



**NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS
DIVISION OF FOOD SAFETY AND INSPECTION
10B AIRLINE DRIVE
ALBANY, NY 12235**

CIRCULAR 951

Pursuant to the

LICENSING OF

FOOD PROCESSING ESTABLISHMENTS

Article 20-C of the Agriculture and Markets Law
Section 251-z-1 to 251-z-13

Revised as of November 21, 2014

ARTICLE 20-C
LICENSING OF FOOD PROCESSING ESTABLISHMENTS

Section

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Section 251-z-1. Declaration of policy and purpose

The general purposes of this article are to assure that foods processed in New York state and offered for sale for human consumption are pure and wholesome and that the food processing establishments, in which such foods are manufactured or processed, conform to proper operating and sanitary standards.

Section 251-z-2. Definitions

1. The terms "food" and "food products" shall include all articles of food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by man and shall also include all substances or ingredients to be added to food for any purpose.

2. "Person" shall mean any individual, corporation, partnership, association or other organized group of persons, or any business entity by whatever name designated and whether or not incorporated.

3. The term "food processing establishment" means any place which receives food or food products for the purpose of processing or otherwise adding to the value of the product for commercial sale. It includes, but is not limited to, bakeries, processing plants, beverage plants and food manufactories. However, the term does not include: those establishments that process and manufacture food or food products that are sold exclusively at retail for consumption on the premises; those operations which cut meat and sell such meat at retail on the premises; bottled and bulk water facilities; those food processing establishments which are covered by articles four, four-a, five-a, five-b, five-c, five-d, seventeen-b, nineteen, twenty-b, and twenty-one of this chapter; service food establishments, including vending machine commissaries, 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; establishments under federal meat, poultry or egg product inspection; or establishments engaged solely in the harvesting, storage, or distribution of one or more raw agricultural commodities which are ordinarily cleaned, prepared, treated or otherwise processed before being marketed to the consuming public.

4. The term "processing" means processing foods in any manner, such as by manufacturing, canning, preserving, freezing, drying, dehydrating, juicing, pickling, baking, brining, bottling, packing, repacking, pressing, waxing, heating or cooking, or otherwise treating food in such a way as to create a risk that it may become adulterated if improperly handled.

5. The term "chain store" means a food processing establishment that is part of a network of subsidiaries, affiliates, or other member stores under direct or indirect control of a corporation, partnership, limited liability company, or other organized entity.

Section 251-z-3. Licenses; fees

No person shall maintain or operate a food processing establishment unless licensed biennially by the commissioner. Application for a license to operate a food processing establishment shall be made, upon a form prescribed by the commissioner. A renewal application shall be submitted to the commissioner at least thirty days prior to the commencement of the next license period.

The applicant shall furnish evidence of his or her good character, experience and competency, that the establishment has adequate facilities and equipment for the business to be conducted, that the establishment is such that the cleanliness of the premises can be maintained, that the product produced therein will not become adulterated and, if the applicant is a retail food store, that the applicant has an individual in a position of management or control who has completed an approved food safety education program pursuant to section two hundred fifty-one-z-twelve of this article. The commissioner, if so satisfied, shall issue to the applicant, upon payment of the license fee of four hundred dollars, a license to operate the food processing establishment described in the application. The commissioner shall prorate the license fee paid by an applicant, if the applicant's food processing establishment has as its only full time employees the owner or the parent, spouse, or child of the owner, and/or not more than two full time employees, and if that applicant vacates a food processing establishment six months or more prior to the expiration of the license period, and, within one year of vacating such establishment, applies for a new license associated with another food processing establishment, provided the applicant's license has not been suspended or revoked pursuant to section two hundred fifty-one-z-five of this article. The commissioner may establish rules and regulations governing the prorating of such fees and/or the application of such fees from a prior license to a new one. Notwithstanding the preceding, an applicant that is a chain store shall pay a license fee of one hundred dollars if its license expires six months or less from the date its license period began, two hundred dollars if its license expires between six months and one year from the date its license period began, three hundred dollars if its license expires between one year and eighteen months from the date its license period began, or four hundred dollars if its license expires between eighteen months and two years from the date its license period began. However, the license fee shall be nine hundred dollars for a food processing establishment determined by the commissioner, pursuant to duly promulgated regulations, to require more intensive regulatory oversight due to the volume of the products produced, the potentially hazardous nature of the product produced or the multiple number of processing operations conducted in the establishment. The license application for retail food stores shall be accompanied by documentation in a form approved by the commissioner which demonstrates that the food safety education program requirement has been met. The license shall take effect on the date of issuance and continue for two years from such date. Notwithstanding the preceding, a license issued to an applicant that is a chain store shall expire on the date set forth on the application form prescribed by the commissioner for such applicant.

Section 251-z-4. Exemptions

In addition to the exemptions specified in subdivision three of section two hundred fifty-one-z-two, the commissioner may, if he determines that the protection of the consumers of the state as a whole will not be impaired by such action, provide by regulation for exemption from licensing of small food processing establishments when he finds that such exemptions would avoid unnecessary regulation and assist in the administration of this article without impairing its purposes. Regulations defining such exemptions may classify exempted establishments with respect to the volume and types of food handled, the types of processing involved, or with respect to any other factor or combination thereof which bear a reasonable relation to the purposes of this article. Such exemptions may be conditioned upon requirements relating to sanitation, record keeping and reporting as the commissioner may require.

Section 251-z-5. Granting, suspending or revoking licenses

The commissioner may decline to grant a new license, may decline to renew a license, may suspend or revoke a license already granted after due notice and opportunity for hearing whenever he finds that:

- (1) Any statement contained in an application for license is or was false or misleading;
- (2) The establishment does not have facilities or equipment sufficient to maintain adequate sanitation for the activities conducted;
- (3) The establishment is not maintained in a clean and sanitary condition or is not operated in a sanitary or proper manner;
- (4) The maintenance and operation of the establishment is such that the product produced therein is or may be adulterated;
- (5) The establishment has failed or refused to produce any records or provide any information demanded by the commissioner reasonably related to the administration and enforcement of this article;
- (6) The applicant or licensee, or an officer, director, partner, holder of ten per cent of the voting stock, or any other person exercising any position of management or control has failed to comply with any of the provisions of this chapter or rules and regulations promulgated pursuant thereto; or
- (7) Any person including the applicant or licensee, or an officer, director, partner or any stockholder, exercising any position of management or control has been convicted of a felony in any court of the United States or any state or territory.
- (8) A retail food store licensed under this article fails to comply with the education requirements set forth in section two hundred fifty-one-z-twelve of this article.

Section 251-z-6. Review

The action of the commissioner in refusing to grant or reissue a license, or in suspending or

revoking a license, shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules. The decision of the commissioner shall be final unless within thirty days from the date of service thereof on the applicant or licensee, a proceeding is instituted to review such action.

Section 251-z-7. Records to be kept by licensee

Every operator of a food processing establishment shall keep, in such form as the commissioner shall approve, such records as may be required by the commissioner pursuant to rules and regulations promulgated pursuant to this article.

Section 251-z-8. Power of commissioner to investigate

The commissioner and his duly authorized representatives in the performance of his licensing and inspection duties under this article shall have access to and may enter at all reasonable hours all places where food or food products are being manufactured, packaged, processed or stored, or where food or food products are being bought, sold or handled.

Section 251-z-9. Rules and regulations

The commissioner is hereby authorized, after public hearing, to adopt, amend, promulgate and issue rules and regulations, including, but not limited to regulations prescribing good manufacturing practices and requiring records relating to processing data and food distribution patterns, food safety education programs and requirements, and such other regulations as he or she may deem necessary to supplement and give full force and effect to the provisions of this article. A proposal to adopt applicable federal regulations pursuant to the federal food, drug and cosmetic act, relating to commercially processed foods for human consumption may be adopted without public hearing.

Section 251-z-10. Penalties

No operator of a food processing establishment shall fail to conform to any requirement of or violate any provision of this article or of the rules and regulations promulgated thereunder. Each day's operation of a food processing establishment without a license shall constitute a separate violation of this article, punishable by the penalties described in article three of this chapter, in addition to the remedies provided in this article.

Section 251-z-11. Remedies

The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provision of this article or of any rule or regulation applicable thereto or promulgated thereunder. In addition to any other remedy prescribed in article three of this chapter, or otherwise, he may apply for relief by injunction without alleging or proving that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county, as provided by the civil practice law and rules, or to the supreme court in the third judicial district.

Section 251-z-12. Food Safety Education

1. Every retail food store licensed under this article shall have an individual in a position of management or control assigned to it who has been issued a certificate of completion from an approved food safety education program. Individuals who have completed a food safety education program pursuant to this section shall only be assigned to one retail store for the purpose of compliance with this section. For purposes of this section, a retail food store shall be defined as an establishment or section of an establishment, licensed pursuant to this article, where food and food products are offered to the consumer and are intended for off-premises consumption.

2. This section shall not apply to a food store that:

a. has as its only full-time employees the owner thereof, or the parent, spouse or child of the owner, or in addition thereto not more than two full-time employees; or

b. had annual gross sales in the previous calendar year of less than three million dollars, excluding petroleum products, unless the food store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which, as a group, had annual gross sales the previous calendar year of three million dollars or more.

Notwithstanding the provisions of paragraphs a and b of this subdivision, if at any time the commissioner is not satisfied that an applicant is competent to offer for sale potentially hazardous products, then the commissioner may require such applicant to comply with the requirements of this section.

3. Such program shall consist of not less than eight hours of training received within two years prior to the commencement of the license period or, if the program required the passing of a test, within five years prior to the commencement of the license period. The program shall cover one or more of the following topics: New York state food safety statutes and regulations; food microbiology, including a review of pathogenic and spoilage microorganisms; food-borne illnesses, including causative agents, symptoms, and prevention; HACCP (Hazardous Analysis Critical Control Point); cleaning and sanitation; personal hygiene; temperature control, including heating, cooling, and storage standards; and food security, including identifying risks, implementing preventive measures and pest control. Certifications of completion of an approved food safety education program that does not require the passing of a test shall be valid for a period of two years from the date of issuance. Certifications of completion of an approved, nationally accredited food safety education program that requires the passing of a test shall be valid for a period of five years from the date of issuance. Re-certification of an individual previously certified shall only be granted upon his or her completion of the program requirements in accordance with this subdivision.

4. Food safety education programs established for purposes of this section shall be approved by the commissioner and may only be offered by a federal or state agency, an accredited college or university, a chain store having ten or more retail units, a grocery wholesaler supplying twenty or more food stores, a franchisor with ten or more franchisees, a cooperative with twenty or more members or a trade association with fifty or more members representing the interests of retail food stores. Entities that offer approved food safety education programs shall issue a certificate of completion to every individual who completes an approved program. Such certificate shall consist of a form approved by the commissioner and shall be posted in a manner prescribed by the commissioner in the individual's place of business. A copy of every certificate of completion shall be filed with and maintained by the commissioner. A certificate of completion shall not be invalidated by a change of employment to another licensee.

5. Any entity approved pursuant to subdivision four of this section to offer food safety education programs pursuant to this section shall submit, for each application and renewal, a non-refundable fee of two hundred dollars, in a form approved by the commissioner, together with a copy of the proposed curriculum, or a syllabus of a nationally accredited food safety program upon request by the commissioner, and such other documentation as required by the commissioner. The commissioner shall issue a certificate of approval to those entities authorized to offer food safety education programs. Each certificate of approval shall be good for a period of two years and may be revoked for failure to comply with this section and any department rule or regulation promulgated to implement this section.

6. The commissioner shall allow a licensee a period of up to thirty days to come into compliance with this section where the person assigned to the retail store who has been certified as having completed the approved food safety education program separates from his or her place of employment. The commissioner may, upon determination that a retail store has exercised due diligence in complying with this subdivision, authorize an additional amount of time for compliance with the requirements of this section in the event such store shall not immediately assign an individual certified pursuant to this section. Such additional amount of time shall not exceed thirty days.

Section 251-z-13. Severability

If any provision of this article or the application therefor to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.