

FOOD SAFETY

State and Federal Standards and Regulations

New York

1999

A Project of the

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

through the

National Center for Agricultural Law Research and Information

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

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NEW YORK

New York's Food, Drug, and Cosmetic Act mimics the Federal Food, Drug and Cosmetic Act very closely. The exceptions and deviations will be specially noted.

Definitions

New York has defined "food" and "food product" as articles of food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by men or animals, including chewing gum and all substances or ingredients to be added to food. The term "labeling" means all labels and other written, printed, or graphic matter that is upon an article or container or accompanying such article.¹⁸⁶⁰

"Food additive" means any substance that directly becomes a component or otherwise affects 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), except the 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, the Federal Poultry Products Inspection Act, or the Federal Meat Inspection

¹⁸⁶⁰ N.Y. AGRIC. & MKTS. LAW § 198 (McKinney 1991 & Supp. 1999).

Act.

A “pesticide chemical” is a substance, alone or combined, which is an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, and is used in the production, storage, or transportation of raw agricultural commodities.

“Raw agricultural commodity” means any food in its raw or natural state, including unwashed, colored or treated fruit.¹⁸⁶¹

Application of This Article

The provisions of this article apply to the manufacture, production, processing, packing, transportation, exposure, offer, possession, and holding of any food article for sale, dispensing, giving, supplying or applying. However, the adulteration provisions do not apply to animal food, so long as human safety is ensured through measures taken to label such food as unfit for human consumption.¹⁸⁶²

Prohibition as to Adulterated or Misbranded Food

No one, within the state of New York, can manufacture, compound, brew, distill, produce, process, pack, transport, possess, sell, offer, or expose for sale, or serve any article of food which is adulterated or misbranded. Also prohibited is the selling or using, in any way, new or unsafe color or food additives. All information given as evidence to the Commissioner in support of a report under his section shall be confidential. If there is an actual controversy, a report will be made.¹⁸⁶³

¹⁸⁶¹ N.Y. AGRIC. & MKTS. LAW § 198 (McKinney 1991 & Supp. 1999).

¹⁸⁶² § 199.

¹⁸⁶³ § 199-a.

Misdemeanor

Any person who intends that an article be used for food, and offers or exposes for sale or sells with knowledge that the article is tainted, spoiled or otherwise unfit is guilty of a misdemeanor.¹⁸⁶⁴

Sulfites

It is unlawful for any retail or wholesale distributor to add any sulfite to food.¹⁸⁶⁵

Irradiated Foods

Under most circumstances the sale of irradiated food is prohibited. “Irradiated food” means any food that is treated with ionizing radiation from radioactive sources, such as X-rays. It also includes a food where only a portion has been irradiated. However, irradiated spices do not make a food irradiated. Furthermore, the only approved sale or distribution is to a hospital for part of a medical treatment. Any other type of sale is subject to a fine.¹⁸⁶⁶

When Food is Deemed Adulterated

The New York statute on adulterated food is verbatim to the Federal Act with a few exceptions. Part 12 is a slight deviation from the Federal Act in regard to confectionaries. The New York Act is also more specific as it relates to alcohol, harmless glaze, harmless natural wax, harmless natural gum and pectin percentages.

Otherwise, New York's Act states that a food is deemed to be adulterated when:

- (1) it bears or contains any poisonous or deleterious substance which may render it

¹⁸⁶⁴ § 199-c.

¹⁸⁶⁵ § 199-d.

¹⁸⁶⁶ § 199-e.

injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated if the quantity of such substance does not ordinarily render it injurious to health;

- (2) it bears or contains any added poisonous or deleterious substance other than one which is 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 202, or if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the Federal Food, Drug, and Cosmetic Act, as amended, or if is, or it bears or contains, any food additive which is unsafe within the meaning of section 409 of the Federal Act, 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 480 of such federal act, and such raw agricultural commodity has been subjected to processing, the residue of such pesticide chemical remaining in or on such processed food shall not be deemed unsafe if such residue 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) 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) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or it may have been

- rendered diseased, unwholesome, or injurious to health;
- (5) it is a product of a diseased animal or an animal that died from other than slaughter, or from an animal that fed on uncooked offal from a slaughterhouse;
 - (6) the container is composed, entirely or partially of any poisonous or deleterious substance which may render the contents injurious to health;
 - (7) it has been intentionally subjected to radiation, unless the radiation was in conformity with a regulation or exemption;
 - (8) any valuable part has been partially or completely omitted or extracted;
 - (9) any part has been partially or completely substituted;
 - (10) damage or inferiority has been concealed in any way;
 - (11) anything has been added to increase the bulk or weight, reduce or strengthen its quality, or make it appear falsely to be of greater value than it actually is;
 - (12) it bears or contains an unsafe color additive; or
 - (13) it falls below standards of purity, quality, or strength, as purported.¹⁸⁶⁷

When Food is Deemed Misbranded

New York's Act states that a food is misbranded when:

- (1) its labeling is false or misleading;
- (2) it is offered for sale under the name of another article;
- (3) it is an imitation of another food, unless the label is obvious enough and the word “imitation” appears directly after the name of the food imitated;
- (4) the container is misleadingly made, formed or filled;

¹⁸⁶⁷ § 200.

- (5) in a package form, unless the label contains the manufacturer's, packer's, or distributor's name and place of business;
- (6) the label is not conspicuous and easily understood by the ordinary user of the product;
- (7) the food claims to be a defined and standardized food, unless
 - (a) it conforms to the definition and standard,
 - (b) its label contains the name of the defined and standardized food, and if required, the common names of optional ingredients that are in the food;
- (8) it purports to be or is represented as:
 - (a) a food defined and standardized under section 214-b but falls below that standard, unless the label indicates that the food falls below the standard;
or
 - (b) a food that has no definition or standard, but falls below the purported standard of quality, purity, or strength;
- (9) the food is not subject to part (7) and its label does not
 - (a) clearly state the common name of the food; or
 - (b) it is made from two or more ingredients, the common name of all ingredients is not stated, with the exception of spices, flavorings, and colorings that do not otherwise need to be named, however, subsection (b) does not apply if such naming is impractical or deceptive, or results in unfair competition;
- (10) the label does not state vitamin, mineral, and other dietary properties if it claims to

be a dietary use product, so that consumers may be informed as to real value of the product;

- (11) the labeling does not state the presence of artificial flavoring, artificial coloring, or chemical preservatives;
- (12) it is a raw agricultural commodity produced from the soil that bears or contains a pesticide chemical applied after harvest, unless the container's label states that the chemical has been applied, and declares the name and function of the chemical; however, no declaration is necessary if it is customary for the product to be displayed at the retail level out of the shipping container; or
- (13) the color additive labeling requirement does not comply with the federal act.¹⁸⁶⁸

Kosher Meat and Meat Preparations, Kosher Articles of Food and Food Products

This section is a very specific labeling regulation that ensures no false or deceptive labeling as it relates to kosher, Jewish, Hebrew or Passover labeling. For example, a food cannot be labeled as "Jewish" unless it is kosher. If it is not kosher and is labeled "Jewish," the label must be in the same size and type of lettering that bears the words "Jewish" and "Not-Kosher."¹⁸⁶⁹ Specific requirements also exist for kosher meat and food sold in hotels and restaurants.¹⁸⁷⁰ Furthermore, prohibitions exist for the fraudulent identification of food and food products with respect to the kosher labeling laws of New York.¹⁸⁷¹ Moreover, provisions outline

¹⁸⁶⁸ § 201.

¹⁸⁶⁹ § 201-a.

¹⁸⁷⁰ § 201-b.

¹⁸⁷¹ § 201-c.

the difference between kosher and kosher for Passover labeling.¹⁸⁷²

Provisions also are outlined for labeling kosher meat and poultry;¹⁸⁷³ for the listing and filing of persons or entities certified as kosher and the labeling of the word “parve.”¹⁸⁷⁴

Violations of the above constitute a misdemeanor; however, in the case of fraudulent labeling of a specified violation of product, the violation constitutes a felony. Monetary penalties are imposed.¹⁸⁷⁵

Unavoidable Added Poisonous or Deleterious Substances

Any poisonous or deleterious substance added to any food will be deemed unsafe, unless it is unavoidable in good manufacturing practice. The Commissioner has the authority to regulate tolerances for such additions.¹⁸⁷⁶

Seizure and Quarantine

When an authorized agent of the Commissioner either finds, or has probable cause to believe that a food is adulterated or misbranded, the agent may tag or mark the item, and give notice that the item is or is under suspicion of being adulterated or misbranded. They can detain or quarantine the item and warn all persons not to dispose of the article by sale or otherwise, until given permission to do so. No person shall dispose or sell the item once notified, without permission.

¹⁸⁷² § 201-e.

¹⁸⁷³ § 201-f.

¹⁸⁷⁴ § 201-g, -h, -i.

¹⁸⁷⁵ § 201-d.

¹⁸⁷⁶ § 202.

After seizure, the Commissioner shall give the owner or custodian of the questionable food ten days notice to show cause why such food should not be destroyed. If the article is deemed unfit or unsafe, then the article will be destroyed at the expense of the claimant, under the supervision of the agent. All storage, and other costs, will be assessed against the claimant.¹⁸⁷⁷

Commissioner's Power

The Commissioner has the authority to refuse to approve any new food additive or color additive or combination thereof.¹⁸⁷⁸ The Commissioner has the authority to regulate samples of food which need to be taken in order to enforce this act. Also, the Commissioner is authorized to establish standards for foods and classes of foods, including quality, identity, and ingredients.¹⁸⁷⁹ Furthermore, authority is given the Commissioner to allow temporary permits to test new food markets.¹⁸⁸⁰

Other Provisions

The following listing outlines New York's code provisions for specific food items. The code sections will be listed and will be followed by a description of the specified food. Most of these regulations deal with the proper definition and labeling of the item or items the foods purports to be.

§ 203: Prohibition of imitation maple sugar and syrup as maple syrup.

¹⁸⁷⁷ § 202-b.

¹⁸⁷⁸ § 202-c.

¹⁸⁷⁹ § 214-b.

¹⁸⁸⁰ § 214-d.

- § 204: Branding and labeling of maple sugar and syrup mixtures.
- § 204-a: Olive oil mixtures labeling.
- § 204-b: Foods containing fats or oils and the labeling of the origin of such fat or oil.
- § 204-c: Prepared horseradish definition.
- § 204-d: Adulteration of natural fruit juices.
- § 204-e: Standards for baked beans.
- § 205: Definition of honey.
- § 206: Prohibition of imitation or semblance of honey as honey.
- § 207: Definition of vinegars and adulterated vinegars.
- § 208: Prohibition of the manufacture and sale of misbranded vinegar.
- § 209: Branding of packages containing vinegar as such.
- § 210-a: Pork processing: pork must be processed if customarily eaten without cooking.
- § 211: Branding canned goods.
- § 212: Amount of free liquor allowed in oysters; branding oyster kegs and cans.
- § 213: Repacking farm produce and fruit.
- § 214-e: Procedure for obtaining and authorizing temporary food marketing and manufacturing permits.
- § 214-f: Temperature requirements for manufacture, transportation, and storage of certain foods.
- § 214-g: Labeling of certain frozen foods.
- § 215-a: Standards for enriched foods.
- § 215-b: Procedure and ramifications for the sale of unenriched products.

§ 216 to 222: Licensing of food salvagers provisions.

§ 230 to 243: Refrigerated warehouses and locker plants provisions.

§ 244-250-i: Standards for the sale of farm products. These include food items, however, this section is dedicated to sale practices rather than any food safety issues.

§ 251-z-1 to 251-z-12: Licensing of food processing establishments. This section discusses licensing and exemptions.

§ 252 to 258-r: Milk control section. Again, this section does not address food safety issues but is tailored to dairy sales and orders, licensing, price fixing and the like. The sections that follow are the dairy promotion sections and the powdered milk sections.¹⁸⁸¹

¹⁸⁸¹ §§ 258-aa, 258-bb to 258-ii.