

FOOD SAFETY
State and Federal Standards and Regulations

New Hampshire

1999

A Project of the

**National Association of State Departments of Agriculture
Research Foundation**

through the

National Center for Agricultural Law Research and Information

This publication was made possible by a financial grant from the National Association of State Departments of Agriculture (NASDA), Washington, D.C., through funds made available from the United States Food and Drug Administration (FDA).

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NEW HAMPSHIRE

New Hampshire's Statutes governing food adulteration, misbranding, mislabeling, additives, and the enforcement thereof fall under Title X, Public Health, Chapter 146. Any reference to "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).¹⁷¹²

Adulteration of Food

The adulteration or misbranding of any food is a prohibited act.¹⁷¹³ Food includes articles used for food or drink for humans or other animals. The term "food" also refers to chewing gum and the component parts of such food, drink or chewing gum.¹⁷¹⁴

Food is deemed to be adulterated:

- (1) if it contains any poisonous or deleterious substance which could result in injury to health, unless those substances occur naturally and are not injurious to health in the existing quantities;
- (2) if it bears or contains any added poisonous or added deleterious substance, unless it falls within one of several exceptions;
- (3) if it consists of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
- (4) if it has been produced, prepared, packed, or held under unsanitary conditions

¹⁷¹² N.H. REV. STAT. ANN. § 146:2 (1996).

¹⁷¹³ § 146:1.

¹⁷¹⁴ § 146:2.

where it may have been contaminated by filth,¹⁷¹⁵ or may have been rendered diseased, unwholesome, or injurious to health;

(5) if it is the product of a diseased animal;

(6) if its container is composed of any poisonous or deleterious substance which may render its contents injurious to health; or

(7) if it bears or contains any color additive which is unsafe.

“Adulterated food” also includes:

(1) food which has been altered to conceal damage, increase weight through added substance, or to substitute components;

(2) food which falls below the quality standards it purports to possess;

(3) confectionery food which bears or contains alcohol or non-nutritive substance, with exceptions.

Poisonous or deleterious substances added to food, except where required in the food’s production or where it cannot be avoided by good manufacturing practice, shall be deemed unsafe. Regulations are required to be promulgated where such substances so required cannot be avoided. These regulations limit the quantity of any such substance but do not create an adulteration of food.¹⁷¹⁶

Food additives are substances intended to bring about an expected result when added as a component or otherwise affecting the characteristics of any food. Food additives do not include pesticide chemicals in or on a raw agricultural commodity, where raw agricultural commodity

¹⁷¹⁵ § 146:2. Food is considered to be “contaminated with filth” when it is not securely protected from dust, dirt and foreign or injurious contaminations.

¹⁷¹⁶ § 146:3.

refers to any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form. Food additives also do not include pesticide chemicals used in the production, storage, or transportation of any raw agricultural commodity or color additives. Color additives are materials which are dyes, pigments, or other substance which when added or applied to a food is capable of imparting color thereto. Color additives do not include materials exempted under the federal act. Color includes black, white and intermediate grays.¹⁷¹⁷

Added poisonous or deleterious substances, food additives, pesticide chemicals in or on a raw agricultural commodity, or color additives shall be deemed unsafe as an adulteration of food unless there are regulations permitting the use of such substances.¹⁷¹⁸

Misbranding of food

Misbranding involves foods that:

- (a) are labeled with false or misleading information.
- (b) are offered for sale under the name of another article.
- (c) are an imitation of another food subject to regulations.
- (d) are offered for sale in misleading containers.
- (e) are packaged without the name and place of business of the manufacturer, packer or distributor and an accurate statement of the quantity of the contents.
- (f) are packaged without prominently placing information required by statute

¹⁷¹⁷ § 146:2.

¹⁷¹⁸ § 146:21.

on the label.

- (g) claim to be a food for which a definition and standard of identity has been prescribed by regulations and they do not conform to the definition and standard and its label does not bear the name of the food specified in the definition and standard.
- (h) claim to be a food for which a definition and standard of identity has been prescribed by regulations and fall below such standard, unless their label clearly indicates such substandard quality.
- (i) claim to be for special dietary uses and its label does not bear information concerning its dietary properties as required by the regulations to fully inform purchasers as to its value.
- (j) contain artificial flavoring, coloring or chemical preservatives and its label does not state that fact.¹⁷¹⁹

Labeling of food

“Label” refers to a display of written, printed or graphic matter upon the immediate container of the food. Requirements that any word, statement or other information appear on the label is not considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper of the retail package of the article or is easily legible through the outside container or wrapper. Immediate containers do not include package liners.¹⁷²⁰

¹⁷¹⁹ § 146:5.

¹⁷²⁰ § 146:2.

Advertisements of food are deemed to be false if false or misleading in any particular. Statements made directly or indirectly implying that the product is recommended or endorsed by any agency of the federal or state government shall be considered misleading, unless the agency concerned has approved the statement prior to its use.¹⁷²¹

Enforcement

The New Hampshire Department of Health and Human Services is charged with enforcement of the Pure Food and Drug statute. The Commissioner adopts rules when necessary and proper for enforcing the statute. The Commissioner is also responsible for adopting standards of quality and for ordering inspections of the quality, condition and branding of foods found on sale, possessed for sale, or in process of manufacture or distribution.

The Commissioner is charged with defining standards of identity for determining misbranding of foods, establishing requirements for labeling, and enforcing of violations of rules concerning additives to fresh produce.¹⁷²² First offenses are violations for natural persons or misdemeanors for other persons. Subsequent violations or convictions are misdemeanors for natural persons and felonies for other persons.¹⁷²³ Fines may be imposed for violations in an amount not to exceed \$2000 for each offense,¹⁷²⁴ except for fresh produce violations where fines imposed may not exceed \$200 for a first violation and \$500 for subsequent violations.¹⁷²⁵

¹⁷²¹ § 146:9.

¹⁷²² §§ 146:11, 146:17.

¹⁷²³ § 146:18.

¹⁷²⁴ § 146:18-a.

¹⁷²⁵ § 146:11.

Inspectors must be permitted access at all reasonable hours to all places of business concerned in the manufacture, production, transportation, distribution, and sale of food. Inspectors have the power to open and examine any package or container of any kind containing, or believed to contain, any article of food which may be manufactured, distributed, sold or possessed for sale in violation of the provisions of the statute. Inspectors may take samples for analysis but must tender to the manufacturer, distributor or vendor the value of the food taken for analysis.¹⁷²⁶

When an agent of the department of health and human services finds or has probable cause to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent, the agent shall tag the food to give notice that the food is, or is suspected to be adulterated or misbranded and has been detained or embargoed. The tagging of such food serves to warn all persons not to remove or dispose of the food by sale or otherwise until permission is given by the agent or court. It is unlawful for any person to remove or dispose of detained or embargoed food by sale or otherwise without such permission.

The agent discovering adulterated or misbranded food must petition the court for a libel for condemnation of the food. If the agent finds that detained or embargoed food is not adulterated or misbranded, the agent shall remove the tag or other marking. If, however, the court finds that the food is adulterated or misbranded, the food, after entry of the decree, shall be destroyed at the expense of the claimant thereof, under the agent's supervision. The claimant is responsible for all court costs, fees, storage and other expenses.

Any time the department of health and human services finds any meat, seafood, poultry,

¹⁷²⁶ § 146:11.

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 Commissioner, or authorized agent, shall condemn and destroy such food.¹⁷²⁷

Meat and Meat Products

Meat and Meat Inspections are covered in New Hampshire Statutes at Title XI, Agriculture, Horticulture and Animal Husbandry, Chapter 427. New Hampshire declared as policy: the protection of the health and welfare of consumers by assuring that meat and meat products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated or misbranded meat or meat food products are injurious to the public welfare and destroy markets for wholesome, not adulterated and properly labeled meat and meat food products. This creates injury to livestock producers and processors of meat and meat products as well as injury to the consumers. Unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally.¹⁷²⁸

The term “prepared” means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed. “Adulterated” applies to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

- (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health;

¹⁷²⁷ § 146:20.

¹⁷²⁸ § 427:1 (1996 & Supp. 1998).

- (2) if it bears or contains any added poisonous or added deleterious substance other than one which is
- (A) a pesticide chemical in or on a raw agricultural commodity;
 - (B) a food additive; or
 - (C) a color additive which may not make such article unfit for human food;
- (3) if it is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the federal act;
- (4) if it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal act;
- (5) if it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal act;
- (6) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;
- (7) if it has 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;
- (8) if it is the product of an animal which died other than by slaughter;
- (9) if its container is composed of any poisonous or deleterious substance which may render the contents injurious to health;
- (10) if it has been intentionally subjected to radiation, unless in conformity with a regulation or exemption in effect pursuant to section 409 of the federal act;

(11) if any valuable constituent has been omitted; or if any substance has been substituted; or if damage or inferiority has been concealed; or if any substance has been added to increase its bulk or weight; or

(12) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.¹⁷²⁹

A meat inspection service has been created in New Hampshire charged with enforcement of the meat inspection provisions of the statute. The state veterinarian is the chief of the service.¹⁷³⁰ To prevent the use of adulterated meat in intrastate commerce, inspections are made of all cattle, sheep, swine, goats, horses, mules, and other equines before entering into any slaughtering, packing, meat-curing, rendering, or similar establishment where slaughtering and preparation of meat and meat food products are conducted solely for intra state commerce. Upon inspection, any livestock showing symptoms of disease are set apart and slaughtered separately. The carcasses of the diseased livestock are carefully examined and inspected.

Carcasses of all livestock are inspected postmortem in order to separate that which is not adulterated (marked “inspected and passed”) and that which is adulterated (marked “inspected and condemned”). Carcasses and parts thereof condemned are destroyed for food purposes in the presence of an inspector.¹⁷³¹ Inspections shall be made before the carcasses or parts are allowed to enter into any department wherein they are to be treated and prepared for meat food

¹⁷²⁹ § 427:2.

¹⁷³⁰ § 427:3.

¹⁷³¹ § 427:4.

products.¹⁷³²

Inspectors have access at all times, day or night, whether the establishment is operating or not, to every part of establishments covered by the meat inspection provisions.¹⁷³³ Where slaughtering of livestock and/or preparation of food products occurs at night, inspections shall occur at night.¹⁷³⁴ All meat products found not to be adulterated must be marked, stamped, tagged, or labeled as “New Hampshire inspected and passed.” All meat products found to be adulterated must be marked, stamped, tagged, or labeled as “New Hampshire inspected and condemned.”¹⁷³⁵ No inspection shall be deemed to be complete until meat or meat food products have been sealed or enclosed in cans, tins, posts, canvas, or other receptacles or coverings under the supervision of an inspector.¹⁷³⁶

Inspections must be made by experts in sanitation, or by other competent inspectors, of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments where livestock is slaughtered and meat and meat food products are prepared solely for intrastate commerce. If the sanitary conditions of any establishment cause the meat or meat products to be adulterated, the Commissioner shall refuse to allow such meat to be marked “inspected and passed.”¹⁷³⁷

Persons who slaughter animals they own and intend to use exclusively within their own households are exempt from the provisions of the meat inspection statute. Persons exempt must

¹⁷³² § 427:5.

¹⁷³³ § 427:6.

¹⁷³⁴ § 427:9.

¹⁷³⁵ § 427:6.

¹⁷³⁶ § 427:7.

¹⁷³⁷ § 427:8.

not be in the business of buying or selling any carcasses, parts of carcasses, meat or meat food products of any livestock capable of use as human food.¹⁷³⁸

¹⁷³⁸ § 427:16.