2003, Ch. 38, § 2.

(iv) For failure to correct conditions for which a summary suspension was issued;

(v) For failure to correct critical violations from routine inspections;

(vi) For multiple critical violations on multiple occasions;

(vii) For a refusal to grant access pursuant to W.S. 35-7-121.

(b) The regulatory authority shall issue notice of a hearing to the license holder. The notice and the hearing shall be governed by the provisions of the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq.

(c) Upon completion of the hearing and consideration of the record, the regulatory authority shall issue an order which shall include findings of fact and conclusions of law.

(d) The decision of the regulatory authority may be appealed to the district court pursuant to the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq.

35-7-127. Governor's food safety council.

(a) There is created the governor's food safety council. The governor shall appoint eleven (11) members of the council as follows:

(i) One (1) member who is an employee of the department of agriculture;

(ii) One (1) member who is an employee of the department of health;

(iii) One (1) member who is an employee of the laboratory of the department of agriculture or the department of health;

(iv) One (1) member from a local health department;

(v) One (1) ex officio nonvoting member who is an employee of the University of Wyoming cooperative extension service;

(vi) Four (4) members representing the food industry, at least one (1) member representing restaurants and one (1) member representing retail food stores; and

(vii) Two (2) members with no connections to the food industry representing the general public as consumer representatives.

(b) Members of the council shall hold office for staggered terms of three (3) years. For the initial council, three (3) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years and five (5) members shall be appointed for a term of one (1) year. Each member shall hold office until his successor is appointed. The governor may remove any member pursuant to W.S. 9-1-202.

(c) No rule shall be promulgated by the department of agriculture or a local health department under this act until the department has consulted with the governor's food safety council and received comment from the council.

(d) The members of the council shall not receive compensation for their service, but shall receive reimbursement for traveling expenses as provided by W.S. 9-3-102 for state employees from the department of agriculture.

(e) The council shall meet not less than once each year.