

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES AGRICULTURAL
COMMODITIES INSPECTION
ADMINISTRATIVE CODE

CHAPTER 80-1-22
FOODS, DRUGS AND COSMETICS

80-1-22-.32 Classifications Of Violations For Out-Of-Date
Class "A" Food And Misbranded Or Adulterated
Foods.

(1) An "Equivalent number" shall be determined using a factor that takes into account the number of packages, case lots, containers or such other packaging and the length of time said products have passed an expiration date. The following factors shall be used to determine an "equivalent number":

(a) For each package that has passed the expiration date by four to seven days the factor would be 0.75

(b) For each package that has passed the expiration date by eight to fourteen days the factor would be 1

(c) For each package that has passed the expiration date by greater than fourteen and less than 30 days the factor would be 1.5

(d) For each package that has passed the expiration date by 30 days or more the factor would be 2

(2) The equivalent number shall be determined by multiplying the number of out-of-date packages by the appropriate factor as specified in paragraph "(1)" of this rule. An equivalent number shall be determined for each of three primary retail display areas, (Meat, Dairy, Baby Food and Infant Formula), as well as the equivalent number for the aggregate of all three areas. The following criteria shall be used in determining classes of violations for products offered for sale in retail establishments:

(a) Class I Violations: If each of the three areas have an "equivalent number" less than 20, and the aggregate of all three areas is less than 35, no civil penalty is required. A warning letter may be issued if the "equivalent number" is more than 10 and less than 20 in any of the three categories.

(b) Class II Violations: If any of the three areas have an "equivalent number" equal to or greater than 20 and less than 40 the violation is considered a Class II violation. If the total of all three areas result in an "equivalent number" equal to or greater than 35 and less than 105 the violation is considered a Class II violation.

(c) Class III Violations: If any of the three areas have an "equivalent number" equal to or greater than 40 and less than 80 the violation is considered a Class III violation. If the total of all three areas result in an "equivalent number" equal to or greater than 105 and less than 130 the violation is considered a Class III violation. Subsequent Class II violations within a one year period shall also result in a Class III violation.

(d) Class IV Violations: If any of the three areas have an "equivalent number" equal to or greater than 80 the violation is considered a Class IV violation. If the total of all three areas result in an "equivalent number" equal to or greater than 130 the violation is considered a Class IV violation. Subsequent Class III violations within a one year period shall also result in a Class IV violation. Products deemed misbranded are considered a Class IV violation. More than ten packaged items offered for sale at retail without proper labeling to include ingredient statements and/or cure ingredients is a Class IV Violation and will result in a warning letter. Subsequent labeling violations will result in a penalty administered as a Class IV violation. Obscuring, removing, or extending existing open date statements shall be considered as misbranding and therefore a Class IV violation.

(e) Class V Violations: Subsequent Class IV violations within a one year period shall result in a Class V violation. Products found to be adulterated are considered a Class V violation. Adulterated products with food safety concerns of an immediate nature will be subject to penalties on the first violation. If a determination is made by the Department that an establishment is involved in the practice of buying short-dated or date-expired Class A foods and by intent or neglect offers for sale date-expired products the actions by the establishment shall be considered a Class V violation.

(3) The same provisions in paragraph "(1)" of this rule used to determine equivalent numbers shall be used in the assessment of class violations as set forth herein for wholesale packages except that: the unit (package) through which the product is offered for sale shall constitute one package, i.e. case lots, large containers, etc. If the equivalent number is exceeded, the penalty shall be assessed in the appropriate class of violation. The following criteria shall be used in establishing class violations for wholesale packages:

(a) Class I Violations: (Wholesale distribution packages) If the out-of-date products have an "equivalent number" less than 5, no civil penalty is required. A warning letter may be issued if the "equivalent number" is more than 1 and less than 5.

(b) Class II Violations: (Wholesale distribution packages) If the out-of-date products have an "equivalent number" equal to or greater than 5 and less than 20 the violation is considered a Class II violation.

(c) Class III Violations: (Wholesale distribution packages) If the out-of-date products have an "equivalent number" equal to or greater than 20 and less than 40 the violation is considered a Class III violation. Subsequent Class II violations within a one-year period shall also result in a Class III violation.

(d) Class IV Violations: (Wholesale distribution packages) If the out-of-date products have an "equivalent number" equal to or greater than 40 the violation is considered a Class IV violation. Subsequent Class III violations within a one year period shall also result in a Class IV violation. Products deemed misbranded are considered a Class IV violation. Obscuring, removing, or extending existing open date statements shall be considered as misbranding and therefore a Class IV violation.

(e) Class V Violations: Subsequent Class IV violations within a one year period shall result in a Class V violation. Products found to be adulterated are considered a Class V violation. Adulterated products with food safety concerns of an immediate nature will be subject to penalties on the first violation.

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