



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

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**CIRCULAR 938**

**Rules and Regulations Relating to**

**FOOD PROCESSING ESTABLISHMENTS**

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Pursuant to Article 20-C of the  
Agriculture and Markets Law  
Part 276 of Title 1 of the Official Compilation of  
Codes, Rules and Regulations of the State of New York

Revised as of June 7, 2017

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**PART 276**  
**FOOD PROCESSING ESTABLISHMENTS**

**Section**

**276.1 Good manufacturing practices**

**276.2 Records**

**276.3 Codes**

**276.4 Exemptions**

**Section 276.1 Good manufacturing practices.**

All food processing establishments subject to regulation under article 20-C of the Agriculture and Markets Law shall be subject to the current good manufacturing practices of Part 261 of this Title unless exempted by said article 20-C or by this Part.

**Section 276.2 Records.**

Establishments required to be licensed pursuant to article 20-C of the Agriculture and Markets Law unless exempted by this Part shall conform to the following recordkeeping requirements:

- (a) Food processing and production information shall be entered on forms, approved by the commissioner, which shall include the product processed, the code number, the size of the container, the approximate number of containers per coding interval and other appropriate processing data required by the commissioner.
- (b) Every operator of a processing plant shall keep a record of every transaction of the sale and distribution of potentially hazardous foods. Such records, in addition to the names and addresses of the persons or firms involved in the transaction, shall contain the code numbers of each lot involved.
- (c) All records, formulas and related data shall be legibly written in English and kept for the commissioner's confidential review for two years, at the processing facilities, and shall be available for examination at all reasonable hours by designated employees of the department.

**Section 276.3 Codes.**

- (a) Each container of potentially hazardous food, as defined hereinafter, shall be marked with an identifying code which shall be permanently visible to the naked eye.
  - (1) Where the container does not permit the code to be embossed or inked, the label or other similar marking device may be legibly perforated or otherwise marked, provided that such label is securely affixed to the product container in a manner satisfactory to the commissioner.
  - (2) The required identification shall identify in code the establishment where packed and the period during which packed.

(3) The packing period shall be changed with sufficient frequency to enable identification of lots during their sale and distribution.

(4) Packing period codes may be changed on the basis of one of the following: intervals of every four to five hours; personnel shift changes; or batches, provided the containers comprising such batch do not extend over a period of more than one personnel shift.

(b) *Definitions.* (1) *Potentially hazardous food* shall mean any perishable food which consists in whole or in part of milk or milk products, eggs, poultry, fish, shellfish or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(2) *Perishable food* shall mean any food of such type or in such condition as may spoil.

(3) *Home processed food* within the context of this Part shall mean any food processed in a private home or residence using only the ordinary kitchen facilities of that home or residence which are also used to prepare food for the owner thereof, his family, nonpaying guests and household and farm employees who reside therein, but shall exclude potentially hazardous foods as defined in this Part or thermally processed low-acid foods packaged in hermetically sealed containers as covered by Part 277 of this Chapter and acidified foods packed in closed containers, including but not limited to pickles and relishes prepared from low-acid fruits, vegetables, poultry, meat, meat products, fish or seafood.

#### **Section 276.4 Exemptions.**

(a) *Maple syrup and honey.* Processors of maple syrup or honey who do not purchase maple syrup or honey from others for repackaging, and who do not combine maple syrup or honey with any other ingredients capable of supporting the growth of infectious or toxigenic organisms, shall be exempt from the licensing requirements of Article 20-C of the Agriculture and Markets Law, provided that:

(1) such establishments are maintained in a sanitary condition and manner, and the following requirements shall be complied with:

(1) Every practicable precaution shall be taken to exclude birds, insects (except those involved in the production of the product), rodents and other vermin and animals from the premises of the operation.

(2) The use of insecticides, rodenticides and other pest control items in such establishments shall be permitted only under such precautions and restrictions as will prevent the contamination of the product.

(3) Rooms, compartments, places, equipment and utensils used for preparing, storing or otherwise handling the product, and all other parts of the operating premises, shall be kept in a clean and sanitary condition.

(4) There shall be no handling or storing of materials which may create insanitary conditions in any place or places where the product is prepared, stored or otherwise handled.

(5) All equipment and utensils used in processing or handling of the product shall be maintained in good repair to assure sanitary conditions in the operation.

(6) All finished product containers must be clean, sanitary and properly labeled in

compliance with the requirements of Part 259 of this Title.

(b) *Home processed foods*. Processors of home-processed foods who sell or offer for sale such foods shall be exempt from the licensing requirements of article 20-C, provided that the following conditions are met:

(1) All finished product containers are clean and sanitary and are labeled to

show: (i) the name and address of the home processor;

(ii) the common or usual name of the food;

(iii) if the food is fabricated from two or more ingredients, the common or usual name of each ingredient in their order of predominance; except that spices, flavorings and colorings may be designated as spices, flavorings and colorings without naming each, and spices and flavorings may be designated together as flavorings; and

(iv) the net weight, standard measure or numerical count.

(2) All home-processed foods produced under this exemption are neither adulterated nor misbranded.

(3) Glass containers for jams, jellies, marmalades and similar products are provided with suitable rigid metal covers.

(c) Any establishment licensed as a farm winery, pursuant to section 76-a of the Alcoholic Beverage Control Law, or as a special farm winery, pursuant to section 76-d of said Law; a farm brewery, pursuant to section 51-a of said law; or a farm distillery, pursuant to section 61 of said law, shall be exempt from the licensing requirements of article 20-C of the Agriculture and Markets Law, provided that:

(1) such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and

(2) no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

(d) Slicing and packaging of cheese at farmers' markets. (1) Definitions. As used this subdivision.

(i) *Person* means a natural person, partnership, corporation, association, limited liability company or other legal entity that slices cheese which it has manufactured in its own milk plant.

(ii) farmers' market means a premises as defined in Agriculture and Markets Law section 260(1). An open-air farmers' market is a farmer' market that does not operate in or under a permanent structure.

(2) Any person who slices and packages cheese for sale to consumers at a farmers' market shall be exempt from the licensing requirements of article 20-C of the Agriculture and Markets Law, provided that:

(i) The premises where the cheese is sliced and packaged is maintained in a sanitary condition and in compliance with the provisions of Part 271, of this Title, except that sections 271-6.1, 271-6.6, 271-6.12 through 271-6.17, 271-6.24, 271-7.1 through 271-7.14 and 271-7.16 through 271-7.29 shall not apply to such premises located in an open-air farmers' market; and

(ii) No other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required is being conducted at the

- premises; and
- (iii) The standardized name of each cheese offered for sale if the cheese meets a standard of identity, or the common or usual name of each cheese offered for sale if the cheese does not meet a standard of identity, is:
  - (a) Affixed or in close proximity to the slice of cheese to be sold to consumers; or
  - (b) Affixed or in close proximity to the “wheel” of cheese from which a slice thereof is obtained, and the consumer is accurately and adequately informed as to the identity of the “wheel” of cheese from which such slice was obtained;
- (iv) The price per pound of each cheese offered for sale is prominently displayed so as to be readily observable by consumers, and the price and weight of each slice of cheese sold or offered for sale to consumers is prominently displayed or is clearly disclosed; and
- (v) The cheese and each slice thereof is transported, maintained, held, handled, processed, and packaged under sanitary conditions.

(e) Processing of hops.

(1) Definitions. As used in this subdivision:

- (i) *Hops* means the seed cones of the hops plant, *humulus lupulus*.
- (ii) *Person* means a natural person, partnership, corporation, association, limited liability company or other legal entity.

(iii) *Processing* means that term as defined in Agriculture and Markets Law section 251-z-2(4) except *processing*, as used in this subdivision, shall not mean non-mechanical drying.

(3) Any person who processes hops in a volume that does not exceed 100,000 lbs. annually shall be exempt from the license fee requirement of Agriculture and Markets Law section 251-z-3, provided that:

- (i) Such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and
- (ii) No other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

(f) *Cideries*. (1) Definitions. As used in this subdivision:

(i) *Cidery* meant a food processing establishment that manufactures hard cider.

(ii) *Hard Cider* means the partially or fully fermented juice of fresh, whole apples or other pome fruits, containing more than three and two-tenths per centum but not more than eight and one-half per centum alcohol by volume:

- (a) To which nothing has been added to increase the alcoholic content produced by natural fermentation; and
- (b) With the usual cellar treatments and necessary additions to correct defects due to climate, saccharine levels and seasonal conditions. Nothing contained in this subparagraph shall be deemed to preclude the use of such methods or materials as may be necessary to encourage a normal alcoholic fermentation and to make a product that is free of microbiological activity at the time of sale. Hard cider may be sweetened or flavored after fermentation with fruit juice, fruit juice concentrate, sugar, maple syrup, honey, spices or other agricultural products, separately or in combination. Hard cider may contain retained or added carbon dioxide.

(iii) *Person* means a natural person, partnership, corporation, association, limited liability company or other legal entity.

(2) Any person who maintains or operates a cidery shall be exempt from the licensing requirements of article 20-C of the Agriculture and Markets Law, provided that:

- (i) such establishment is maintained in a sanitary condition and follows the current good

manufacturing practices set forth in Part 261 of this Title; and

(ii) no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

(g) Exemptions from licensing requirements of article 20-C of the Agriculture and Markets Law under this section are conditioned on continued compliance with the requirements of this section.

(h) The granting of an exemption pursuant to this section will not exempt an operation from any inspections the commissioner may deem necessary to assure compliance with this section.