



**NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS
DIVISION OF FOOD SAFETY AND INSPECTION
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ALBANY, NY 12235**

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Article 17
Adulteration, Packing, and Branding
of Food and Food Products

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Article 17
ADULTERATION, PACKING AND BRANDING
OF FOOD AND FOOD PRODUCTS

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Section 198. Definitions

1. The terms "food" and "food product" shall include all articles of food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by men or animals, and shall also include all substances or ingredients to be added to food for any purpose. This definition shall be construed as including chewing gum.

2. The term "person" includes individual, partnership, corporation, and association.

3. 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 chapter that any word, statement, or other information appear 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. The term "immediate container" does not include package liners.

4. 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.

5. The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of a food or food product.

6. The term "contaminated with filth" applies to any food or food product not securely protected from dust and dirt, insects and parts thereof, and from all injurious contaminations.

7. The term "food additive" means any substance the intended use of which results or may reasonably be 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 ionizing 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 food prior to January first, nineteen hundred fifty-eight, through either scientific procedures or experience based on prolonged 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 this subdivision pursuant to the federal food, drug, and cosmetic act,¹ the federal poultry products inspection act,² or the federal meat inspection act.³

8. The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the federal insecticide, fungicide, and rodenticide act as now in force or as hereafter amended, and which is used in the production, storage or transportation of raw agricultural commodities.

9. 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.

10. (a) The term "color additive" means a material which (1) 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, and (2) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto: except that such term does not include any material which the commissioner, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

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

(c) Nothing in paragraph (a) of this subdivision shall be construed to 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 processes of produce of the soil and thereby affecting its color, whether before or after harvest.

¹ 21 U.S.C.A. § 301 et seq.

² 21 U.S.C.A. § 451 et seq.

³ 21 U.S.C.A. § 601 et seq.

11. **REPEALED** effective August 1, 1999.

Section 199. Application of article

1. The provisions of this article regarding the selling of food shall be considered to include the manufacture, production, processing, packing, transportation, exposure, offer, possession, and holding of any such article for sale; the sale, dispensing, and giving of

any such article; and the supplying or applying of any such articles in the conduct of any food establishment. Provided that the word "transportation" as herein used shall not be deemed to include common carriers.

2. The provisions of this article regarding adulteration shall not apply to food or food products for animals, provided, however, that animal food and food products which are or may be adulterated within the meaning of this article may only be manufactured, produced, processed, packed, transported, exposed, offered, possessed, and held for sale pursuant to rules and regulations promulgated under authority of section two hundred fourteen-b of this article. Such rules and regulations shall provide for the safety of humans by requiring, among other things, the decharacterization of such products and the prominent labeling thereof as unfit for human consumption, and for the health of animals by prohibiting the use of certain adulterated products or the use of carcasses of animals or poultry or parts thereof affected with diseases of particular concern to public and animal health, and may require such other safeguards, including heat processing, as are necessary to protect animal health.

3. The provisions of this article regarding misbranding shall not apply to commercial feed as defined in article eight of this chapter, provided such feed complies with the provisions of such article eight and the rules and regulations promulgated thereunder.

4. The provisions of this article shall not apply to game or wild game.

Section 199-a. Prohibition as to adulterated or misbranded food

1. No person or persons, firm, association or corporation shall within this state manufacture, compound, brew, distill, produce, process, pack, transport, possess, sell, offer or expose for sale, or serve in any hotel, restaurant, eating house or other place of public entertainment any article of food which is adulterated or misbranded within the meaning of this article.

2. It shall be unlawful for any person, firm, association or corporation to sell or offer or expose for sale for use in or on food or to use in the manufacturing, compounding, brewing, distilling, producing or processing of any food or food product any new food additive or combination thereof or any color additive which is not in use at the time this section as hereby amended takes effect, or to make any new use of a food additive or color additive therein or thereon unless and until he shall have reported the same to the commissioner upon a form prescribed by the commissioner and shall have submitted test data to the commissioner and shall have satisfied the commissioner as to the safety of such new food additive or color additive or of such new use of such food additive or color additive under the conditions of its intended use.

3. It shall be unlawful for any person, firm, association or corporation to manufacture, compound, brew, distill, produce, process, sell, offer or expose for sale any food additive or color additive or any food or food product containing a food additive or color additive which is in use at the time this section as hereby amended takes effect, or in which the manufacturing, compounding, brewing, distilling, producing or processing of such a food additive or color additive was used, unless the manufacturer of such a food additive or color additive or of such food or food product shall have reported to the

commissioner upon a form prescribed by him the identity of each such food additive or color additive and the proportions thereof by weight in the finished food product manufactured, offered or exposed for sale. The commissioner may, from time to time, through rules and regulations, exempt certain food additives and color additives from the requirements of this subdivision and remove from such exemption lists such food additives and color additives as upon further information may appear to be unsafe.

4. All data submitted to the commissioner in support of the report under this section shall be considered confidential by the commissioner and shall not be revealed to any person other than to a person authorized by the commissioner in the performance of his official duties under this article. In case of an actual controversy as to the validity of an order or decision of the commissioner respecting the test data or report in which a proceeding to review has been instituted as authorized by section two hundred two-c of this article the petition, data and report shall be transmitted by the commissioner to the clerk of the court in which the review proceeding is instituted, together with a record of the proceedings on which the commissioner based his order or decision, and such transmittal shall not be construed to be a violation of confidence. Subdivisions two and three of this section shall not apply to food additives or color additives which are safe within the meaning of the federal food, drug and cosmetic act¹ as amended.

¹ 21 U.S.C.A. § 301 et seq.

Section 199-b. Powers and duties of commissioner respecting food additives and color additives

1. The commissioner shall maintain currently an exemption list which shall contain the food additives and color additives which in his judgment are safe for human consumption and need not be reported. All other food additives and color additives shall be reported by the food manufacturer or processor selling or offering or exposing for sale any food in which a food additive or color additive has been used or is an ingredient and the commissioner shall grant a grace period of two years from the effective date of this act¹ within which such manufacturer or processor shall submit test data which shall satisfy the commissioner as to the safety of such food additive or color additive when used in food or food processing. Upon failure of the manufacturer or processor to supply the commissioner with such satisfactory test data within said two year period, the sale or use of such food additive or color additive by such manufacturer or processor shall be unlawful.

¹ July 1, 1961.

2. The commissioner shall determine upon a fair evaluation of the entire record whether a food additive or color additive may be safely used, the conditions under which it may be used, and a safe, permissible maximum therefor. As to such matters, the determination shall be made upon written recommendation with the reasons therefor, and which shall constitute the commissioner's decision upon which a formal order shall be made by him. Whenever the commissioner is not satisfied upon a fair evaluation of the entire record as to the safety of a food additive or color additive, he shall make a determination which shall show the facts found and the reasons for it and on this decision he shall make his formal order. On or before the thirtieth day after the date on which a formal order under this subsection is served either in person or by registered or certified

mail upon the person affected thereby, any person who will be adversely affected by such order if placed in effect may file objections thereto with the commissioner specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. The filing of such objections shall operate to stay the effectiveness of those provisions of the order to which the objections are made. As soon as practicable after objections are filed by any person who will be adversely affected by such order the commissioner, after due notice, shall hold a public hearing for the purpose of receiving evidence relevant and material to the issue raised by such objections. At the hearing any interested person may be heard in person or by attorney, and upon the completion of the hearing the commissioner shall make a final order which shall be based upon a fair evaluation of the entire record taken at such hearing and shall set forth as part of the order the findings of fact on which the order is based. Any order of the commissioner under this section shall be final unless within thirty days from the date of service thereof upon the party affected thereby a court proceeding is instituted to review it.

3. The commissioner is hereby authorized to adopt regulations relating to the reporting of food additives and color additives, the use thereof in food and food products, the fixing of definitions and standards of identity and of quality for foods and of safe permissible maximums for food additives and color additives in the manufacturing, compounding or processing of foods, requirements for the submission of test data on the safety of food additives and color additives or in new uses therefor, public hearings, official orders and all such matters as shall supplement and give full force and effect to the provisions of this chapter relating to the use of food additives and color additives in food and food products.

4. In making or changing any determination under this article as to whether any food additive or color additive may be safely used, the commissioner of agriculture and markets shall obtain the prior written approval of the department of health which approval shall not be withheld if the food additive or color additive is safe under the conditions of its intended use. The commissioner of agriculture and markets shall make available to the department of health all test data and other information furnished him in accordance with sections one hundred ninety-nine-a and one hundred ninety-nine-b of this article.

Section 199-c. Disposing of tainted food

A person who with intent that the same be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink or medicine, is guilty of a misdemeanor.

Section 199-d. Prohibition as to sulfites

1. For the purposes of this section, the terms:

a. "Sulfiting agent" means potassium bisulfite, potassium metabisulfite, sodium bisulfite, sodium metabisulfite, sodium sulfite and sulfur dioxide.

b. "Distributor" means a person, firm, partnership, corporation or association, whether a resident or nonresident, selling or distributing in this state foods to any person.

c. "Retail sale" or "sale at retail" means a sale to any person for any purpose other than resale.

d. "Wholesale" or "sale at wholesale" means a sale to any person for the purpose of resale.

2. It shall be unlawful for any retail or wholesale distributor of foods to add sulfiting agents in, or to, the foods they sell, offer or expose for sale, or serve. The provisions of this section shall not apply to the sale by a manufacturer or grower to a retail or wholesale distributor of any such foods except fruits and vegetables which are to be sold, offered for sale or served raw, by such distributor, at retail.

3. Any violation of the provisions of this section shall be punishable by a civil penalty not to exceed five hundred dollars.

4. Each day a violation is continued shall constitute a separate violation.

Section 199-e. Prohibition as to sale of irradiated foods

1. Definitions. As used in this section, the following definitions shall apply:

(a) "Food" means fruits, vegetables, meats, poultry, eggs, dairy products and other natural and processed products offered for sale for human or animal consumption.

(b) "Irradiated food" means any food treated with ionizing radiation from radioactive sources, X-rays, or electron beams and includes any food which contains an ingredient that has been irradiated; provided, however, that if the irradiated ingredients of any food consist solely of spices which have been so treated, such food shall not be deemed an irradiated food on account of such irradiated spices.

2. Sale of irradiated food prohibited; exception. It shall be unlawful for any merchant, broker or processor to knowingly sell, offer for sale or expose for sale an irradiated food except as otherwise provided in this subdivision, whether or not such food is deemed to be adulterated under the provisions of subdivision six-a of section two hundred of this article. It shall not be unlawful under this subdivision for any merchant, broker or processor to knowingly sell, offer for sale or expose for sale irradiated food to a general hospital for use as part of a medical regimen in the care or treatment of persons with immune system deficiency or other disease, provided the irradiated food is packaged with or accompanied by a warning label that it is intended for hospital use only by such persons.

3. Penalties. (a) Any person violating any provision of this article shall be subject to a penalty in the sum of not less than two hundred dollars and not more than ten thousand dollars; provided, however, that for a violation by a retail merchant the penalty shall be not less than fifty dollars and shall not exceed five hundred dollars.

(b) For the purposes of this section, each day on which an irradiated food is unlawfully offered or exposed for sale or exchange shall constitute a separate violation.

(c) For the purposes of this section, the unlawful offer for sale or exchange of a group of identical consumer commodities shall constitute but a single violation, and the unlawful offer for sale or exchange of different groups of identical consumer commodities shall constitute a separate violation for each group.

4. Applicability. The provisions of this section shall not apply to irradiated foods purchased prior to the effective date of this section.

5. Effectiveness. The provisions of this section shall be of no force or effect on and after September first, nineteen hundred ninety-five.

Section 200. Adulteration of food

Food shall be deemed to be adulterated: 1. 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 subdivision if the quantity of such substance in such food does not ordinarily render it injurious to health.

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 is unsafe within the meaning of section two hundred two, or if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section four hundred eight-a of the federal food, drug and cosmetic act, as amended,¹ or if is, or it bears or contains, any food additive which is unsafe within the meaning of section four hundred nine of such federal act, as amended²; provided, that where a pesticide chemical has been in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section four hundred eight of such federal act,³ 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 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.

3. 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.

4. 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.

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

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

6-a. 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 sections one hundred ninety-nine-a or one hundred ninety-nine-b.

7. If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

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

9. If damage or inferiority has been concealed in any manner.

10. 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 than it is or of greater value than its true value.

10-a. If it is, or it bears or contains, a color additive which is unsafe within the meaning of section seven hundred six-a of the federal food, drug and cosmetic act, as amended.⁴

11. If it falls below the standard of purity, quality or strength which it purports or is represented to possess.

12. If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin; provided that this subdivision shall not apply to any confectionery by reason of its containing up to one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances; and provided further that this subdivision shall not apply to any confectionery bearing or containing more than one-half of one per centum but not more than five per centum of alcohol by volume.

13. With respect to the manufacture or sale of confectionery bearing or containing more than one-half of one per centum but not more than five per centum of alcohol by volume, such confectionery must:

(a) not be sold to individuals under twenty-one years of age;

(b) bear a statement on the label that sale of the product to individuals under twenty-one years of age is prohibited;

(c) bear a statement on the label that the product contains alcohol up to five percent by volume;

(d) bear the following statement: "Notice: This product contains alcohol used as a

flavoring and, as with any product that contains alcohol: (i) women should not consume alcohol during pregnancy because of the risk of birth defects, and (ii) consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems; and

(e) be sold, either alone or in conjunction with other confectionery containing no alcohol or less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, in quantities of at least one-half pound or in a package or container containing at least twenty-four pieces.

If the confectionery is sold in bulk to be packaged by the retailer at the time of sale to a consumer, the statements required by paragraphs (b) and (c) of this subdivision shall appear on the box, bag or other container in which the confectionery is placed by the retailer and furnished to the consumer and the statement required by paragraph (d) of this subdivision shall appear either on the box, bag or other container in which the confectionery is placed by the retailer and furnished to the consumer or shall appear on a card enclosed within such box, bag or other container. In addition, the manufacturer and/or distributor of such confectionery in bulk shall provide written notice to the retailer with each shipment (i) that the confectionery in the shipment may not be sold to individuals under twenty-one years of age; and (ii) that the packaging in which such confectionery is furnished to the consumer must bear the statements required by paragraphs (b) and (c) of this subdivision; and (iii) that the statement required by paragraph (d) of this subdivision must appear on the packaging in which such confectionery is furnished to the consumer or on a card enclosed within such packaging; and (iv) that the confectionery must be sold in quantities of at least one-half pound or twenty-four pieces.

14. If it is ice cream or other frozen desserts made with wine bearing or containing more than five percent of alcohol by volume.

15. With respect to the manufacture and sale of ice cream or other frozen desserts made with wine bearing or containing more than one-half of one percent, but not more than five percent of alcohol by volume:

(a) No person shall sell at retail packages of ice cream or other frozen desserts made with wine for consumption off the premises where sold unless:

(i) each package is a sealed package containing at least one pint, as received from the manufacturer or distributor;

(ii) each sealed package containing at least one pint, as received from the manufacturer or distributor, in a format to be established or approved by the commissioner, prominently bears the following statements:

(A) The sale of this product to individuals under the age of twenty-one years is prohibited.

(B) This product is made with wine and contains alcohol up to five percent by volume.

(C) Notice. This product contains alcohol used as a flavoring and, as with any product that contains alcohol:

(1) women should not consume alcohol during pregnancy because of the risk of birth defects, and

(2) consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems.

(iii) the following advisory, on a sign or poster not less than seven inches by five inches, in a format to be established or approved by the commissioner, is displayed prominently at each location where packages of ice cream or other frozen desserts made with wine are made available to the public:

“THIS AREA CONTAINS WINE ICE CREAM
OR OTHER FROZEN DESSERTS
MADE WITH WINE

The sale of WINE ICE CREAM OR OTHER FROZEN DESSERTS MADE WITH WINE to individuals under the age of twenty-one years is prohibited.

WINE ICE CREAM OR OTHER FROZEN DESSERTS MADE WITH WINE contain alcohol up to five percent by volume.

NOTICE: WINE ICE CREAM OR OTHER FROZEN DESSERTS MADE WITH WINE contain alcohol used as a flavoring and, as with any product that contains alcohol:

(1) women should not consume alcohol during pregnancy because of the risk of birth defects, and

(2) consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems.

IT IS A VIOLATION PUNISHABLE UNDER LAW FOR ANY PERSON UNDER THE AGE OF TWENTY-ONE TO PRESENT ANY WRITTEN EVIDENCE OF AGE WHICH IS FALSE, FRAUDULENT OR NOT ACTUALLY HIS OWN FOR THE PURPOSE OF ATTEMPTING TO PURCHASE WINE ICE CREAM OR OTHER FROZEN DESSERTS MADE WITH WINE.”

(b) No manufacturer and/or distributor of ice cream or other frozen desserts made with wine shall sell such product:

(i) to a person intending to sell at retail individual servings of ice cream or other frozen desserts made with wine, unless, with each shipment, such manufacturer and/or distributor provides:

(A) a written notice that individual servings of wine ice cream or other frozen desserts made with wine may be sold at retail only where the retailer complies with all of the requirements set forth in paragraph (a) of this subdivision, and

(B) a written copy of such requirements; and

(ii) to a person intending to sell at retail packages of wine ice cream or other frozen desserts made with wine for consumption off the premises, unless, with each shipment, such manufacturer and/or distributor provides:

(A) a written notice that packages of wine ice cream or other frozen desserts made with wine may be sold at retail only where the retailer complies with all of the requirements set forth in paragraph (a) of this subdivision, and

(B) a written copy of such requirements.

[FN1] So in original. Probably should read "section four hundred eight, subsection (a)." See 21 USCA § 346a(a).

[FN2] 21 USCA § 348.

[FN3] 21 USCA § 346a.

[FN4] So in original. Probably should read "section seven hundred six, subsection (a)." See 21 USCA § 376(a).

Section 201. Misbranding of food

Food shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.
2. If it is offered for sale under the name of another article.
3. If it is an imitation of another food, unless its label bears the word "imitation" and immediately thereafter the name of the food imitated in type of uniform size and equal prominence, followed by a statement showing the constituents thereof.
4. If its container is so made, formed, colored or filled as to be misleading.
5. If in package form, unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor.
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, 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, in so far as may be required, the common names of optional ingredients 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 this chapter or by regulations as provided in section two hundred fourteen-b, 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 no definition and standard of identity and/or standard of quality have been prescribed, and it falls below the standard of purity, quality or strength which it purports or is represented to possess.
9. If it is not subject to the provisions of subdivision seven 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 clause (b) of this subdivision is impracticable, or results in deception or unfair competition, in the judgment of the commissioner, exemptions shall be established by regulations promulgated by the commissioner.

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 commissioner determines to be and prescribes as necessary in order to inform purchasers fully as to its value for such uses.

11. If it bears or contains any artificial flavoring, artificial coloring, or permitted chemical preservative, unless it bears labeling stating that fact: provided, that to the extent that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the commissioner. The provisions of this subdivision and subdivisions seven and nine with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream. The provisions of this subdivision with respect to chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce 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 color additive unless its packing and labeling are in conformity with such packing and labeling requirements, applicable to such color additive, as may be contained in regulations promulgated by the commissioner.

14. If it contains a milk protein concentrate, caseinate, or added casein and is not subject to the provisions of subdivision seven of this section, unless its label bears the name of such substance as an ingredient.

Section 201-a. Kosher food and food products; packaging

1. All food and food products packaged in any container and sold or offered for sale as “kosher” or “kosher for passover” shall have a “kosher” or “kosher for passover” label affixed by the manufacturer or packer at its premises. No person other than such manufacturer or packer shall affix such labels.

2. All food or food products that are not packaged in a container and are sold or offered for sale as “kosher” or “kosher for passover” shall have a “kosher” or “kosher for passover” label affixed thereto. No person other than such manufacturer or packer shall affix such labels.

3. Any food or food product in package form that is certified or labeled as “kosher” or “kosher for passover” shall not be sold or offered for sale by the producer or distributor of

such food or food product until the producer or the distributor shall have registered with the department the name, current address and telephone number of the person certifying the food as kosher.

4. Any food or food product in package form that is marked “rabbinical supervision” or that is marked with a “k”, “km”, “kos”, “kp” or any other generic marking used to convey that such food or food product is kosher, except a registered trademark not used to represent such food or food product as kosher, shall not be sold or offered for sale by the producer or distributor of such food or food product until such producer or distributor shall have registered with the department the name, current address and telephone number of the person certifying the food or food product as kosher.

5. As used in this section, the term “food or food product in package form” means a food or food product not intended for consumption at the point of manufacture that is put up or packaged in any manner in advance of sale in units suitable for retail sale.

6. Any advertisement for food or food products representing that such food or food products are kosher shall identify the name of the person, or entity, certifying such food or food products as kosher.

7. Where a producer or distributor is required to register a certifying person pursuant to the provisions of this section, such producer or distributor shall immediately notify the department of any change in the registration information.

8. No liability for misrepresentation shall be incurred by any distributor if it has received written representation from a manufacturer of food and food products that its certifying information has been filed with the commissioner; provided, however, that if such distributor has received notice from the commissioner that the information filed by such manufacturer is no longer valid, the distributor will be liable for the sale of misrepresented products unless the distributor files valid certifying information.

Section 201-b. Retail sale of kosher food or food products

1. Any person who sells or offers for sale in the same place of business meat, meat preparations, meat by-products, poultry or other food or food products that are represented as both kosher and non-kosher shall indicate in window signs, in block letters at least four inches in height, “kosher and non-kosher meat sold here” or “kosher and non-kosher food sold here.”

2. All fresh meat, meat preparations, meat by-products and poultry sold or offered for sale at retail as kosher shall be marked on the label when packaged, or by a sign when not packaged, with the words “soaked and salted” or “not soaked and salted,” as the case may be. Such words, when marked on a label or a sign, shall be in letters at least as large as the letters of the words on the label or sign designating such meat, meat preparations, meat by-products and poultry as kosher.

3. Any person who sells or offers for sale as kosher, at wholesale or retail, any meat, meat preparations, meat by-products or poultry shall maintain a record of each purchase from a manufacturer or packer, which shall include, but not be limited to, a bill of sale, and retain all records with respect to the origin of such meat, meat preparations, meat by-products or poultry for a period of two years after the sale to which the records relate, and shall make such records available to the department upon request. Meat, meat preparations, meat by-products and poultry packed off-premises and labeled as kosher by the packer thereof shall be exempt from the record keeping requirements of this subdivision, provided that the package contains the name and address of the manufacturer

or packer and the name of the person certifying such food or food products as kosher.

Section 201-c. Persons certifying as kosher; filing with department

1. Any person who certifies any non-prepackaged meat, meat preparations, meat by-products or poultry as kosher or kosher for Passover, and any person who certifies any non-prepackaged food or food products as kosher or kosher for Passover shall file with the department, in accordance with regulations set by the commissioner, a statement of such person's qualifications for providing such certification.

2. No person shall within this state manufacture, compound, brew, distill, produce, process, pack, sell or offer for sale any non-prepackaged meat, meat preparations, meat by-products, poultry or food or food products that are represented or branded as kosher unless such person has, in accordance with regulations set by the commissioner, filed with the department the name, address, and telephone number of the person certifying such food or food product as kosher.

3. Any food establishment or caterer that sells or offers for sale food or food products prepared on the premises or under its control that are represented as kosher, shall file with the department the name, address, and telephone number of the person certifying the food or food products as kosher. Food establishments and caterers selling or offering for sale food or food products prepared on the premises or under their control that are represented as kosher shall post a "kosher certification form" in a location readily visible to the consumer, and shall also provide a copy of such form to the department. The kosher certification form shall contain the information and be in the form set forth below, in not less than twelve point type:

KOSHER CERTIFICATION FORM

Name of Establishment: _____

Address _____

Name of Individual or Organization Certifying Food as Kosher: _____

Address & Phone Number of Certifying Individual or Organization: _____

Affiliation & Education of Certifying Individual or Organization:

The certifying individual or organization visits this establishment: ___time(s) daily ___
time(s) weekly ___ time(s) monthly ___ time(s) yearly

All meat sold or served by this establishment ___is ___is not soaked and salted.

Describe soaking and salting process: _____

We ___do ___do not exclusively sell or serve kosher food.

Establishment selling and serving both kosher and nonkosher food must complete the following: We ___do ___do not use separate ovens and sinks for kosher and nonkosher foods. We ___do ___do not use separate utensils, refrigerators, freezers and storage areas for kosher and nonkosher foods. All utensils and equipment ___are ___are not clearly identified as kosher or nonkosher. Nonkosher products ___are ___are not mixed with kosher products and then sold as kosher.

4. Any food establishment or caterer that sells or offers for sale food or food products prepared on the premises or under their control that are represented as kosher shall maintain a permanently bound logbook that shall include for each inspection visit of the person certifying their food or food products as kosher, the signature and printed name of the person performing the inspection and the date and time of arrival at the establishment. The logbook shall be maintained for a period of not less than two years after the final entry, and shall be made available to the department upon request.

5. The department is authorized to inspect all food establishments and caterers selling or offering for sale food or food products represented as kosher to ensure compliance with sections two hundred one-a and two hundred one-b of this article and this section, and the accuracy of any information supplied in accordance with such sections. The commissioner is authorized to promulgate rules and regulations as are necessary to further implement the provisions of sections two hundred one-a and two hundred one-b of this article and this section. The department shall develop and maintain a website that makes available to consumers copies of all forms and certification information that are required by this section.

6. Failure to comply with the requirements of sections two hundred one-a and two hundred one-b of this article and this section or the failure to conform sales practices to the information provided in the kosher certification form pursuant to this section shall be punishable by a fine of not more than two thousand five hundred dollars for a first violation; not more than seven thousand five hundred dollars for a second violation; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter.

Section 201-d. Notice of violation

In any case where the department, after consultation between the division responsible for kosher law enforcement and counsel, determines a violation has occurred of any of the provisions of section two hundred one-a, two hundred one-b, or two hundred one-c of this article, it shall notify such person in writing, by regular mail, of the violations alleged, the grounds therefor, and the penalty assessed. After such person has been so notified, such information shall be available to the public, without charge, and shall include as a minimum the following:

1. the name and business address of the alleged violator;
2. the date of inspection of the premises by the department;
3. the violation that is alleged to have occurred; and
4. the amount of the penalty which has been assessed by the department.

Section 201-e. Halal food and food products; packaging

1. All food and food products packaged in any container and sold or offered for sale as “halal” shall have a “halal” label affixed by the manufacturer or packer at its premises. No person other than such manufacturer or packer shall affix such label.

2. All food or food products that are not packaged in a container and are sold or offered for sale as “halal” shall have a “halal” label affixed thereto. No person other than such manufacturer or packer shall affix such label.

3. Any food or food product in package form that is certified or labeled as “halal” shall not be sold or offered for sale by the producer or distributor of such food or food product until the producer or the distributor shall have registered with the department the name, current address and telephone number of the person certifying the food as halal.

4. Any food or food product in package form that is marked with a generic marking used to convey that such food or food product is halal, except a registered trademark not used to represent such food or food product as halal, shall not be sold or offered for sale by the producer or distributor of such food or food product until such producer or distributor shall have registered with the department the name, current address and telephone number of the person certifying the food or food product as halal.

5. As used in this section, the term “food or food product in package form” means a

food or food product not intended for consumption at the point of manufacture that is put up or packaged in any manner in advance of sale in units suitable for retail sale.

6. Any advertisement for food or food products representing that such food or food products are halal shall identify the name of the person or entity certifying such food or food products as halal.

7. Where a producer or distributor is required to register a certifying person pursuant to the provisions of this section, such producer or distributor shall immediately notify the department of any change in the registration information.

8. No liability for misrepresentation shall be incurred by any distributor if it has received written representation from a manufacturer of food and food products that its certifying information has been filed with the commissioner; provided, however, that if such distributor has received notice from the commissioner that the information filed by such manufacturer is no longer valid, the distributor will be liable for the sale of misrepresented products unless the distributor files valid certifying information.

Section 201-f. Retail sale of halal food or food products

1. Any person who sells or offers for sale in the sale place of business meat, meat preparations, meat by-products, poultry or other food or food products that are represented as both halal and non-halal shall indicate in window signs, in block letters at least four inches in height, "halal and non-halal meat sold here" or "halal and non-halal food sold here."

2. All fresh meat, meat preparations, meat by-products and poultry sold or offered for sale at retail as halal shall be marked on the label when packaged, or by a sign when not packaged, as the case may be. Such words, when marked on a label or a sign, shall be in letters at least as large as the letters of the words on the label or sign designating such meat, meat preparations, meat by-products and poultry as halal.

3. Any person who sells or offers for sale as halal, at wholesale or retail, any meat, meat preparations, meat by-products or poultry shall maintain a record of each purchase from a manufacturer or packer, which shall include, but not be limited to, a bill of sale, and retain all records with respect to the origin of such meat, meat preparations, meat by-products or poultry for a period of two years after the sale to which the records relate, and shall make such records available to the department upon request. Meat, meat preparations, meat by-products and poultry packed off-premises and labeled as halal by the packer thereof shall be exempt from the record keeping requirements of this subdivision, provided that the package contains the name and address of the manufacturer or packer and the name of the person certifying such food or food products as halal.

Section 201-g. Persons certifying as halal; filing with department

1. Any person who certifies any non-prepackaged meat, meat preparations, meat by-products or poultry as halal, and any person who certifies any non-prepackaged food or food products as halal shall file with the department, in accordance with regulations set by the commissioner, a statement of such person's qualifications for providing such certification.

2. No person shall within this state manufacture, compound, brew, distill, produce, process, pack, sell or offer for sale any non-prepackaged meat, meat preparations, meat by-products, poultry or food or food products that are represented or branded as halal unless such person has, in accordance with regulations set by the commissioner, filed with the department the name, address, and telephone number of the person certifying such food or

food product as halal.

3. Any food establishment or caterer that sells or offers for sale food or food products prepared on the premises or under its control that are represented as halal, shall file with the department the name, address, and telephone number of the person certifying the food or food products as halal. Food establishments and caterers selling or offering for sale food or food products prepared on the premises or under their control that are represented as halal shall post a “halal certification form” in a location readily visible to the consumer, and shall also provide a copy of such form to the department. The halal certification form shall contain the information and be in the form set forth below, in not less than twelve point type:

HALAL CERTIFICATION FORM

Name of Establishment: _____

Address: _____

Name of Individual or Organization Certifying Food as Halal: _____

Address & Phone Number of Certifying Individual or Organization: _____

Affiliation & Education of Certifying Individual or Organization: _____

The certifying individual or organization visits this establishment: _____ time(s) daily
_____ time(s) weekly _____ time(s) monthly _____ time(s) yearly

All meat sold or served by this establishment ___ is ___ is not halal.

Describe halal food preparation process: _____

We _____ do _____ do not exclusively sell or serve halal food.

Establishment selling and serving both halal and non-halal food must complete the following:

We _____ do _____ do not use separate ovens and sinks for halal and non-halal foods. We _____ do _____ do not use separate utensils, refrigerators, freezers and storage areas for halal and non-halal foods. All utensils and equipment _____ are _____ are not clearly identified as halal and non-halal. Non-halal products _____ are _____ are not mixed with halal products and then sold as halal.

4. Any food establishment or caterer that sells or offers for sale food or food products prepared on the premises or under their control that are represented as halal shall maintain a permanently bound logbook that shall include for each inspection visit of the person certifying their food or food products as halal, the signature and printed name of the person performing the inspection and the date and time of arrival at the establishment. The logbook shall be maintained for a period of not less than two years after the final entry, and shall be made available to the department upon request.

5. The department is authorized to inspect all food establishments and caterers selling or offering for sale food or food products represented as halal to ensure compliance with sections two hundred one-e and two hundred one-f of this article and this section, and the accuracy of any information supplied in accordance with such sections. The commissioner is authorized to promulgate rules and regulations as are necessary to further implement the provisions of sections two hundred one-e and two hundred one-f of this article and this section. The department shall develop and maintain a website that makes available to consumers copies of all forms and certification information that are required by this section.

6. Failure to comply with the requirements of sections two hundred one-e and two hundred one-f of this article and this section or the failure to conform sales practices to the information provided in the halal certification form pursuant to this section shall be punishable by a fine of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation; and not more than ten thousand dollars

for a third violation and each subsequent violation thereafter.

Section 201-h. Notice of violation

In any case where the department, after consultation between the division responsible for halal law enforcement and counsel, determines a violation has occurred of any of the provisions of section two hundred one-e, two hundred one-f, or two hundred one-g of this article, it shall notify such person in writing, by regular mail, of the violations alleged, the grounds therefor, and the penalty assessed. After such person has been so notified, such information shall be available to the public, without charge, and shall include as a minimum the following:

1. the name and business address of the alleged violator;
2. the date of inspection of the premises by the department;
3. the violation that is alleged to have occurred; and
4. the amount of the penalty which has been assessed by the department.

Section 202. Unavoidable added poisonous or deleterious substance

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided in good manufacturing practice, shall be deemed to be unsafe for the purpose of the application of subdivision two of section two hundred; but when such substance is so required or cannot be so avoided, the commissioner shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of subdivision two of section two hundred. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of subdivision one of section two hundred. In determining the quantity of such added substance to be tolerated in or on different articles of food the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Section 202-a. False advertising

1. An advertisement concerning a food or food product shall not be false or misleading in any particular.

2. No publisher, radio-broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties provided by this chapter by reason of his dissemination of any false advertisement, unless he has refused on the request of the commissioner to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the United States, who caused him to disseminate such false advertisement.

3. Whenever it appears to the satisfaction of the court in the case of a newspaper,

magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the methods by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the commissioner shall exclude such issue from the operation of the restraining order or injunction.

Section 202-b. Seizure and quarantine

Whenever the commissioner or his duly authorized representative shall find distributed, offered or exposed for sale within this state, a food or food product which is unfit or unsafe for use as food, and its condemnation is required to protect the public health, he may seize, destroy or denature such product so that it cannot thereafter be used for food.

Whenever the commissioner finds, or has probable cause to believe, that any food or food product is adulterated or misbranded within the meaning of this article, he may affix to such food or food product a tag or other appropriate marking, giving notice that such food or food product is, or is suspected of being, adulterated or misbranded and has been quarantined, and warning all persons not to remove or dispose of such food or food product by sale or otherwise until permission for removal or disposal is given by the commissioner or his duly authorized representative. It shall be a violation of this article for any person to remove or dispose of such quarantined food or food product by sale or otherwise without such permission.

Before destruction of a food or food product following seizure or quarantine, the commissioner shall give the owner, proprietor or custodian of such food or food product ten days' notice in writing, to be served either personally or by mail, of a hearing for said owner, proprietor or custodian to show cause why such food or food product should not be destroyed in accordance with the provisions of law.

Following such hearing, the commissioner shall make a determination in accordance with the provisions of this chapter. The determination of the commissioner may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, and such determination shall be final unless within thirty days from the date of service of a copy thereof upon the owner, proprietor or custodian a court proceeding is instituted to review such determination.

Whenever, following seizure or quarantine, a food or food product is found to be unfit or unsafe for use as food, the destruction and disposition of such food or food product, as well as any necessary storage, handling, or other incidentals between the time of seizure or quarantine and the destruction and disposition thereof, shall be the responsibility, both financially and otherwise, of the owner or other person having custody of such food or food product; provided, however, that such destruction and disposition shall be carried out only under the direction and immediate supervision of the commissioner or his duly authorized representative. Nothing in this section shall be construed as preventing the

commissioner or his duly authorized representative from destroying and disposing of such food or food product found to be unfit or unsafe, where such procedure is warranted.

Section 202-c. Proceedings to review, violations and remedies

The commissioner may refuse to approve any new food additive or color additive or combination thereof or new use of a pre-existing food additive or color additive on the ground that he is not satisfied as to its safety. The burden of satisfying the commissioner as to the safety of a food additive or color additive shall be upon the manufacturer or processor selling or offering or exposing the food additive or color additive or food product in which a food additive or color additive was used or is an ingredient. Whenever the commissioner is not satisfied as to the safety of a food additive or color additive or whenever he makes any decision (a) prohibiting the use of a food additive or color additive as unsafe; (b) prescribing the conditions under which it may be used or establishing a safe, permissible maximum for such food additive or color additive, his decision with respect thereto may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules and his determination shall be final unless within thirty days from the date of service thereof personally or by registered or certified mail upon the party affected thereby a court proceeding is instituted to review such action. Such application shall be made to the supreme court in the third judicial district.

The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with sections one hundred ninety-nine-a, two hundred and two hundred one of this article, and any rule or order respecting a food additive or color additive promulgated pursuant to sections one hundred ninety-nine-b and two hundred fourteen-b of this article and, in addition to any other remedy under this chapter or otherwise, may apply for relief by injunction to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. In an action instituted by the commissioner to enforce compliance with said sections one hundred ninety-nine-a, two hundred and two hundred one the commissioner shall not be required to prove that the food, food additive or color additive mentioned in the complaint is unsafe and the claim or defense of the defendant as to its safety shall be immaterial, provided, however, that the recognition by the federal food and drug administration of a food additive or color additive as safe may be alleged as a proper defense.

Section 203. Manufacture and sale of imitation maple, birch or walnut sugar and syrup prohibited

(a) 1. No person shall manufacture for sale, keep for sale, or offer or expose for sale, any sugar in imitation or semblance of maple sugar which is not pure maple sugar, nor any syrup in imitation or semblance of maple syrup, which is not pure maple syrup, nor shall any person manufacture, offer or expose for sale any sugar as and for maple sugar which is not pure maple sugar, nor any syrup as and for maple syrup which is not pure maple syrup.

2. For the purpose of this article the term "maple sugar" shall be deemed to mean sugar made from pure maple sap or pure maple syrup, and the term "maple syrup" shall be deemed to mean syrup made from pure maple sap.

(b) 1. No person shall manufacture for sale, keep for sale, or offer or expose for sale, any sugar in imitation or semblance of birch sugar which is not pure birch sugar, nor any syrup, which is not birch syrup, nor shall any person manufacture, offer or expose for sale any sugar as and for birch sugar which is not pure birch sugar, nor any syrup as and for birch syrup which is not pure birch syrup.

2. For the purpose of this article the term "birch sugar" shall be deemed to mean sugar made from pure birch sap or pure birch syrup, and the term "birch syrup" shall be deemed to mean syrup made from pure birch sap.

(c) 1. No person shall manufacture for sale, keep for sale, or offer or expose for sale, any sugar in imitation or semblance of walnut sugar which is not pure walnut sugar, nor any syrup, which is not walnut syrup, nor shall any person manufacture, offer or expose for sale any sugar as and for walnut sugar which is not pure walnut sugar, nor any syrup as and for walnut syrup which is not pure walnut syrup.

2. For the purpose of this article the term "walnut sugar" shall be deemed to mean sugar made from pure walnut sap or pure walnut syrup, and the term "walnut syrup" shall be deemed to mean syrup made from pure walnut sap.

Section 204. Branding and labeling of maple, birch or walnut sugar and syrup mixtures

No person shall manufacture, sell or expose for sale, any compound or mixture as and for sugar which shall be made up of maple, birch or walnut sugar mixed with any other sugar or any other substance without branding or labeling the said sugar with a statement giving the ingredients of which it is made up. No person shall manufacture, sell, expose for sale or offer for sale any compound or mixture as syrup which shall be made up of maple, birch or walnut syrup mixed with any other syrup or ingredient without branding or labeling said syrup with a statement giving the ingredients of which it is made up. This shall not be construed to apply to a syrup or syrups manufactured and sold for medicinal purposes only.

Section 204-a. Olive oil mixtures

It shall be unlawful for any person to manufacture, pack, possess, sell, offer for sale and/or expose for sale any compound or blended oil of any kind which purports to be an olive oil mixture unless the container thereof be permanently and conspicuously labeled "compound oil" or "blended oil" with a statement of the different ingredients thereof and the specific percentage of olive oil, the total percentage of other vegetable oils and the specific percentage of each other ingredient comprising more than one-half of one per centum of the mixture. 1. As used in this section the following terms shall have the following meanings:

(a) "Olive oil" means the olive oil obtained solely from the fruit of the olive tree (*olea europaea*), to the exclusion of oils obtained using solvents or reesterification processes and of any mixture with oils of other kinds. For the purpose of product labeling such term means oil consisting of a blend of refined olive oil, and virgin olive oils fit for

consumption as they are with a free acidity, expressed as oleic acid, of not more than one gram per hundred grams.

(b) "Olive-pomace oil" means oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by reesterification processes and of any mixture with oils of other kinds.

(c) "Refined olive oil" means the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has free acidity, expressed as oleic acid, of not more than 0.3 grams per hundred grams.

(d) "Virgin olive oil" means those oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decanting, centrifuging and filtration. Virgin olive oils fit for consumption as they are include:

(1) "extra virgin olive oil" which means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per hundred grams.

(2) "virgin olive oil" which means olive oil which has a free acidity, expressed as oleic acid, of not more than two grams per hundred grams.

(3) "ordinary virgin olive oil" which means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per hundred grams.

2. (a) No additives are permitted in virgin olive oils.

(b) The addition of alpha-tocopherol to refined olive oil, olive oil, refined olive-pomace oil and olive-pomace oil is permitted to restore natural tocopherol lost in the refining process. The concentration of alpha-tocopherol in the final product shall not exceed 220mg/kg.

3. (a) The commissioner shall promulgate rules and regulations for the production and labeling of olive oils and olive-pomace oils presented and sold for human consumption in intrastate commerce. Those regulations shall substantially comply with the standards for the production and labeling of olive oil and olive-pomace oils of the prevailing international voluntary consensus trade organization formed for the development of standards on characteristics and performance of olive products and the promotion of trade and knowledge related to the accurate and honest presentation of such products, as amended, in the absence of specific federal standards of identity for olive oil.

(b) Failure to meet the standards promulgated pursuant to paragraph (a) of this subdivision shall render olive oil sold in intrastate commerce in the state misbranded.

Section 204-b. Foods containing fats and/or oils

1. (a) Notwithstanding any other provision of law, each individual fat and/or oil ingredient of a food commodity in package²⁴ form intended for human consumption shall

be declared by its specific common or usual name in its order of predominance in the food except that blends of fats and/or oils may be designated as such in their order of predominance as "vegetable", "animal", "marine" shortening, or combination of these, whichever is applicable if, immediately following the term, the common or usual name of each individual vegetable, animal, or marine fat or oil is given in parenthesis.

(b) For products that are blends of fats and/or oils and for foods in which fats and/or oils constitute the predominant ingredient, the listing of the common or usual names of such fats and/or oils in parenthesis shall be in descending order of predominance.

(c) In all other foods in which a blend of fats and oils is used as an ingredient, the listing of the common or usual names in parenthesis need not be in descending order of predominance if the manufacturer, because of the use of varying mixtures, is unable to adhere to a constant pattern of fats and/or oils in the product.

(d) Fat and/ or oil ingredients not present in the product may be listed if they may sometimes be used in the product if such ingredients are identified by appropriate language or words indicating that such ingredients may not be present.

2. For the purposes of this section the term "food commodity in package form" shall be construed to mean a food commodity put up or packaged in any manner in advance of sale in units suitable for retail sale, which has been packaged at point of manufacture and which is not intended for consumption at point of manufacture and which is presently not exempt from placing the ingredients on the label.

Section 204-c. Prepared horseradish

The term "prepared horseradish" means a clean, wholesome food product made with pure ground horseradish root, vinegar and salt, with or without the addition of oil of mustard. Sugar, spices and other flavorings, and either cream or vegetable oil may be used as optional ingredients provided they are listed on the label.

Section 204-d. Adulteration of natural fruit juices

Any person who shall knowingly sell, offer or expose for sale, or give away, any compound or preparation composed, in whole or in part, of any unwholesome, deleterious or poisonous acid, or other unwholesome deleterious or poisonous substance, as a substitute for the pure unadulterated and unfermented juice of lemons, limes, oranges, currants, grapes, apples, peaches, plums, pears, berries, quinces, or other natural fruits, representing such compound or preparation to be pure, unadulterated and unfermented juice of such fruits; or who, in the mixing, decoction, or preparation of food or drink, shall knowingly use any such compound or preparation in the place of, or as a substitute for, the pure unadulterated and unfermented juice of one or more of such fruits, shall be guilty of a misdemeanor.

Section 205. Defining honey

The terms "honey," "liquid or extracted honey," "strained honey," or "pure honey," as used in this article, shall mean the nectar of flowers that has been transformed by, and is

the natural product of the honey-bee, taken from the honeycomb and marketed in a liquid, candied or granulated condition.

Section 206. Relative to selling a commodity in imitation or semblance of honey

No person or persons shall package, label, sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey depicting thereon a picture or drawing of a bee, beehive or honeycomb, or branded as "honey," "liquid or extracted honey," "strained honey" or "pure honey" which is not pure honey. No person or persons, firm, association, company or corporation, shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled as and for honey which shall be made up of honey mixed with any other substance or ingredient. There may be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients, but it shall not be packaged, sold, exposed for sale, or offered for sale as honey; nor shall such compound or mixture be branded or labeled with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled with the word "honey," unless such article is pure honey. A product which is in semblance or imitation of liquid honey shall be labeled as "honey flavored syrup" or "artificially honey flavored syrup", as is appropriate.

Section 207. Definition of vinegars and adulterated vinegars

1. The terms "cider vinegar," "apple cider vinegar," or words of similar import, shall be construed to mean the product made exclusively from the expressed juice of clean, sound, fresh apples, or parts of such apples, by alcoholic and subsequent acetous fermentations without distillation. The term "dried apple vinegar," or words of similar import, shall be construed to mean the product resulting from the alcoholic and subsequent acetous fermentations without distillation of the juice produced from clean, sound, dried apples, clean, sound, dried chopped apples, clean, sound, dried apple skins or cores, or clean, sound dried pomace.

2. The term "sugar vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations without distillation of solutions of sugar, syrup, molasses or refiner's syrup.

3. The term "malt vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of an infusion of barley malt and/or cereals or a concentrate thereof which has been enzymatically converted by the malting process.

4. The terms "wine vinegar," "grape vinegar," shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes or the acetous fermentation of wine, produced according to federal regulations.

5. The term "glucose vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of sugar, molasses and/or other nutritive carbohydrate sweeteners.

6. The terms "spirit vinegar," "distilled vinegar," "grain vinegar," "white distilled vinegar," "white vinegar," shall be construed to mean the product made by the acetous fermentations of dilute ethyl alcohol.

7. All vinegars which contain less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at twenty degrees centigrade, shall be deemed adulterated. Nothing herein shall be deemed to prohibit the manufacture of vinegar for consumption elsewhere than within this state, of such acid content as may be elsewhere required.

8. The product made by the destructive distillation of wood, known as pyroligneous acid, shall not be sold, offered, exposed or had in possession for sale, for food.

9. The terms blended vinegar, mixed vinegar, compound vinegar shall be construed to mean the product made by acetous fermentation of a blend of raw materials or a blend of two or more vinegars, suitably labeled according to law. The product may also be described as "_____ vinegar," the blank being filled in by any suitable and non-deceptive term that does not represent or suggest that the product consists solely of a vinegar described in subdivisions one through six of this section.

9-a. Manufacture and sale of vinegar and vinegar products defined in subdivision one through six of this section shall not be deemed to be misbranded provided the product so defined is labeled in compliance with subdivision three of section two hundred one of this article.

10. Vinegar products other than those defined in subdivisions one through six of this section shall not be deemed to be misbranded or adulterated provided that the product source of the raw material shall be identified on the label by its common or usual name. This includes other fruit vinegars which shall be entitled "_____ vinegar," the blank being filled in by the name of the fruit or fruit juices. Packages containing vinegars made from wine or fruits which have been reduced with water must be plainly marked or branded "reduced to _____ per centum acid strength," indicating the acidity to which they have been so reduced, or words equivalent thereto.

11. The manufacture and sale of the products made by the addition of safe and suitable flavorings and/or coloring ingredients to vinegars described in subdivisions one through ten of this section, and suitably labeled according to law shall not be deemed to be misbranded.

Section 208. Manufacture and sale of misbranded vinegar prohibited

No person, firm or corporation shall manufacture, sell, offer, expose or have in possession for sale in this state:

1. Any vinegar defined herein not in compliance herewith.

2. Any vinegar or product in imitation of cider or apple vinegar which is not cider or apple vinegar unless the labeling complies with subdivision three of section two hundred

one of this article.

3. As or for cider or apple vinegar any vinegar or product which is not cider or apple vinegar.

Section 209. Packages containing vinegar to be branded

Every manufacturer or distributor of vinegar, as defined in section two hundred and seven of this chapter, shall plainly brand each cask, barrel or other container of such vinegar with his name and place of business, the kind of vinegar contained therein, in the terms defined in such section two hundred and seven, and the substance or substances from which it was made.

No person shall mark or brand as or for cider vinegar, or apple cider vinegar, or dried apple vinegar, any package containing that which is not cider vinegar, or apple cider vinegar, or dried apple vinegar, as defined in such section two hundred and seven.

Every person who sells any vinegar other than cider vinegar or apple cider vinegar not made from whole apples, or dried apple vinegar not made from dried whole apples or from dried chopped apples, except it be delivered to the purchaser in the unbroken branded package of the manufacturer or distributor, shall plainly and conspicuously mark or brand the receptacle or container in which such vinegar is delivered to the purchaser, whether such receptacle or container be furnished by the seller or purchaser, with a label showing the kind of vinegar, in the terms defined in such section two hundred and seven, so delivered and the substance or substances from which it was made.

Nothing herein shall be deemed to prohibit the sale of cider vinegar stock, provided it be sold as and for such and in compliance with the provisions of this article as to marking or branding. The term "cider vinegar stock" when used herein, shall be construed to mean acetified apple juice of less acidity than that required for vinegar which contains sufficient alcohol to develop the acidity required in vinegar.

The phrase "substance or substances from which it was made," when used in this section, shall, when applied to "cider vinegar" or "apple cider vinegar" not made from whole apples, be construed to mean the parts of the apples, such as skins and cores, from which the vinegar was made, and shall, when applied to "dried apple vinegar" not made from dried whole apples or dried chopped apples, be construed to mean the parts of the dried apples, such as skins, cores or pomace, from which the vinegar was made.

Section 210. Packaging in the shape of firearms

1. No person, firm or corporation shall manufacture, sell, offer, export or have in possession for sale in this state any food or food products packed in a container in the shape of a firearm and for consumption from any such packaging. The provisions of this section shall not apply to any alcoholic beverages.

2. A violation of this section for a first violation shall be punishable by a civil penalty of at least fifty dollars but not more than two hundred dollars, but in no event shall the total penalty therefor exceed one thousand dollars. For a second or subsequent violation

in any twelve month period a penalty of at least fifty dollars but not more than four hundred dollars shall be imposed for each violation, but in no event shall the total penalty exceed one thousand dollars for each day.

- a. Each packaged food or food product shall constitute a violation.
- b. Each day the food or food product is packaged shall constitute a separate violation.
- c. Each day a violation is continued shall constitute a separate violation.

Section 210-a. Pork processing

For the purpose of preventing trichinosis, the commissioner is hereby authorized to require any person who manufactures, sells, offers for sale, or delivers any article of food containing any muscle tissue of pork customarily eaten without cooking to process such food in the manner prescribed by the department.

Section 213. Repacking fruit and farm produce

A person, firm or association who purchases fruit or farm produce in barrels, boxes or other packages, and empties, or causes to be emptied, such barrels, boxes or other packages, and repacks, or causes to be repacked therein the same or other fruit or farm produce, shall before any such repacked barrel, box or other package is sold, or offered or exposed for sale, erase or otherwise obliterate the name of the grower or producer, if found thereon.

Section 214. Guaranty established

1. No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing or having a place of business within the state from whom he purchased the articles to the effect that the same are not adulterated or misbranded within the meaning of this article. Said guaranty to afford protection shall contain the name and address of the guarantor and in such case the guarantor shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under the provisions of this article.

2. It shall be the duty of the commissioner immediately upon the discovery of evidence that any article of food is adulterated or misbranded within the meaning of this chapter, to notify in writing the dealer selling the same and no guaranty shall exempt any dealer from prosecution if he shall continue to sell such article after having received such written notice.

Section 214-a. Samples

The commissioner is hereby empowered to enact, amend and repeal rules prescribing the number, nature and size of samples of food to be taken in the enforcement of this article.

Section 214-b. Regulations

The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the commissioner. This article and the regulations promulgated thereunder shall be so interpreted and construed, however, as to effectuate its general purpose to enact state legislation uniform with the federal act approved June twenty-fifth, nineteen hundred thirty-eight, and all acts amendatory thereof and supplemental thereto.¹

The commissioner is hereby authorized (1) to adopt, in so far as practicable, the regulations fixing and establishing definitions and standards of identity and/or standards of quality, and tolerances, for foods or food products from time to time promulgated under the federal act or acts, and (2) to change or amend the regulations promulgated under this chapter fixing and establishing definitions and standards of identity, and/or standards of quality, and tolerances, so as to conform in so far as practicable, to those promulgated under the federal act¹ or acts.

The commissioner shall hold a public hearing upon a proposal to promulgate any new or amended regulations under this article, except in the case of a proposal to adopt an applicable regulation promulgated under the federal act or acts.

¹ See 21 U.S.C.A. § 301 et seq.

Section 214-c. [Construction with other laws]

No provisions contained in sections one hundred ninety-eight, one hundred ninety-nine, two hundred, two hundred one, two hundred two, two hundred two-a, two hundred two-b and two hundred fourteen-b of this article shall be construed to alter, supersede or repeal any of the provisions of sections two hundred three to two hundred fourteen-a, inclusive, of this article, sections ninety-one, ninety-two and ninety-three of article five, or articles four, four-a, twelve-a, twelve-b, thirteen, thirteen-a and thirteen-b of this chapter, but each of said sections and articles shall continue in full force and effect.

Section 214-d. Legislative finding and declaration of policy

It is hereby recognized that appropriate investigations of potential advances in dairy and food technology sometime require the market testing of the advantages to, and acceptance by consumers, of variations in food from applicable definitions and standards of identity prescribed under this chapter.

It is therefore desirable from time to time for the commissioner to issue a temporary permit authorizing such market tests in order to provide useful marketing information and to continue to encourage technological advances in dairy and food processing

Section 214-e. Temporary marketing and manufacturing permits

Any person, firm, partnership, corporation or association desiring a temporary permit to deviate from an existing dairy or food standard or regulation may file with the commissioner a written application on a form prescribed by the commissioner. The application shall include the following: (1) name and address of the applicant, (2) a full

description of the proposed variation from the standard and the basis upon which the food so varying is believed to be wholesome and in the interest of the consumers. This description shall include the names, amounts of all ingredients and a sample of the label, (3) if the resulting product is similar to one for which there is now a definition, the applicant shall indicate the nature of the deviation and why it will be of benefit to consumers, (4) the applicant shall indicate the time for which the permit is desired and how the product will be distributed, (5) the commissioner must also receive a statement of the probable amount of such food to be distributed, the areas of distribution and the address at which such food will be manufactured, (6) the commissioner may require the applicant to furnish samples of the food varying from the standard and to furnish such additional information as may be deemed necessary for action on the application, and (7) the commissioner may, in issuing a temporary permit, specify a limited marketing area for the new food product under study and limit the time of such permit.

If the commissioner concludes that the variation may be advantageous to consumers and will not result in a lowering of health standards or promote fraud and deception, a temporary permit may be issued to the applicant. The terms and conditions of such permit shall be binding on the applicant. The period that the permit shall be in effect shall be at the discretion of the commissioner but shall not exceed one year.

The commissioner may after public hearing, revoke the permit for cause, which shall include but not be limited to the following: (1) violation by the permittee of the terms and conditions of the permit, (2) the application for permit contains and untrue statement of fact, or (3) the need therefore no longer exists.

Section 214-f. Temperature requirements for manufacture, transportation and storage of certain foods

For the purpose of controlling and preventing the outbreak of deadly or dangerous human diseases such as botulism and salmonellosis, and to prevent economic and nutritional loss to consumers, the commissioner is hereby authorized to require any person, who manufactures, cans, bottles, sells, offers for sale, transports or stores any food which is considered a low-acid food or one which if improperly handled could tend to contain a potential health hazard or any food which if stored, transported or held under improper conditions of freezing or refrigeration would result in economic or nutritional loss to consumers, to manufacture, cook, pack, store or display for sale such foods in the manner prescribed by the commissioner in rules and regulations promulgated following a public hearing and after consultation with the state department of health except that no public hearing will be required if the commissioner adopts or amends such regulations to conform with appropriate rules and regulations, similar thereto, which have been adopted by the federal government. The provisions of this section and the regulations promulgated thereunder shall not apply to service food establishments under permit and inspection by the state department of health or by a local health agency which maintains a program certified and approved by the state commissioner of health.

Section 214-g. Labeling of certain frozen foods

If any person, firm, corporation, partnership, association or any other business association sells at retail or displays for sale at retail any sea food, food fish or shellfish,

any meat, meat by-product or meat food product capable of use as human food as those terms are defined in section ninety-six-g of this chapter, any poultry or poultry product capable of use as human food as those terms are defined in section ninety-six-z-21 of this chapter which has been frozen subsequent to being offered for sale or distribution to the ultimate consumer, it shall bear a label in the form to be prescribed by regulation of the commissioner which is clearly discernible to a customer that such product has been previously offered for sale in unfrozen form. No such sea food, food fish or shellfish, meat, meat by-product or meat food product, poultry or poultry product shall be sold unless in such a package or container bearing said label. The commissioner shall also have the power to prescribe by regulations the labeling of such products not sold by package or container.

(b)¹ The provisions of this subdivision shall not be applicable in cities having a population of one million or more.

¹ So in original. Subsec. (a) designation omitted from first paragraph.

Section 214-h. Unit pricing

1. Consumer information required. Each person who sells, offers or exposes for sale in a retail store a consumer commodity shall disclose to the consumer the unit price and the total price of the commodity as provided in this section.

2. Definitions. a. "Consumer commodities" shall mean the following, however packaged or contained:

(1) food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose; and

(2) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates; and

(3) detergents, soaps and other cleansing agents; and

(4) non-prescription drugs, female hygiene products and toiletries.

b. "Retail store" shall mean a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises, or which is not primarily engaged in a specialty trade which the commissioner determines, by regulation, would be inappropriate for unit pricing. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members must pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to article twenty-eight of the tax law.

c. "Unit price" of a consumer commodity shall mean the price per measure.

d. "Price per measure" shall mean:

(1) price per pound for commodities whose net quantity is expressed in units of weight, except for such commodities whose net weight is less than one ounce which shall be expressed as price per ounce and commodities in powdered form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce; provided that the same unit of measure is used for the same commodity in all sizes;

(2) price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts or gallons or a combination thereof; except for such commodities in concentrated liquid or ready to feed form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce for commodities in concentrated liquid form and price per fluid ounce for commodities in ready to feed form; provided that the same unit of measure is used for the same commodity in all sizes sold in the retail establishment;

(3) price per one hundred for commodities whose net quantity is expressed by count, except as otherwise provided by regulation;

(4) price per foot for commodities whose net quantity is stated in units of length, except for such commodities whose net quantity exceeds one hundred feet, which shall be expressed as price per one hundred feet, and the "ply" count, if any, provided that the same unit of measure is used for same commodity in all sizes;

(5) price per square foot or square yard, as appropriate, for commodities whose net quantity is expressed in units of area and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes; or

(6) such other price per measure, including metric equivalents of the customary measures, as the commissioner shall by regulation permit. The commissioner shall establish such metric equivalents whenever he determines that any commodity subject to the provisions of this section is being sold, offered or exposed for sale by metric measure.

3. Exemptions. a. The provisions of this section shall not apply to the following consumer commodities:

(1) food sold for consumption on the premises;

(2) prepackaged food containing separate and identifiable kinds of food segregated by physical division within the package; and any other foods for which the commissioner determines, by rules and regulation, that unit pricing would not be meaningful;

(3) any food which is primarily or exclusively a gourmet or specialty food, provided that the commissioner determines by regulation that unit pricing would be impractical for such food, and provided further that such food is segregated and displayed as a gourmet or specialty food;

(4) any commodity whose net quantity as offered for sale is one pound, one ounce, one pint or quart, one hundred count, one foot, one hundred feet, one square foot, one square yard or equivalent metric units established by the commissioner, provided that it has the retail price marked plainly thereon;

(5) milk, and other similar low fat products such as two percent milk, one percent milk and skim milk, cream, melloream and vegetable oil blend whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, one half liter, one liter; frozen desserts such as ice cream, light ice cream, low-fat ice cream, fat-free ice cream, sherbet, sorbet, frozen yogurt, and any other product similar in appearance, odor and taste to such products whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, and multiples of quarts and gallons; and butter, vegetable spread, oleo margarine and margarine whose net quantity is one fourth pound, one half pound, one pound or multiples of one pound, one hundred twenty-five grams, two hundred fifty grams, five hundred grams or multiples of five hundred grams, flour whose net quantity as offered for sale is in five or ten pound bags;

(6) fresh food produce.

b. The provisions of this section shall not apply to convenience stores which include small stores which typically sell motor fuel, tobacco products, fast food and beverages and do not offer sufficient quantity of consumer commodities to make unit pricing useful to consumers or to any retail store having had annual gross sales of consumer commodities in the previous calendar year of less than two and one-half million dollars, unless the store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, with five or more stores located in New York, which, as a group, had annual gross sales the previous calendar year of two and one-half million dollars or more of consumer commodities.

4. Means of disclosure. A consumer commodity sold, or offered for sale or exposed for sale, subject to this section, shall have the unit price and total price disclosed to the consumer in one of the following ways:

a. if the item is conspicuously visible to the consumer, by the attachment of a stamp, tag or label directly under the item on the shelf on which the item is displayed, or, in the case of refrigerated items not displayed on shelves, in a manner to be prescribed by regulation; or

b. if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement, or by affixing the unit price and total price on the commodity itself.

5. The commissioner may promulgate regulations to effectuate this section.

6. Nothing in this section shall be construed to conflict with or limit section one hundred ninety of this chapter.

7. Violations and penalties. a. A violation of this section shall be subject to the

applicable penalties of this chapter except for the penalties specified in section forty-one thereof.

For purposes of this section, each group of identical consumer commodities for which on any single day the total selling price or price per measure is not displayed in accordance with this section or the regulations promulgated thereunder shall be considered a violation of this section. Improper unit pricing caused by nonintentional technical errors, however, shall not constitute a violation.

b. Each group of units not unit priced or improperly unit priced shall constitute a violation. Each individual unit, however, not unit priced or improperly unit priced shall not constitute a violation unless displayed alone.

c. Each day a violation is continued shall constitute a separate violation.

d. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office or a municipal director of weights and measures.

8. Preemption. Except as provided in paragraph b of subdivision three of this section, any local law, ordinance, rule or regulation relating to labeling, displaying or other disclosure of the price per measure of any commodity must be consistent with the provisions of this section and the rules and regulations adopted hereunder.

Section 214-j. Small quantities of fruits and vegetables

Fresh fruits and vegetables prepackaged and offered for sale at retail shall be made available in small quantities upon customer request. A prominent and conspicuous sign reading "small quantities of prepackaged fresh fruits and vegetables are available upon request" shall be displayed. Such sign shall be located not more than thirty feet from the prepackaged display. The commissioner shall adopt such rules and regulations as are necessary for the proper application, administration and enforcement of these provisions.

As used in this subdivision, "small quantity" means an amount, by weight or volume, smaller than the amount offered for prepackaged sale.

Section 214-k. Sale and labeling of charcoal

Charcoal and charcoal briquettes shall be sold by weight and each container in which charcoal or charcoal briquettes is sold or delivered in quantities of one hundred pounds or less shall be plainly and conspicuously marked to show the net quantity of the contents in letters and figures commensurate with the size of the container as shall be determined and fixed by the commissioner, and shall also bear the legend "CAUTION-FOR INDOOR USE COOK ONLY IN PROPERLY VENTILATED AREAS", or a substantially similar legend as may be approved by the commissioner, in a size commensurate with the size of the container and so placed on the container as shall be determined and fixed by the commissioner. This section shall apply to the city of New York.

Section 214-l. Sale of talc coated rice prohibited

1. As used in this section, the following terms shall have the following meanings:

a. "Talc coated rice" shall mean milled rice which is coated in whole or in part, with glucose and talc.

b. "Talc" shall mean the color additive which is a finely powdered, inactive, hydrous magnesium silicate sometimes containing a small proportion of aluminum silicate.

2. No person shall sell, offer to sell, or expose for sale any rice which has been coated or treated in any manner with talc.

3. A violation of this section shall be punishable by a civil fine not to exceed one thousand dollars on the first offense and ten thousand dollars on any subsequent offense.

4. It shall be an affirmative defense to a violation of this section that the person did not know and could not reasonably have known that the rice contained talc.

Section 214-m. Labeling of certain food products

If any person, firm, corporation, partnership, association or any other business association which processes, manufactures or imports food products has placed upon or accompanying the shipping container, shipping case, pallet or invoice of such food products, any information, whether in coded form or otherwise, which specifies the expiration, "use by" date or similar date; or the lot, batch, date of manufacture or processing or other information regarding the identity of the food product; it shall be unlawful to willfully alter, mutilate, destroy, obliterate or remove such information other than in connection with the destruction of the entire shipping container, shipping case, pallet or invoice. The provisions of this section and any regulations promulgated hereunder shall not be deemed to require any manufacturer, processor or importer of food products to so label any food product prior to distribution in the state or to prevent a manufacturer, processor or importer of food products from correcting or causing to be corrected any of the information accompanying the shipping container, shipping case, pallet or invoice. The provisions of this section shall not affect any provision of federal, state or local law, ordinance, rule or regulation regarding the placing of an expiration or "use by" date on the retail container of any food product.

Section 214-n. Treatment and sale of apple cider

1. As used in this section, the following terms shall have the following meanings:

(a) "Apple cider" or words of similar import means a product made exclusively from the expressed, unfermented juice of fresh apples or parts thereof.

(b) "Treat" or "treated" means any approved action or activity undertaken to prevent, reduce to acceptable levels, eliminate or render harmless a pertinent pathogen.

(c) "Pertinent pathogens" means the most resistant microorganisms of public health significance, and shall include, but not be limited to E. Coli 0157:H7 and

cryptosporidium parvum. The commissioner is hereby authorized to include additional pathogens within this definition as he or she deems necessary and vital to the protection of public health.

(d) "Person" includes any individual, partnership, corporation or association.

(e) "Five log" means a 99.999% reduction in pertinent pathogens.

2. Any person who manufactures, processes, sells or exposes for sale apple cider shall implement an established process to treat such cider that will consistently produce, at a minimum, a five log reduction, for at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, in the pertinent pathogens.

3. This section shall not apply to the sale of apple cider for the use in the production and manufacture of hard cider, vinegar and wine.

4. Any person who knowingly violates the provisions of this section shall be subject to a civil penalty of up to one thousand dollars for the first violation and for any subsequent violation.

5. The commissioner is hereby authorized to adopt rules and regulations, in addition to those authorized in paragraph (c) of subdivision one of this section, as are necessary to carry out the provisions of this section.