

### **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) If 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. (1939, c. 320, s. 10; 1975, c. 614, ss. 13-16; 1985, c. 399.)

**§ 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. (1939, c. 320, s. 11; 1975, c. 614, ss. 17-20; 2000-67, s. 7.10.)