



Embargo Authority

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Embargo – Roadmap

- A brief history of embargo authority
- What is embargo?
- Who may exercise embargo authority?
- What types of establishments and situations are subject to embargo authority?
- Under what conditions may food or drink be embargoed?
- What is the process for ordering an embargo?
- What are some alternatives to embargo?

Embargo

- History
 - Pre-2006 -- G.S. 130A-21
 - DENR authority for milk and shellfish
 - DACS authority for all other food and drink
 - Study committee recommended expanding DENR and LHD authority
 - S.L. 2006-80 -- Expands authority significantly

What is embargo?

- An order from a public health official requiring a person to detain or hold food or drink that the official believes is either adulterated or misbranded
- Once embargoed, public health official must seek condemnation order from district or superior court

What is embargo?

- NOT a seizure order – a detention order
- Once embargoed, no one can remove or dispose of the food or drink without permission from one of the following:
 - Regional EHS (REHS), or DEH Director or his designee
 - Local health director
 - Dept. of Agriculture and Consumer Services (DACCS)
 - Court

What is embargo?

- Important statutes
 - G.S. 130A-21: PH embargo authority
 - (a) Food or drink in regulated establishments
 - (b) Milk
 - (c) Shellfish, scallops, crustacea
 - G.S. 106-125: Embargo process
 - G.S. 106-129: Def'n of adulterated
 - G.S. 106-130: Def'n of misbranded
- Following discussion limited to food and drink other than milk and shellfish

Who may exercise embargo authority?

- Four choices
 - Regional EHS
 - DEH Director or his designee
 - Local health director, after consultation with an REHS or DEH Director/designee
 - DACS

Who may exercise embargo authority?

- Three key issues

(I) May not delegate authority to local EHS

- EHS will be involved but must not issue order

Who may exercise embargo authority?

- Three key issues (cont.)
 - (2) Health director must “consult with” REHS, DEH Director/designee prior to issuing an order
 - Intensity of consultation will likely vary
 - In-person
 - Telephone or email

Who may exercise embargo authority?

- Three key issues (cont.)
 - (3) DACS must be notified whenever an embargo action is taken
 - Have the following information available:
 - Product embargoed - Reason for embargo
 - Location of embargo
 - Disposition of food/drink
 - Source of product
 - DENR staff involved

What types of establishments are subject to embargo?

- Any establishment that is
 - Regulated under G.S. Chapter 130A (e.g., food and lodging, institutions, mass gatherings)
 - Regulated by Commission for Public Health but not included in Ch. 130A (e.g., child care, jails)
 - The subject of a communicable disease investigation under G.S. 130A-144

What types of establishments are **NOT** subject to embargo?

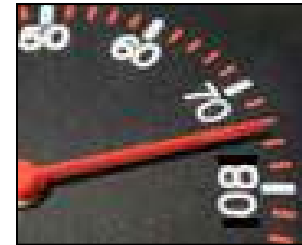
- Exempted from regulation under G.S. Chapter 130A (e.g., private clubs)
- Dept. of Agriculture jurisdiction
 - Areas/products regulated by DACS
 - Establishments regulated by DACS

Under what conditions?

- Adulterated (G.S. 106-129): food or drink has been mixed or altered such that it may result in human illness and/or death if consumed
 - Examples: rodent droppings, insects, flooding, obviously spoiled or decomposed
- Misbranded (G.S. 106-130)
 - Definition addresses a variety of different labeling and other issues
 - Not likely to be an issue for public health

Adulterated or Misbranded Food or Drink

- What are the options?
 - Voluntary Disposal
 - Embargo
 - Imminent hazard
 - Others



Alternatives to embargo?

- Voluntary disposal
 - Majority of the time
 - Can explain embargo or other remedies but be careful not to threaten/coerce
- Permit action
 - May immediately revoke or suspend permit if imminent hazard

Alternatives to embargo?

- Abatement of an imminent hazard
 - Last resort only (e.g., if need to immediately seize or destroy)
- Abatement of a public health nuisance
 - Still requires a court process
- Injunction
 - Longevity
- Misdemeanor
 - Repeat Offender

Selling Points for Voluntary Disposal

- Demonstrates responsible action by the operator
- Subject to public records law
- In their best long-term interest

Voluntary Disposal—Do's

- If the responsible person agrees to voluntary disposal AND if embargo would be used otherwise, then complete the Voluntary Disposal portion of “*Product Disposition*” form
- Don't rely on the responsible person to sign
 - Need owner/operator

Voluntary Disposal—Don'ts

- Do not assist with the disposal
 - Do not carry to the dumpster
 - Do not pour bleach on it
- Do not take the food with you

PIC Refuses to Voluntarily Dispose-- then Embargo

- **Contact**
 - Health Director (or Acting Health Director)
 - Consult with the REHS, Director DEH/Director's Designee
 - Health Director not available?
 - Contact the REHS, DEH Director/Designee
 - If unable to contact or after hours, call the EHSS Embargo on-call number:
 - (910) 840-4607

Highly Recommended !!!

- The Health Director needs to see the situation
 - If not available the Assistant HD, Supervisor, Team Leader, or other EHS is to witness the action



Contact

- Who else should be contacted?
 - In each case DACS
 - Food & Drug 24-hour on-call number
 - 919-733-7366
- If intentional contamination is suspected
 - Local Law Enforcement (Always first)
 - Food Defense Coordinator
 - (910) 840-4607

Embargo

- Explain embargo process
- Affix Embargo tag
- Complete “*Product Disposition*” form

-INAT I KAF I

Front

Back

The following product (s) to which this tag is attached is (are) hereby embargoed because the undersigned has probable cause to believe that the product(s) is (are)

Adulterated Misbranded. This action is authorized by N.C.G.S. 130A-21. A petition will be filed in district or superior court requesting an order of condemnation in accordance with N.C.G.S. 106-125. The court will review and act on the request in accordance with that law. A tag is affixed to the product(s) embargoed. All persons are warned not to remove or dispose of the product(s) until permission for removal is given by the Department of Environment and Natural Resources, The Department of Agriculture and Consumer Services, or by the court in accordance with N.C.G.S. 106-125. It shall be unlawful for any person to remove or dispose of the embargoed product(s) without that permission.

NO. 000001 This stub is to be retained by official and attached to Product Disposition Form.

Product(s) Tagged:	Quantity of Product(s):
N.C. EMBARGOED	(SEE REVERSE)

REMARKS:

Tag Applied By: _____
 Title: _____
 Date: _____ Time: _____

Location and Remarks:

Date _____ Tag Applied By (initials) _____

N.C. EMBARGOED

Product Disposition Form

- Signed by Health Director, REHS, Director DEH/Designee
- Last resort
 - Have health director or REHS fax a signed letter or note authorizing someone to sign on his or her behalf
 - Have EHS sign form and write “pursuant to oral order of _____ (name/title)” and have health director, REHS, Director/Designee sign ASAP



Embargo

- Food remains in establishment or in a location acceptable to the health authority
 - Food is not seized
 - Establishment may not destroy the food

Take Photographs

- What to photograph
 - Temperature on the thermometer
 - Product identifying info (lot #, brand)
- Size relationships
- Location
- Right to take pictures?



Condemnation-- Destroying the Food

- Court—District or Superior
 - Show the law
 - Present your paperwork
 - Make your case
- Judge will decide—destroy or delay to allow establishment to present a case

Destroying Adulterated Food

- Where does it go?
 - Landfill
 - Dumpster
- Observe...do not assist with the disposal
- Denaturing

Disposal of Adulterated Food



Termination of Embargo

- Health Director
- REHS
- Director DEH/Designee
- DACS
- Court

Keys to Success

- Preparation
- Standard procedures
- Response time
- Communication
- Documentation

