Statutes Related to
Public Health's Embargo Authority*

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* Important note: These are the statutes in effect in April 2007. This compilation has been updated to include the changes made to the embargo law on April 4 (S.L. 2007-7). When exercising embargo authority, please consult the official statutes to ensure that you are relying upon the most recent version of the law. The statutory compilation on the General Assembly's website is typically updated on an annual basis (http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

G.S. 130A-2. Definitions.

The following definitions shall apply throughout this Chapter unless otherwise specified:

…

(3) "Imminent hazard" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

G.S. 130A-18. Injunction.

(a) If a person shall violate any provision of this Chapter or the rules adopted by the Commission or rules adopted by a local board of health, the Secretary or a local health director may institute an action for injunctive relief, irrespective of all other remedies at law, in the superior court of the county where the violation occurred or where a defendant resides.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter.

G.S. 130A-19. Abatement of public health nuisance.

(a) If the Secretary or a local health director determines that a public health nuisance exists, the Secretary or a local health director may issue an order of abatement directing the owner, lessee, operator or other person in control of the property to take any action necessary to abate the public health nuisance. If the person refuses to comply with the order, the Secretary or the local health director may institute an action in the superior court of the county where the public health nuisance exists to enforce the order. The action shall be calendared for trial within 60 days after service of the complaint upon the defendant. The court may order the owner to abate the nuisance or direct the Secretary or the local health director to abate the nuisance. If the Secretary or the local health director is ordered to abate the nuisance, the Department or the local health department shall have a lien on the property for the costs of the abatement of the nuisance in the nature of a mechanic's and materialmen's lien as provided in Chapter 44A of the General Statutes and the lien may be enforced as provided therein.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter.

G.S. 130A-20. Abatement of an imminent hazard.

(a) If the Secretary or a local health director determines that an imminent hazard exists, the Secretary or a local health director may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard or may, after notice to or reasonable attempt to notify the owner, lessee, operator, or other person in control of the property enter upon any property and take any action necessary to abate the imminent hazard. If the Secretary or a local health director abates the imminent hazard, the Department or the local health department shall have a lien on the property of the owner, lessee, operator, or other person in control of the property where the imminent hazard existed for the cost of the abatement of the imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did not exist at the time the Secretary or the local health director took the action. The owner, lessee, operator, or any other person against whose property the lien has been filed may defeat the lien by showing that that person was not culpable in the creation of the imminent hazard.

(b) The Secretary of Environment and Natural Resources and a local health director shall have the same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter.

G.S. 130A-21. Embargo.

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, the Secretary of Environment and Natural Resources or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter, that is subject to rules adopted by the Commission, or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or the Director of the Division of Environment Health or the Director's designee, in programs regulating food and drink pursuant to this Chapter or in programs regulating food and drink that are subject to rules adopted by the Commission. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of the Department of Environment and Natural Resources or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Environment and Natural Resources regional environmental health specialist, the Director of the Division of Environmental Health or the Director's designee, the local

health director, or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130."

§ 130A-23. Suspension and revocation of permits and program participation.

(a) The Secretary may suspend or revoke a permit issued under this Chapter upon a finding that a violation of the applicable provisions of this Chapter, the rules of the Commission or a condition imposed upon the permit has occurred. A permit may also be suspended or revoked upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(b) The Secretary may suspend or revoke a person's participation in a program administered under this Chapter upon a finding that a violation of the applicable provisions of this Chapter or the rules of the Commission has occurred. Program participation may also be suspended or revoked upon a finding that participation was based upon incorrect or inadequate information that materially affected the decision to grant program participation.

(c) A person shall be given notice that there has been a tentative decision to suspend or revoke the permit or program participation and that an administrative hearing will be held in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act, at which time the person may challenge the tentative decision.

(d) A permit shall be suspended or revoked immediately if a violation of the Chapter, the rules or a condition imposed upon the permit presents an imminent hazard. An operation permit issued pursuant to G.S. 130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. A permit issued pursuant to G.S. 130A-248 shall be revoked immediately for failure of an establishment to maintain a minimum grade of C. The Secretary of Environment and Natural Resources shall immediately give notice of the suspension or revocation and the right of the permit holder or program participant to appeal the suspension or revocation under G.S. 150B-23.

(e) The Secretary of Environment and Natural Resources shall have all of the applicable rights enumerated in this section to enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter.

§ G.S. 130A-25. Misdemeanor.

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Division of Prisons, Department of Correction, McCain, North Carolina; the North Carolina Correctional Center for Women, Division of Prisons, Department of Correction, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Correction after consultation with the State Health Director. The Secretary of Correction shall consult with the State Health Director concerning the medical management of these persons.

(c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court.

§ 130A-144. Investigation and control measures.

(a) The local health director shall investigate, as required by the Commission, cases of communicable diseases and communicable conditions reported to the local health director pursuant to this Article.

(b) Physicians and persons in charge of medical facilities or laboratories shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical or other records in their possession or under their control which the State Health Director or a local health director determines pertain to the (i) diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition, or (ii) the investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.

(c) A physician or a person in charge of a medical facility or laboratory who permits examination, review or copying of medical records pursuant to subsection (b) shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with a request made pursuant to subsection (b).

(d) The attending physician shall give control measures prescribed by the Commission to a patient with a communicable disease or communicable condition and to patients reasonably suspected of being infected or exposed to such a disease or condition. The physician shall also give control measures to other individuals as required by rules adopted by the Commission.

(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health. The local health department shall provide, at no cost to the patient, the examination and treatment for tuberculosis disease and infection and for sexually transmitted diseases designated by the Commission.

(f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13.

(h) Anyone who assists in an inquiry or investigation conducted by the State Health Director for the purpose of evaluating the risk of transmission of HIV or Hepatitis B from an infected health care worker to patients, or who serves on an expert panel established by the State Health Director for that purpose, shall be immune from civil liability that otherwise might be incurred or imposed for any acts or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful or wanton misconduct, or intentional wrongdoing. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. Nothing in this subsection provides immunity from liability for a violation of G.S. 130A-143.

§ 106-121. Definitions and general consideration.

For the purpose of this Article:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(1a) The term "color" includes black, white, and intermediate grays.

(1b) The term "color additive" means a material which:

a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, 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;

Provided, that such term does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture and Consumer Services, and the term "Board" means the Board of Agriculture.

(2a) The term "consumer commodity" except as otherwise specifically provided by this subdivision means any food, drug, device, or cosmetic as those terms are defined by this Article. Such term does not include:

a. Any tobacco or tobacco product; or

b. Any commodity subject to packaging or labeling requirements imposed under the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157) commonly known as the Virus-Serum Toxin Act; or

c. Any drug subject to the provisions of G.S. 106-134(13) or 106-134.1 of this Article or section 503(b)(1) or 506 of the federal act; or

d. Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

e. Any commodity subject to the provisions of the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes of North Carolina.

(3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) The term "cosmetic" means

a. Articles 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. Articles intended for use as a component of any such articles, except that such terms shall not include soap.

(4a) The term "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 thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor.

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) 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.

(6) The term "drug" means

a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or 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 paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

(7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(8) The term "food" means

a. Articles used for food or drink for man or other animals,

b. Chewing gum, and

c. Articles used for components of any such article.

(8a) The term "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 (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

a. A pesticide chemical in or on a raw agricultural commodity; or

b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

c. A color additive; or

d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(9) The term "immediate container" does not include package liners.

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

(11) The term "labeling" means all labels and other written, printed, or graphic matter

a. Upon an article or any of its containers or wrappers, or

b. Accompanying such article.

(11a) Repealed by Session Laws 1989, c. 226, s. 1.

(12) The term "new drug" means

a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(12a) Repealed by Session Laws 1989, c. 226, s. 1.

(13) The term "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.

(13a) The term "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, but does not include:

a. Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

b. Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(14) The term "person" includes individual, partnership, corporation, and association.

(14a) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), and which is used in the production, storage, or transportation of raw agricultural commodities.

(14b) The term "practitioner" means a physician, dentist, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.

(14c) The term "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.

(14d) The term "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.

(14e) (14f) Repealed by Session Laws 1989, c. 226, s. 1.

(15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or 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 thereof or under such conditions of use as are customary or usual.

(16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment.

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.

(a) Whenever a duly authorized agent of the Department of Agriculture and Consumer Services finds or 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 Article or is in violation of G.S. 106-131 or 106-135 of this Article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded or to be in violation of G.S. 106-131 or 106-135 of this Article, he shall petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Services. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agriculture and Consumer Services that the article is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture and Consumer Services shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

§ 106-129. Foods deemed to be adulterated.

A food shall be deemed to be adulterated:

(1) a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

b. 1. If it bears or contains any added poisonous or added deleterious substance, other than one which is

I. A pesticide chemical in or on a raw agricultural commodity;

II. A food additive; or

III. A color additive, which is unsafe within the meaning of G.S. 106-132; or

2. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of G.S. 106-132; or

3. If it is or it bears or contains any food additive which is unsafe within the meaning of G.S. 106-132; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under G.S. 106-132 of this Article, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of G.S. 106-132 and clause 3 of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

c. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or

d. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

e. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to G.S. 106-132 of this Article; or

h. If a retail or wholesale establishment has added sulfiting agents, including sulfur dioxide, sodium sulfite, sodium or potassium bisulfite, and sodium or potassium metabisulfite, separately or in combination, to fresh fruits and fresh vegetables intended for retail sale as fresh food products.

(2) a. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

b. If any substance has been substituted wholly or in part therefor; or

c. If damage or inferiority has been concealed in any manner; or

d. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) it is confectionery, and:

a. Has partially or completely imbedded therein any nonnutritive object: Provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the Board of Agriculture as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; or

b. Bears or contains any alcohol other than alcohol not in excess of one half of one per centum (0.5%) by volume derived solely from the use of flavoring extracts; or

c. Bears or contains any nonnutritive substance: Provided, that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Article; and provided further, that the Board may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances.

(4) If it is or bears or contains any color additive which is unsafe within the meaning of G.S. 106-132.

§ 106-130. Foods deemed misbranded.

A food shall be deemed to be misbranded:

(1) a. If its labeling is false or misleading in any particular, or

b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If in package form, unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label:

Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(6) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by G.S. 106-128, unless

a. It conforms to such definition and standard, and

b. Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(8) If it purports to be or is represented as

a. A food for which a standard of quality has been prescribed by regulations as provided by G.S. 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by G.S. 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears

a. The common or usual name of the food, if any there be, and

b. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each:

Provided, that, to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.

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

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that to the extent that compliance with the requirements of this subdivision are impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture. The provisions of this subdivision and subdivisions (7) and (9) with respect to artificial coloring do not apply to butter, cheese, or ice cream. The provisions of this subdivision with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the product of the soil.

(12) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical: Provided, however, that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

(13) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(14) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of G.S. 106-132 of this Article.

(15) If the labeling provided by the manufacturer, packer, distributor, or retailer on meat, meat products, poultry, or seafood includes a "sell-by" date or other indicator of a last recommended day of sale, and the date has been removed, obscured, or altered by any person other than the customer. This subdivision does not prohibit the removal of a label for the purpose of repackaging and relabeling a

food item so long as the new package or new label does not bear a "sell-by" date or other indicator of a last recommended day of sale later than the original package. This subdivision does not prohibit relabeling of meat, meat products, poultry, or seafood that has had its shelf life extended through freezing, cooking, or other additional processing that extends the shelf life of the product.

G.S. 106-132. Additives, etc., deemed unsafe.

Any added poisonous or added deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of G.S. 106-129(1), paragraphs b and g and 106-129(4) with respect to any food, 106-133(1) with respect to any drug or device, or 106-136(1) and (5) with respect to any cosmetic, unless there is in effect a regulation pursuant to G.S. 106-139 of this Article limiting the quantity of substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a food, drug, or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations be considered adulterated within the meaning of G.S. 106-129(1)a, 106-133(1) and 106-136(1). (1939, c. 320, s. 13; 1975, c. 614, s. 21.)

Others referenced in the embargo laws but not reprinted

§ 106-131. Permits governing manufacture of foods subject to contamination with microorganisms.

§ 106-135. Regulations for sale of new drugs.