CHAPTER 48

AN ACT in relation to agriculture and markets, constituting chapter sixty-nine of the consolidated laws.

Became a law February 27, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 69 OF THE CONSOLIDATED LAWS

AGRICULTURE AND MARKETS LAW

Article	1.	Short title; definitions; matters of public interest (§§ 1-3).
	2.	Department of agriculture and markets; jurisdiction; general powers and duties (§§ 4-28).
	2-A.	Division of the New York State Fair (§§ 31--31-c).
	2-C.	Community gardens (§§ 31-g--31-i).
	3.	Investigation; practice and procedure; violations; penalties (§§ 32--45-c).
	4.	Dairy products (§§ 46-71).
	4-A.	Frozen desserts (§§ 71-a--71-k).
	4-B.	Milk sanitation (§§ 71-l--71-o).
	4-C.	Foreign dairy products (§§ 71-u--71-x).
	4-D.	Liability for canned, perishable food or farm products distributed free of charge (§§ 71-y--71-z).
	5.	Diseases of domestic animals; calves and veal; pure bred stock; certificates of registry (§§ 72-96).
	5-A.	Licensing of slaughterhouses (§§ 96-a--96-f).
	5-B.	Sale of meat (§§ 96-g--96-w).
	5-C.	Licensing of rendering plants (§§ 96-x--96-z-12).
	5-D.	Sale of poultry and poultry products (§§ 96-z-21--96-z-36).
	6-A.	Indemnification for rabies (§§ 105-c--105-j).
	7.	Licensing, identification and control of dogs (§§ 106-125).
	7-A.	Mink and ranch fox farming (§§ 127-a--127-b).
	8.	Manufacture and distribution of commercial feed (§§ 128--135-g).
	9.	Inspection and sale of seeds (§§ 136--142-b).

9-A. Sale of agricultural liming materials (§§ 142-aa--142-hh).

10. Sale and analysis of commercial fertilizer (§§ 143--146-f).

10-A. Prevention of fraud in sale of soil and plant inoculants (§§ 147-a--147-i).

11. Integrated pest management program (§§ 148-149).

11-A. Agricultural environmental management (§§ 150--151-j).

11-B. Soil health and climate resiliency (§§ 151-l--151-o).

12. Adulteration and sale of turpentine and linseed oil (§§ 152-156).

12-A. Grading of farm products (§§ 156-c--156-i).

13. (Enacted without Article heading) (§§ 157-160).

13-A. (Enacted without Article heading) (§§ 160-a--160-e).

13-B. (Enacted without Article heading) (§§ 160-h--160-k).

13-C. Lettuce (§§ 160-p--160-t).

13-D. Manufacture, distribution and sale of maple syrup and sugar (§ 160-u).

13-E. Prohibition of dumping certain agricultural products (§ 160-v).

14. Prevention and control of disease in trees and plants; insect pests; sale of fruit-bearing trees (§§ 161--169-c).

14-A. Sale and distribution of lye and other caustic substances (§§ 170--172-e).

15. Bee diseases (§§ 173--175-b).

15-A. Sales of baby chicks (§§ 175-m--175-r).

16. Weights and measures (§§ 176--197-b).

17. Adulteration, packing, and branding of food and food products (§§ 198--214-o).

17-A. Enrichment of certain foods (§§ 215--215-c).

17-B. Licensing of food salvagers (§§ 216-222).

18. Wood products development (§ 225).

18-A. Natural fiber textile development (§ 226).

19. Refrigerated warehouses and locker plants (§§ 230-243).

20. Licensing of farm products dealers (§§ 244--250-k)
20-C. Licensing of food processing establishments (§§ 251-z-1--25l-z-13).
21. Milk control (§§ 252--258-r).
21-AA. Dairy promotion act (§ 258-aa).
21-B. Dry milk powder control (§§ 258-bb--258-ii).
21-C. Northeast Interstate Dairy Compact (§§ 258-kk--258-nn).
22. Farmers' markets (§§ 259-263).
23. Direct marketing (§§ 281--284-a).
24. Promotion of agriculture and domestic arts; agricultural societies (§§ 286-290).
25. Marketing of agricultural products (§§ 291-294).
25-A. Food and agricultural industry development (§§ 296-297)
25-AA. Agricultural districts (§§ 300-310).
25-AAA. Agricultural and farmland protection programs (§§ 321-326).
25-AAAA. Farmland Viability Program (§§ 327-330).
25-B. Abandoned animals (§§ 331-332).
25-C. Farm employer overtime credit program (§§ 333-335).
26. Animals (§§ 350-386).
26-A. Care of animals by pet dealers (§§ 400-407).
26-B. Emergency response services for animals (§§ 410-411).
26-C. Regulation of animal shelters (§§ 420-434).
27. Nourish New York (§§ 450-452).
28. Special powers and duties of the department with respect to retail food stores, food service establishments and food warehouses (§§ 500-a--500-i).
29. Growth of hemp (§§ 505-521).
30. Saving clauses; laws repealed; when to take effect (§§ 550-555).

ARTICLE 1.

Short Title; Definitions; Matters of Public Interest.

Section 1. Short title.
2. Definitions.
3. Declaration of policy and purposes.

§ 1. Short title. This chapter shall be known as the agriculture and markets law.

§ 2. Definitions. When used in this chapter, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Department" means the state department of agriculture and markets;

2. "Commissioner" means the commissioner of agriculture and markets.

3. 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 or animals, and shall also include all substances or ingredients to be added to food for any purpose;

4. The production of foods means the producing of food upon the farm or elsewhere by the tillage of the soil, the commercial raising, shearing, feeding and management of animals or other agricultural, horticultural, ranching or dairying processes and shall also include the manufacture of foods.

5. "Farm product" means any agricultural, dairy or horticultural product, or any product designed for food manufactured or prepared principally from an agricultural, dairy or horticultural product and the commercial raising, shearing, feeding and management of animals on a ranch.

§ 3. Declaration of policy and purposes. The agricultural industry is

basic to the life of our state. It vitally concerns and affects the welfare, health, economic well-being and productive and industrial capabilities of all our people. It is the policy and duty of the state to promote, foster, and encourage the agricultural industry, with proper standards of living for those engaged therein; to design and establish long-range programs for its stabilization and profitable operation; to increase through education, research, regulation, and scientific means, the quantity, quality, and efficiency of its production; to improve its marketing system; to encourage adequate and skilled assistance for agricultural enterprises; to maintain at fair prices uncontrolled by speculation the instrumentalities and products of agriculture; to remove unnecessary or unfair costs and obstacles in the transportation, storage, processing, distribution, marketing, and sale of agricultural products; to prevent frauds in the traffic therein; to promote an expanded demand for the state's agricultural products and the intelligent uses thereof by consumers as pure and wholesome food; to protect the public health and to eliminate the evils of under-nourishment; to encourage the selection and consumption of food according to sound dietary and nutritional principles; to improve our citizens' overall health and to combat the increasing incidence of adult and childhood obesity; and to make our people conscious of the bond of mutual self-interest between our urban and our rural populations.

Accordingly, all laws enacted concerning the agricultural industry and its allied subjects, whether included in this chapter or not, are to be deemed an exercise of the police power of the state and a discharge of its obligations for the promotion of the general welfare through state-wide laws and regulations, local initiative and government, cooperative action between groups and localities, home-rule measures, individual enterprise, civic consciousness, and appropriate coordination with the federal government and as between educational research institutions within the state.

Such laws and all governmental measures adopted pursuant thereto should receive a liberal interpretation and application in furtherance of the aforesaid policy and purposes.

ARTICLE 2

Department of Agriculture and Markets; Jurisdiction; General Powers and Duties

Section 4. Department of agriculture and markets.
5. Commissioner of agriculture and markets.
6. Deputy commissioners.
7. Secretary.
8. Counsel.
9. Bureaus.
10. Confidential positions.
11. Other officers and employees.
12. Oaths of office.
13. Salaries of officers; expenses.
14. Offices of department.
15. Seal of department.
16. General powers and duties of department.
16-a. Food products containing nitrous oxide; packaging.
16-b. Public awareness campaign regarding Lyme disease and other tick-borne diseases.
17. Delegation of powers.
18. Rules of department.
19. Publication of rules.
20. Access to place of business.
20-a. Search warrant in aid of the commissioner of agriculture.
21. Interference with department employees in performance of duties; bribery.
22. Power to administer oaths and compel testimony.
23. Records, documents and papers of department.
24. Publication of department bulletins; publications and reports.
25. Annual reports.
26. Transfer of property and records in custody of council of agriculture and markets.
27. Obtaining title to real property by purchase or acquisition.
28. Advisory group for improving urban and rural consumer

access to locally produced, healthy foods.

§ 4. Department of agriculture and markets. There shall continue to be in the state government a department of agriculture and markets.

§ 5. Commissioner of agriculture and markets. The head of the department of agriculture and markets shall be the commissioner of agriculture and markets, who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office until the end of the term of the governor by whom he was appointed, and until his successor is appointed and has qualified. He shall be a person qualified by training and experience for the duties of his office. Subject to removal by the governor, the commissioner of agriculture and markets in office at the time this section takes effect shall be the head of the department of agriculture and markets and shall hold such office until his successor is appointed and has qualified. In addition to the powers and duties specifically prescribed by this chapter, the commissioner shall have supervision over and direction of all officers and employees and of the affairs of the department. He shall be responsible for the enforcement and carrying into effect of the laws, rules and orders pertaining to matters as to which the department has functions, powers and duties.

§ 6. Deputy commissioners. The commissioner may appoint and at pleasure remove such deputies and other officers and assistants as he may find necessary, and assign them the work which shall be under their respective supervision, and fix their compensation within the amounts appropriated therefor, subject to the approval of the director of the budget. Each of such deputies, officers and assistants shall be a person qualified by training and experience for the performance of the duties so assigned to him.

§ 7. Secretary. There shall be a secretary of the department to be

appointed by the commissioner and who shall serve during the pleasure of the commissioner.

§ 8. Counsel. There shall be a counsel of the department to be appointed by the commissioner and who shall serve during the pleasure of the commissioner. The counsel of the department shall represent and appear for the department in all actions and proceedings involving any question under this chapter or within the jurisdiction of the department under any general or special law or under or in reference to any act, order or proceeding of or before the commissioner, and shall, when directed, intervene, if possible, in behalf of the department in any action or proceeding involving or relating to any matter within the jurisdiction or powers of the department as herein prescribed, except that the attorney-general of the state shall continue to have direct charge of and bring such actions as he may deem necessary for any and all violations of this chapter. The said counsel shall, also, act as counsel for any officer of the department in the conduct of a hearing, investigation or inquiry instituted under authority of the department or as provided in this chapter. He shall advise the commissioner or any officer of the department, when so requested, in regard to all matters in connection with their powers and duties, and perform generally all duties and services as counsel of the department which may reasonably be required of him.

§ 9. Bureaus. Existing bureaus in the department are continued until consolidated or abolished pursuant to this section. The commissioner may establish such divisions, bureaus, and other units within the department as may be necessary for the administration and operation of the department and the proper exercise of its powers and the performance of its duties, under this chapter, and may, from time to time, consolidate or abolish such divisions, bureaus or other units within the department. Notwithstanding any inconsistent provision of law, the commissioner may determine the official functions of each division, bureau, or other unit within the department. There shall be a director of each bureau to be appointed by the commissioner and who shall serve during the pleasure of

the commissioner. The directors of bureaus in the department who are in office when this chapter takes effect shall continue in office during the pleasure of the commissioner.

§ 10. Confidential positions. The deputy commissioners, secretary and counsel shall be deemed to occupy confidential positions to the commissioner, and may be appointed without competitive examination.

§ 11. Other officers and employees. There shall be such agents, inspectors, chemists, experts, statisticians, accountants and other assistants and employees, as the commissioner shall deem necessary for the exercise of the powers and the performance of the duties of the department under this chapter.

Such officers and employees shall be appointed by the commissioner and hold office during the pleasure of the commissioner. The officers and employees of the department who are in office when this chapter takes effect shall continue in office during the pleasure of the commissioner.

The commissioner may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions.

Prior to the appointment of inspectors and investigators by the department, applicants for such positions shall be fingerprinted as a condition of employment. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

§ 12. Oaths of office. The commissioner, the deputy commissioners, the counsel and the secretary shall, before entering upon the duties of their offices, take and subscribe the constitutional oath of office.

Such oaths shall be filed in the office of the secretary of state.

§ 13. Salaries of officers; expenses. The annual salaries and compensation of the deputy commissioners, the counsel, secretary and all other officers and employees of the department shall be fixed by the commissioner within the limits of appropriations made therefor.

The reasonable and necessary traveling and other expenses of the commissioner, deputy commissioners, secretary, counsel and other officers and employees of the department, while actually engaged in the performance of their duties, shall be paid in accordance with the rules and regulations of the department of audit and control from the state treasury upon the audit of the comptroller, upon vouchers approved by the commissioner.

§ 14. Offices of department. The principal office of the department shall be in the county of Albany in office space to be designated by the commissioner of general services pursuant to law. Branch offices shall be established and maintained by the department in such places as the commissioner of agriculture and markets may determine. The offices shall be supplied with all necessary books, stationery, office equipment and furniture, to be furnished and paid for in the manner provided by law.

§ 15. Seal of department. The department shall have an official seal, to be prepared and furnished by the secretary of state, as provided by law. Such seal shall be used for the authentication of the orders and proceedings of the commissioner and for such other purposes as the commissioner may prescribe.

§ 16. General powers and duties of department. The department through the commissioner shall have power to:

1. Execute and carry into effect the laws of the state and the rules of the department, relative to agriculture, horticulture, farm, fruit, and dairy products, aquaculture, and the production, processing, transportation, storage, marketing and distributing of food; enforce and carry into effect the provisions of the laws of the state relative to weights and measures.

2. Aid in the promotion and development of the agricultural resources of the state and the improvement of the conditions of rural life; the improvement of the fertility and productiveness of farm lands and the restoration to fertility and productiveness of unoccupied and unproductive land; the settlement of farms and the supply of farm labor; the stocking of farms with meat-producing and dairy animals and promoting the production of cereals, fruits and vegetables, and co-operate with county farm bureaus, and with agricultural, dairying and horticultural associations or corporations and other agencies organized for any or all of such purposes.

2-a. Aid in the promotion and marketing of finfish and shellfish derived from commercial fishing or aquacultural activities and cooperate with fishing and aquaculture associations or corporations organized for any or all such purposes.

2-b. Aid in the promotion, marketing, and sale of New York state labelled wines, grapes and grape products in cooperation with the department of economic development both within and outside the state and to provide promotion and marketing advisement to wineries, farm wineries, micro-wineries, grape and other fruit growers and processors, and related trade organizations located within this state.

2-c. Aid in the export promotion and marketing of eligible agricultural products, in cooperation with the department of economic development.

2-d. Coordinate with the office of general services and the department of economic development to provide a training program once per year, in each economic development region, established in article eleven of the

economic development law, to encourage and increase participation in the procurement process, pursuant to article eleven of the state finance law, by small businesses, as defined in section one hundred thirty-one of the economic development law, including farms, selling food or food products, or animal or plant fiber products grown, produced, harvested, or processed in New York state or textile products manufactured from animal or plant fiber grown or produced predominantly in New York state and assist such businesses in identifying such food or food products, or animal or plant fiber textile products, which may help to meet state agencies' needs. The departments and office may also invite to the regional training programs representatives of local governments, including school districts, that may be interested in purchasing New York state food products or animal or plant fiber textile products.

2-e. Develop, and update, guidance and other information to:

(i) assist county legislative bodies, agricultural and farmland protection boards and departments in creating and reviewing agricultural districts pursuant to sections three hundred three, three hundred three-a and three hundred three-b of this chapter; and

(ii) assist the commissioner of taxation and finance to support training of assessors and any other local government officials who have responsibility for agricultural assessment and taxation.

2-f. Aid in the promotion, marketing and sale of New York state farm products used for holiday celebrations and decorations, including, but not limited to, Christmas trees, wreaths, pumpkins, flowers and other similar products in cooperation with the empire state development corporation by providing listings of such growers and suppliers to vendors selling such products and to municipalities that may provide such information to vendors selling such products on municipal sidewalks, lots or streets.

2-g. Aid, in cooperation with the department of economic development, in the promotion, marketing and sale, both within and outside the state, of New York state animal and plant fiber and products made from such fiber. For the purposes of this subdivision animal fiber means natural fibers that have formed the covering, or fleece, of sheep or other hairy

animals such as goats or alpacas, shorn for the purposes of creating textile products, and plant fiber means natural fibers that are obtained from plants and used to create textile products including, but not limited to, hemp. Such aid shall include, but not be limited to:

(a) the opportunity for producers of animal and plant fibers in the state to participate in programs that offer seals or logos identifying such fibers as grown in New York state and certified for their quality, for product labeling, advertising, and displays; and

(b) the development of educational materials about animal and plant fiber, especially for young people, in cooperation with cooperative extension, boards of cooperative educational services, local fairs, and the state fair.

* 2-h. In cooperation with the department of environmental conservation, offer seals or logos identifying native plants as grown in New York state and certified for their quality, product labeling, advertising, and displays. The department, in cooperation with the department of environmental conservation, shall establish appropriate standards and guidelines for such designation. The department shall further provide educational materials promoting awareness and understanding of native plants under the New York native plants designation to horticultural producers, garden centers, consumers, educational institutions, Cornell cooperative extension, and relevant agricultural and environmental organizations. For the purposes of this subdivision, "native plants" shall mean non-invasive herbaceous and woody plant species that are indigenous to New York state and are likely to maintain their range or successfully adapt to anticipated climate changes in New York state and the northeastern United States.

* NB Effective and Repealed December 19, 2026

3. Investigate the cost of food production and marketing in all its phases.

4. Investigate the sources of food supply for the state, the production, transportation, storage, marketing and distribution of food sold, offered for sale, stored or held within the state, the cost of transportation to the leading centers of population and of distribution to consumers.

5. Collect and disseminate accurate data and statistics as to the food produced, stored or held within the state, the quantities available from time to time and the location thereof, and so far as practicable and available collect such like statistics from without the state, as are of value to producers and consumers within the state.

5-a. Establish an information network between agricultural producers and consumers to facilitate and promote the direct marketing of New York farm products. The commissioner may publicize such direct marketing information network. He may compile information voluntarily provided by farmers and growers who desire to sell farm products directly to consumers, and distribute such information, in the manner he deems appropriate, to food buying cooperatives, governmental agencies, community service organizations, the bureau of government-donated foods distribution in the office of general services, the cooperative extension service, and to any person requesting such information.

5-b. (a) Establish, in cooperation with the commissioner of education, a farm-to-school program to facilitate and promote the purchase of New York farm products by schools, universities and other educational institutions under the jurisdiction of the education department. The department shall solicit information from the education department regarding school districts and other educational institutions interested in purchasing New York farm products, including but not limited to, the type and amount of such products schools wish to purchase and the name of the appropriate contact person from the interested school district. The department shall make this information readily available to interested New York farmers, farm organizations and businesses that market New York farm products. The department shall provide information to the education department and interested school districts and other educational institutions about the availability of New York farm products, including but not limited to, the types and amount of products, and the names and contact information of farmers, farm organizations and businesses marketing such products. The commissioner shall report to the legislature on the need for changes in law to facilitate the purchases of such products by schools and educational

institutions.

The department shall also coordinate with the education department, and school food service, education, health and nutrition, farm, and other interested organizations in establishing a promotional event, to be known as New York Harvest For New York Kids Week, in early October each year, that will promote New York agriculture and foods to children through school meal programs and the classroom, at farms and farmers' markets and other locations in the community.

(b) Cooperate with the department of health in implementing the childhood obesity prevention program pursuant to title eight of article twenty-five of the public health law and with the commissioner of education to encourage the production and consumption of fresh locally produced fruits and vegetables by elementary and secondary school aged children pursuant to paragraph (a) of this subdivision to help combat the increasing incidence of childhood obesity.

(c) Cooperate with federal, other state and municipal agencies to encourage the expansion of community gardens pursuant to article two-C of this chapter to help encourage the production and consumption of fresh locally produced fruits and vegetables to help combat the increasing incidence of adult and child obesity.

5-c. Cooperate with the commissioner of education, pursuant to subdivision fifty-six of section three hundred five of the education law, to develop guidelines for the voluntary implementation by school districts and institutions of higher education of programs which encourage the donation of excess, unused, edible food from meals served at such educational facilities to local voluntary food assistance programs.

6. Investigate and recommend useful methods of co-operative production, marketing and distribution of foods within the state.

6-a. Establish the New York state council on hunger and food policy. The purpose of the council shall be to advise the state on the development of comprehensive, coordinated state food policies with the goal of: ensuring that all citizens of the state are able to eat a

healthy diet and avoid food insecurity while consuming New York grown and produced foods as much as possible. The council shall work to: support and facilitate the growth of a New York-based local farm and food product economy that revitalizes rural, suburban and urban communities, creates jobs, and supports economic growth through promoting and developing local farm and food businesses and their products and helps to make them more available to New York residents; and promote healthy eating through a plentiful, accessible, affordable, safe and nutritious food supply with access to fresh and minimally processed foods including a readily available supply of such food during emergencies.

(a) The priorities of the council shall include, but are not limited to, developing and recommending policies and plans to:

(i) ensure the availability of and expand access to an adequate supply of affordable, fresh and nutritious food to its residents;

(ii) expand agricultural production and processing, including locally-grown and organically-grown food;

(iii) assist local farm and food businesses to succeed and grow, especially beginning and new owners and those historically underrepresented or marginalized in agriculture or the food industry, to identify and secure necessary resources and equipment to begin, maintain, and expand projects and networks necessary for the development of local farm or food products;

(iv) reduce barriers affecting food-insecure populations in rural and urban spaces;

(v) facilitate the building of infrastructure, including, but not limited to, aggregation, processing, storage, packaging, distribution, and marketing facilities necessary to move local farm or food products to local and other markets;

(vi) support and expand programs that recruit, train, and provide technical assistance to New York farmers, food producers, food processors and residents in order to encourage the production and processing of local farm or food products;

(vii) coordinate interagency programs, initiatives, and procedures promoting local farm and food products in New York communities, by working with and involving state, federal, and local agencies, as well as community-based organizations, educational institutions, and trade

organizations in executing the purposes of this section;

(viii) eliminate statutory and legal barriers hindering the development of a local farm and food economy by working with federal, state, and local agencies, other agencies and applicable entities, to ensure consistent and compatible laws and regulations for the production, processing, storage, distribution, and marketing of local farm or food products;

(ix) facilitate the use of public lands for growing local farm or food products by working with governmental entities at the local, state, and federal levels;

(x) initiate and facilitate public awareness campaigns about the economic benefits of a local farm and food economy;

(xi) improve access to nutrition assistance programs and transportation options, enhance infrastructure, and decrease socio-economic disparities that contribute to the prevalence of food insecurity;

(xii) alleviate geographic and economic barriers to improve access to healthy fresh food and reduce hunger among New Yorkers;

(xiii) eliminate barriers impacting a consumer's ability to purchase healthy food; and

(xiv) encourage state agencies and community partners to share ideas for reducing food-related chronic disease and promoting well-balanced child nutrition.

(b) The council shall consist of twenty-five members designated by the commissioner as follows: (i) the commissioner, the commissioner of health, the commissioner of the office of temporary and disability assistance, the commissioner of education, the commissioner of the department of economic development, and the director of the office for the aging;

(ii) eight members with experience and expertise related to agriculture, nutrition, or food policy, of which four shall be designated on the recommendation of the legislative leaders, one each by the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly;

(iii) the dean of the New York state college of agriculture and life sciences;

(iv) one member representing farm organizations;

(v) one member representing school food administrators;

(vi) one member representing consumers;

(vii) two members representing an organization that provides food assistance;

(viii) one member representing anti-hunger advocates;

(ix) one member who is a nutritionist; and

(x) three members representing the food industry, including producers, distributors, processors or retailers who are residents of and work in the state of New York, at least one of whom produces organic food.

(c) The commissioner shall serve as the chairperson of the council.

(d) The council shall issue a written report on the thirtieth day of January each year on: (i) the activities of the council during the preceding year; (ii) recommended food policies and actions for the state; (iii) an account of the progress made in achieving the goals of the council; and (iv) actions which are necessary to implement the recommendations of the council and effectuate its purposes.

(e) The state governmental agencies represented on the council may re-direct existing staff, as appropriations permit; assist in executing the purposes of this subdivision; and provide office space, meeting space, and other research and communication services as appropriate.

(f) No member of the council shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment by virtue of his or her appointment hereunder. Members of the council shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

(g) The council shall set forth the time and place of its meetings and meet as frequently as business requires, but shall meet at least twice each year.

(h) Every agency, department, office, division or public authority of the state shall cooperate with the council and furnish such information and assistance as the council determines is reasonably necessary to accomplish its purpose.

7. Aid in the organization and operation of co-operative associations and corporations among producers and consumers of farm products, and also aid in the organization and operation of co-operative associations,

corporations or other agencies for the purpose of increasing the production, improving the quality, grading or bringing together of farm products for wholesale marketing.

7-a. Call conferences of co-operative associations of producers of farm products organized under or subject to the provisions of chapter seventy-seven of the consolidated laws for discussion of cost of production, transportation and marketing, of market conditions and prices for sale of farm products to the end that the marketing operating operations for such co-operative associations may be facilitated, made more efficient and the producers may obtain the reasonable cost of production, plus cost of compliance with sanitary regulations affecting production or marketing. Such conferences shall be held under the supervision of the commissioner. Neither such conferences nor any agreements or arrangements resulting therefrom, if such agreements or arrangements are approved by the commissioner, shall be deemed or construed to be acts, conspiracies, agreements or arrangements in restraint of trade or commerce or injurious to public welfare. The powers hereby conferred may also be exercised in conjunction with officials or representatives of the federal government.

8. Co-operate with and aid farmers and other producers of food, and distributors and consumers thereof, in improving and maintaining economic and efficient systems of production, storage, distribution and marketing, and in reaching advantageous markets. The commissioner may develop, coordinate and conduct programs for advertising, publicity and general promotion of agricultural and food products grown, processed, packed or otherwise made within the state. The commissioner may establish a voluntary program for the improvement of direct marketing of New York farm products at roadside farm markets. The commissioner may adopt a word or symbol to identify roadside markets participating in such program, advertise and publicize the roadside farm market program, and provide technical and promotional assistance to effectuate said program. The commissioner may charge fees for the sale or use of promotional materials or items, and any income derived from such programs shall be deposited in a special account of the farm products publicity fund established under section one hundred fifty-six-i of this

chapter. Any expenses incurred in the conduct of such programs may be paid out of such account on vouchers approved by the commissioner, after audit by the comptroller.

9. Acquire and disseminate accurate information as to market prices of food products, and market conditions, in the markets of the state and any other markets, through use of department market reporters, or agreements with organized groups of producers or shippers or dealers in farm produce for the joint employment of market reporters, or special arrangements with existing market reporting agencies, when in the judgment of the commissioner such information will be valuable to the producers or consumers of the state.

10. Acquire and publish useful information to facilitate transportation, to avoid delays therein and upon request advise shippers or purchasers as to the most direct and expeditious route of shipment to market.

11. Co-operate with the commissioner of transportation with the view of obtaining suitable, expeditious and economical facilities for the shipment of food, and recommend as to the action to be taken by such commissioner to avoid and prevent unfair discrimination in such shipment and unreasonable delay in the transportation thereof, and to obtain fair and reasonable rates for such transportation.

12. Investigate delays in transportation, and in case food is likely to spoil for lack of ready market, take such action as seems advisable for facilitating the sale thereof.

13. Investigate restraints of trade or unlawful combinations to fix prices.

14. Investigate as to the needs of terminal, dock and other distributing facilities for the delivery and distribution of foods at the centers of population, and the establishment and operation of co-operative or public abattoirs for the slaughter of animals and poultry for food purposes; and advise and co-operate with corporations

and municipalities or other agencies to promote their establishment, construction or acquisition for the public use and make recommendations as to the conduct thereof.

15. Advise and co-operate in establishing local markets, and warehouses for assembling, grading, packing and storing food or farm products, whenever in the judgment of the commissioner the public interests require such establishment.

16. Co-operate with producers in the conduct of experiments and disseminate information as to producing, assembling, grading, packing, distributing and selling farm products, so as to demonstrate economic and efficient methods, and to standardize the grades of such products and determine the cost of such production, assembling, grading, packing, distribution and sale.

17. Investigate plans to be established by law for the purpose of securing an ample supply of pure milk in centers of population upon an economic basis of distribution and to aid in the accomplishment of such purpose within the provisions of existing law.

18. Ascertain the names and addresses of producers, manufacturers, importers, exporters and potential exporters and distributors of food, the kind of food produced, manufactured, imported, exported or to be exported or distributed by such persons, and to publish the same whenever in the judgment of the commissioner public interests require or, upon request, when in the public interest, supply lists of such persons.

19. Make such recommendations as in the judgment of the commissioner will stimulate and increase the production or distribution or sale of food and co-operate with public or private agencies for that purpose.

20. Act as mediator or arbitrator in any controversy or issue that may arise between producers and distributors of food.

21. Investigate, when deemed advisable, the conduct and methods of

exchanges and boards of trade within the state for the purchase and sale of food.

22. Collect and publish data concerning the purity, wholesomeness, economic value and the nutritious and hygienic properties of food produced, sold or available for sale within the state, and for such purpose to take, examine and analyze samples of such food.

23. Investigate deceptions in the quality, quantity or character of foods produced, stored, sold or offered for sale within the state, including the adulteration and misbranding thereof.

24. Co-operate with local health departments and other local agencies in preventing the production, manufacture, sale or offering for sale of fraudulent, deleterious or unwholesome food. The commissioner may contract with any such local health department or other local agency for the performance of inspections with respect to any food or other product over which he has jurisdiction, powers and duties under the provisions of this chapter.

25. Inspect and determine the grade or condition of farm products at shipping points and receiving centers, and provide for the issuance of certificates of such inspections and enter into co-operative arrangements with state and federal marketing agencies for joint inspections. The commissioner shall require and receive the payment of fees for such inspection services in amounts not exceeding the estimated cost of the services. The commissioner shall remit to the state treasurer such fees received monthly.

25-a. Inspect and determine the grade or condition of farm products, issue certificates of such inspections and provide quality control services for growers, canners, processors, packers, shippers, sellers, buyers, retailers and receivers upon request therefor; enter into cooperative arrangements with state and federal agencies, or persons or organizations authorized by a federal agency to conduct farm products inspections, for joint inspections; enter into contracts with applicants for such inspections and services, which contracts shall require payment

by applicants of the full costs of the services provided. All moneys received by the commissioner pursuant to such contracts shall be deposited in an account within the miscellaneous special revenue fund and shall be used to defray the expenses incidental to carrying out the powers and duties authorized by this subdivision. The state's financial contribution to the pest control compact adopted pursuant to section one hundred forty-nine of this chapter may be paid out of the portion of said moneys received by the commissioner for phytosanitary inspections. All moneys shall be paid out of such fund on vouchers approved by the commissioner, after audit by the comptroller. Nothing contained in this subdivision shall apply to fees received for inspections performed under subdivision twenty-five of this section.

25-b. Require and receive the payment of a fee of fifty dollars for the issuance of certificates of compliance with the food related provisions of this chapter and the regulations promulgated pursuant thereto. Notwithstanding any other provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all money received pursuant to this subdivision in an account within the miscellaneous special revenue fund.

25-c. The commissioner may enter into a contract or cooperative agreement under which laboratory services of the department may be made available to federal, state, local, and educational entities when, in the commissioner's judgment, such contract or cooperative agreement shall be in the public interest and shall not adversely affect the department's obligations under this chapter. Such contracts or cooperative agreements shall require payment by contractors and cooperators of, at a minimum, the full costs of the services provided. All moneys received by the commissioner pursuant to such contracts and agreements shall be deposited in an account within the miscellaneous special revenue fund and shall be used to defray the expenses incidental to carrying out the services authorized by this subdivision.

25-d. The commissioner may enter into a contract or cooperative agreement under which services relating to food safety and inspection, animal health, invasive species control, the collection of samples for

research studies and similar services relating to the duties and responsibilities of the department may be made available to federal entities, educational entities located outside of the state, and state and local governmental entities located outside of the state, when, in the commissioner's judgment, such contract or cooperative agreement shall be in the public interest and shall not adversely affect the department's obligations under this chapter. Such contracts or cooperative agreements shall require payment by contractors and cooperators of, at a minimum, the full costs of the services provided. All moneys received by the commissioner pursuant to such contracts and agreements shall be deposited in an account within the miscellaneous special revenue fund and shall be used to defray the expenses incidental to carrying out the services authorized by this subdivision.

26. Investigate and take action to prevent illegal acts or practices in the sale or distribution of food or of fertilizers, feeding stuffs, materials, apparatus and machinery or other instrumentalities used or needed for the production, marketing and distribution of food.

27. Seize, destroy or denature so that it cannot thereafter be used for food, any unwholesome food or food products sold or exposed for sale on the markets of this state, or any food or food products consisting in whole or in part of any filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal or one that has died otherwise than by slaughter. Provided, however, that the commissioner of agriculture and markets after seizure and before such destruction, shall give the owner, proprietor or custodian of such food ten days notice in writing, to be served either personally or by mail, of a hearing for the said owner, proprietor or custodian to show cause why such food should not be destroyed in accordance with the provisions of the statute.

28. Provide for holding a state fair to be known as the New York state fair and, for the purpose of seeking advice and counsel in relation thereto, consult with the state fair advisory board. The advisory board shall consist of eleven members appointed by the governor, including one

member on the recommendation of the temporary president of the senate; one member on the recommendation of the speaker of the assembly; one member on the recommendation of the minority leader of the senate; and one member on the recommendation of the minority leader of the assembly. The governor shall select a member of the advisory board to serve as chairperson. The members of the advisory board shall not receive compensation for their services, but may be paid their actual and necessary expenses incurred in serving upon the advisory board.

29. All the functions of the former department of farms and markets, of the former council of farms and markets and of the former commissioner of farms and markets and all their powers and duties, which were transferred to the department of agriculture and markets by section two hundred and seventy-two of the state departments law or shall have been prescribed by law when this subdivision as hereby enacted takes effect, whether in terms vested in such department, in such council or in such commissioner or in a committee, member or officer thereof, and all the functions of the former council of agriculture and markets and the commissioner of agriculture and markets and all their powers and duties which shall have been prescribed by law when this subdivision, as hereby amended, takes effect, whether in terms vested in such council or in such commissioner or in a committee, member or officer thereof, shall continue to be vested in the department of agriculture and markets and shall continue to be exercised and performed therein by or through the commissioner of agriculture and markets or the appropriate division, bureau, board or officer thereof as prescribed by or pursuant to law, together with such functions, powers and duties as hereafter may be conferred or imposed upon such department by law. All the provisions of this chapter shall apply to the department of agriculture and markets continued by this chapter as hereby amended and to the commissioner of agriculture and markets and to the divisions, bureaus and officers of such department, in so far as such provisions are not inconsistent with this subdivision.

30. Investigate, inspect and supervise the sale and exposure for sale of meat and meat preparations and enforce the provisions of sections two hundred one-a, two hundred one-b and two hundred one-c of this chapter

relating thereto, designate an employee of the department as "director of kosher law enforcement" and to make such rules and regulations imposing such additional requirements and restrictions upon such sale and exposure for sale as may be deemed necessary in connection with or in aid of the proper administration and enforcement of such provisions and of any other applicable laws.

30-a. Whenever under this chapter a person may elect to petition therefor, the commissioner may in his discretion establish inspection of petitioner's meat by-products or meat food products, and shall determine the actual cost of inspection thereof and shall require and receive quarterly the pre-payment of fees for such inspection services in amounts not exceeding the actual cost. The commissioner shall establish in the name of such petitioner an inspection fund to maintain such inspection services and any unexpended funds which may remain over and above the amount needed for such inspection or service shall be paid to the petitioner at the close of each fiscal year.

31. Adopt, promulgate and make effective plans, rules and orders with respect to the furnishing of care for children under fourteen years of age, including children temporarily within the state, whose parent or parents are seasonally or temporarily employed by canners, growers and processors of foods and foodstuffs, and to expend or allocate moneys for such purposes out of moneys appropriated to the department on such terms and conditions as he may deem proper provided that he finds such action is necessary in order to maintain an adequate supply of labor or to avoid waste in the growing, harvesting and processing of food. The commissioner is authorized to enter into contracts approved by the attorney-general, the state comptroller and the director of the budget with non-profit membership corporations providing such care. Such contracts shall specify the terms and standards of operation and shall limit the total financial responsibility of the state to a specified sum which shall not exceed the amount appropriated for such purpose.

32. Receive and disburse federal moneys allotted to the state by or pursuant to the federal agricultural marketing act of nineteen hundred forty-six as amended, or any other act of the congress making

appropriation for the allocation among the states for research into basic laws and principles relating to agriculture and to improve and facilitate the marketing and distribution of agricultural products, and for any other purpose relating to agriculture or marketing agricultural products; on behalf of the state, to adopt, execute and administer plans and to put into effect such measures as may be necessary for research into basic laws and principles relating to agriculture and to improve and facilitate the marketing and distribution of agricultural products; on behalf of the state, to make and execute such contracts, agreements, covenants or conditions, not inconsistent with law, as may be necessary or required by any duly constituted agency of the federal government as a condition precedent to receiving such funds or in connection with such research; to cooperate with all federal, state or local authorities, or other agencies, authorized under such acts of congress to carry out the purposes thereof; to adopt and from time to time to amend such rules and regulations and to prescribe such conditions, not inconsistent with law, as may be necessary to make available to the people of the state the benefits afforded by such acts of congress; and to enforce all the provisions of this subdivision and the rules adopted pursuant hereto. The department of taxation and finance is designated as custodian of all federal-aid funds allotted to the state for the purposes of this subdivision by the United States and such funds shall be payable only on the audit and warrant of the comptroller on certificate of the commissioner as provided in section one hundred ten of the state finance law.

33. Require each applicant for a license, permit or registration or renewal thereof authorized to be issued by the commissioner under the provisions of this chapter to satisfy the commissioner that such applicant is or will be in compliance with all ordinances or local laws of the county, city, town and village in which such business or occupation will be conducted bearing thereon. The commissioner's approval of an application shall not, however, be construed in any way as certifying that such ordinances or local laws have been complied with.

34. Contract with Cornell university or the New York state veterinary

college at Cornell for the planning, design and construction of an animal disease diagnostic laboratory at the state veterinary college at Cornell university.

35. Investigate, inspect, and supervise all sanitary aspects relative to the production, processing, sale and distribution of milk and milk products.

36. Require that a written instrument submitted pursuant to this chapter or a rule or regulation adopted pursuant thereto contain a form notice to the effect that false statements made therein are punishable pursuant to section 210.45 of the penal law or, where the commissioner deems necessary, require that any such instrument be subscribed under oath.

37. Provide for the operation of the state soil and water conservation committee pursuant to the soil and water conservation districts law.

38. Establish and maintain a statewide registry of brands for livestock owners to voluntarily register the brand they use to brand their livestock.

39. (a) Establish a program in the state for the planning, design and implementation of integrated pest management. Under such a program the department may contract with Cornell university or the New York state college of agriculture and life sciences at Cornell university, and shall encourage such contractor to seek federal and private sources of funds for such program. The department shall submit a quinquennial report of such integrated pest management program to the governor, the senate finance committee and the assembly ways and means committee on or before January first, two thousand seven and on or before January first of each fifth year thereafter. Such report shall include, but not be limited to:

i. an identification of all revenue sources, including non-state funds, and an identification of expenditures made within each agricultural production area, as described in article eleven of this

chapter;

ii. an evaluation and description of the status of implementation with each agricultural production area and the achievements of each objective outlined in such article eleven made in the previous five years; and

iii. the overall status of the program and multi-year timetable for the future implementation of the program.

(b) Between report due dates, the department shall maintain the necessary records and data to satisfy such report requirements and to satisfy information requests received from the governor, the senate finance committee and the assembly ways and means committee, between such report due dates.

40. Establish and administer, together with the state soil and water conservation committee and the Cornell cooperative extension, a voluntary program to encourage agricultural environmental planning and implementation. The program shall promote farming practices which are compatible with state water quality and other environmental objectives, and may include training and certification of agricultural planners; educational outreach to producers of farm products; technical and financial assistance to farm operators; consultation and coordination with federal, state and local agencies; and periodic evaluation and assessment of program effectiveness.

41. (a) Establish and maintain New York state domestic animal health assurance programs, voluntary, on-farm, integrated disease prevention programs, directed at improving animal health and promoting a safe and wholesome food supply. Such programs may include but are not limited to the New York state cattle and horse health assurance programs. To carry out such programs, the department may contract with public, private and academic entities and shall encourage such entities to seek federal and private sources of funds for such programs.

(b) Any proprietary farm protocol, animal or herd testing information and/or producer herd data maintained in confidence and voluntarily provided by an owner or operator of a farm operation as defined in section three hundred one of this chapter to participate in a voluntary

cattle health program established pursuant to this subdivision shall be exempt from public disclosure. The submission of any such information or records by the owner or operator of a farm operation does not constitute a waiver of any applicable privilege or protection under federal or state law.

(c) The exemption described in paragraph (b) of this subdivision shall not apply to: (1) information collected or created as part of a federal, state, or local health agency investigation or official action taken in connection with a public health risk; and (2) records that do not identify and cannot be used to discern the identity of any participating farm.

42. (a) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision five of section seventy-six-a of the alcoholic beverage control law, investigate and compile information relative to natural disasters, acts of God, or continued adverse weather conditions which shall affect: (i) the crop of grapes or other fruit products used in the production of wine; and/or (ii) the crop of apples used in the production of cider.

(b) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision eleven of section fifty-one-a of the alcoholic beverage control law, investigate and compile information relative to natural disasters, acts of God, or continued adverse weather conditions which shall affect: (i) the necessary ingredients for brewing beer; and/or (ii) the crop of apples used in the production of cider.

(c) For purposes of making timely determinations and consulting with the chairman of the state liquor authority pursuant to subdivision twelve of section fifty-one-a and subdivision eleven of section fifty-eight-c of the alcoholic beverage control law, investigate and compile information relative to natural disasters, acts of God, or continued adverse weather conditions which shall affect the crop of apples used in the production of cider.

43. Cooperate with the department of environmental conservation and the environmental facilities corporation to establish methods to facilitate loans to New York state's agricultural community, to develop

educational materials for farmers about the low-interest loans available through the water pollution control linked deposit program, and to develop an application form to be provided to lenders for linked deposit loan requests. The department may promulgate rules and regulations necessary and reasonable for the operation of the program.

44. Encourage and support the practice of forestry and manufacture of wood products in the state, in coordination with the departments of environmental conservation and economic development; and provide for the operation of the wood products development council as established in section two hundred twenty-five of this chapter.

45. When considering plans, policies, regulations and programs pursuant to article fourteen of this chapter, the commissioner shall take into consideration the impact on the horticulture and other plant based industries in the state of New York, including but not limited to greenhouse, nursery, and fruit and vegetable production.

46. Within the amount of monies appropriated or otherwise made available therefor, establish, administer and operate, or provide for the administration and operation of, a program, which may include establishment of a revolving loan fund, to assist in the development, implementation and operation of agricultural programs.

47. Evaluate, in conjunction with the state office for the aging, programs and services offered by the department to ensure that they support the needs of farmers, and other individuals engaged in agriculture, and the production, processing, marketing and distributing of food, who are also seniors, which shall mean an individual sixty years of age or older.

48. Make available in written and electronic medium, in a manner readily accessible to police agencies and officers and district attorneys, information about animal cruelty and protection laws in this chapter, including, but not limited to, article twenty-six of this chapter and section seven hundred fifty-three-f of the general business law. The development of such information shall be coordinated with the

division of criminal justice services, including the municipal police training council, in a manner designed to enhance training of municipal police officers and to assist such officers and district attorneys in enforcing and applying such laws.

49. Make available, in consultation with the department of environmental conservation and institutions of higher education with expertise in pollinator protection, information concerning minimum guidelines for vegetation management plans used by any person who intends to develop their property or commercial enterprise, such as solar electric generating systems, in a manner that is pollinator friendly or provides benefits and protection to pollinators. Such information may include guidelines for short-term and long-term property management practices that provide and maintain native perennial vegetation to protect the health and well-being of pollinators including, but not limited to the percentage of the property that may be covered with native perennial vegetation; the type, amount, and diversity of native perennial vegetation that may be maintained on the property; the number of seasons and the minimum number of species of native perennial vegetation that may be in bloom; maintenance practices to be used; the use of pesticides; the width and composition of buffers adjacent to the property; and any other guidelines established by the department.

50. Develop, in consultation with the commissioner of the department of health and the New York state land grant university, best-practice recommendations for treatment, prevention and management of livestock and farm property to protect against Asian longhorned ticks. Such recommendations shall be based upon scientific data and shall include, but not be limited to, the use of landscape techniques demonstrated to be safe for livestock, people, pets and the environment, methods to discourage rodent activity, and, the effective use of pesticides, as defined in subdivision thirty-five of section 33-0101 of the environmental conservation law, including usage information and any label warnings or caution statements. The commissioner, in consultation with the department of environmental conservation and the New York state land grant university, shall develop and distribute to farmers

information on Asian longhorned tick treatment, management, and prevention. Such information and recommendations shall also be made available on the department's website.

51. And shall take any measures necessary to prohibit any person from attaching or affixing to state owned property on the grounds of the state fair any symbols of hate, as defined in section one hundred forty-six of the public buildings law, or any similar image, or tangible personal property, inscribed with such an image, unless the image appears in a book, digital medium, or otherwise serves an educational or historical purpose.

52. Develop and maintain a publicly available searchable directory of New York state farms and farm products on the department's website. The website directory shall include all farms located within the state and shall, when known, list the products available for purchase and contact information for each farm, unless a farm opts out of being included in the directory by notifying the department of such option. The department shall provide farms with the ability to signify that they are interested in supplying schools on the directory. The department shall update the website directory at least every two years.

§ 16-a. Food products containing nitrous oxide; packaging. The commissioner shall promulgate rules and regulations to require that all food products containing nitrous oxide be offered for sale in tamper evident packaging. For the purposes of this section, the term "tamper evident packaging" shall mean packaging having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

§ 16-b. Public awareness campaign regarding Lyme disease and other tick-borne diseases. The commissioner, in consultation with the commissioner of health, shall develop and conduct a public awareness campaign regarding Lyme disease and other tick-borne diseases. The campaign may utilize public forums, social media and mass media,

including but not limited to internet, radio, and print advertising and shall include materials and information on the department's website. The campaign shall be tailored to educate farmers, farm workers, and other agricultural employees regarding: (a) Lyme disease and other tick-borne diseases; (b) recognition of the symptoms of Lyme disease and other tick-borne diseases; (c) the available treatments for Lyme disease and other tick-borne diseases; and (d) preventive measures that may be taken to lessen the threat posed by ticks carrying Lyme disease or other tick-borne diseases.

§ 17. Delegation of powers. (a) The commissioner may delegate any of his powers to, or direct any of his duties to be performed by, a deputy commissioner or the director of a bureau and, except where it is otherwise provided in this chapter or the context otherwise requires, may delegate any of such powers to any officer or employee of the department.

(b) The commissioner, except when it is otherwise provided in this chapter or the context otherwise requires, may also delegate to an officer or employee of the United States department of agriculture, engaged within this state in joint or cooperative state-federal programs, any of the powers invested in him by article five of this chapter for the control, suppression or eradication of communicable diseases in domestic animals or domestic fowls, any of the powers invested in him by article five-B of this chapter relative to ante-mortem and post-mortem inspection of animals slaughtered for food purposes and processing inspection of meat, meat by-products and meat food products, any of the powers invested in him by article five-D of this chapter relative to ante-mortem inspection of poultry slaughtered for human food, post-mortem inspection of poultry carcasses and inspection of poultry and poultry products, any of the powers invested in him by article fourteen of this chapter in the control or eradication of injurious insects or plant diseases, and any of the powers invested in him by subdivisions four and five of section sixteen of this chapter relative to the collection, analysis and publication of primary statistical data relating to agricultural products of this state. Such delegation shall be in writing and shall state the specific limits of

the powers so delegated.

(c) Whenever by the education law or other statute the commissioner is made a member by virtue of his office of the board of visitors, managers or trustees or other similar body of a state institution, he may in writing authorize and empower a deputy commissioner, the secretary of the department or the director of a bureau to act in his place and stead at any meeting or meetings of any such board or body.

§ 18. Rules of department. Subject and in conformity to this chapter and the constitution and laws of the state, the commissioner may enact, amend and repeal necessary rules which shall

1. Regulate and control the transaction of business by the department, provide for the exercise of the powers and the performance of the duties of the department and prescribe the powers and duties of the bureaus and of the directors of bureaus and other officers and employees thereof;

2. Provide for carrying into effect the provisions of this chapter and of the laws of the state in respect of food and food traffic;

3. Regulate the conduct of investigations, inquiries and hearings authorized by this chapter and prescribe necessary forms and notices;

4. Establish official grades for foods and farm products and prescribe the use of such grades, and provide for the marking, packing and shipping of foods and farm products so graded.

5. Establish uniform tolerances or amounts of reasonable variation for containers of food and provide uniform regulations for carrying out the provisions of this chapter in relation to such containers.

6. Provide generally for the exercise of the powers and performance of the duties of the department as prescribed in this chapter and the laws of the state and for the enforcement of their provisions and the provisions of the rules enacted as herein provided.

The rules of the department in force at the time this chapter takes effect shall continue as the rules of the department, until amended or repealed by the commissioner.

§ 19. Publication of rules. Every rule or regulation enacted by the commissioner pursuant to the provisions of this chapter and intended to have the force of law shall be promptly published once in the New York state bulletin, published by the department of state pursuant to section one hundred sixty of the executive law. A copy of every such rule or regulation certified by the commissioner, a deputy commissioner or the secretary of the department shall be promptly filed with the secretary of state. Every such rule or regulation shall take effect twenty days after such filing, unless some other date of taking effect shall be prescribed by the commissioner.

§ 20. Access to place of business. The commissioner, each deputy commissioner and the directors, counsel, experts, chemists, agents and other officers and employees of the department shall have full access to all places of business, factories, farms, buildings, carriages, cars and vessels used in the production, manufacture, storage, sale or transportation within the state of any dairy products or any imitation thereof, or of any article or product with respect of which any authority is conferred by this chapter on the department. They may examine and open any package or container of any kind containing or believed to contain any article or product, which may be manufactured, sold or exposed for sale in violation of the provisions of this chapter, or of the rules of the department, and may inspect the contents therein, and take therefrom samples for analysis.

§ 20-a. Search warrant in aid of the commissioner of agriculture. A search warrant, in the name of the people, directed to a police officer commanding him to search for dairy products, imitations thereof and substitutes therefor, to open any place of business, factory, building, store, bakery, hotel, tavern, boarding house, restaurant, saloon, lunch

counter, place of public entertainment, carriage, car, boat, package, vessel, barrel, box, tub or can, containing, or believed to contain the same, in the possession or under the control of any person who shall refuse to allow the same to be inspected or samples taken therefrom by the commissioner of agriculture, a deputy commissioner or any person or officer authorized by the commissioner or by the agriculture and markets law or to which access is refused or prevented, and to allow and enable the officer mentioned in section fifty-one of the agriculture and markets law applying therefor to take such samples of dairy products, imitations thereof and substitutes therefor, found in the execution of the warrant, as the officer applying for the search warrant shall designate when the same are found, shall be issued by any court to which application is made therefor, whenever it shall be made to appear to such court that such person has refused to permit any dairy products, imitations thereof or substitutes therefor, to be inspected or samples taken therefrom, or that access thereto by any officer mentioned in section fifty-one of the agriculture and markets law has been refused or prevented, and that such officer has reasonable grounds for believing that such person has any dairy products, imitations thereof or substitutes therefor in his possession, or under his control, or that he is violating any of the provisions of the agriculture and markets law relating thereto. The provisions of article six hundred ninety of the criminal procedure law shall apply to such warrant as far as applicable thereto. The officer to whom the warrant is delivered shall make a return in writing of his proceedings thereunto to the court which issued the same.

§ 21. Interference with department employees in performance of duties; bribery. No person shall attempt, by means of any threat or violence, to deter or prevent an inspector, agent or other employee of the department from performing any duty imposed by law upon him or upon the department; nor shall any person give or offer a bribe or any valuable consideration to any inspector, agent or other employee of the department to influence him in respect to any official act or duty.

§ 22. Power to administer oaths and compel testimony. The commissioner, a deputy commissioner, the secretary or counsel of the department, or any other officer or employee duly authorized by the commissioner, may administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers and duties of the department under this chapter. The commissioner, or a deputy commissioner may subpoena and require the attendance of witnesses and the production of books, papers and documents pertaining to the investigations and inquiries which such commissioner or deputy commissioner is authorized to conduct, and examine them in relation to any matter to be investigated by them and issue commissions for the examination of witnesses who are out of the state or unable to attend or excused from attendance.

Any person who shall wilfully testify falsely as to any material matter pending in an investigation or proceeding under this chapter shall be guilty of and punishable for perjury.

An officer who serves the subpoenas issued as above provided and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil actions in courts of record, to be audited and paid in the same manner as other expenses of the department.

§ 23. Records, documents and papers of the department. All proceedings, documents, papers and records filed or deposited with the department relating to matters within its jurisdiction and powers shall be public records; except such portions thereof as are received and accepted by the commissioner, as being of a confidential nature which when so received and accepted shall not be subject to subpoena. Copies of all official documents and orders so filed or deposited, certified by the commissioner, a deputy commissioner, counsel, a division director, or an assistant director under the seal of the department to be true copies of the originals, shall be evidence in like manner as the originals.

§ 24. Publication of department bulletins, publications and reports. There may be published by the department from time to time bulletins or other publications and reports containing accurate data, statistics and information.

1. As to agriculture, agricultural production, agricultural labor and the agricultural conditions of the state, and the development and improvement thereof, with a view of increasing farm production and values;

2. As to the sources, supply and prices of foods, their storage and accumulation at different places, and the quantities and location of the available supply thereof;

3. As to the market prices of foods;

4. As to facilities afforded for transportation, marketing and distribution of foods within the state;

5. As to matters pertaining generally to the production of foods, the actual food value of articles used as foods, and the sale and distribution thereof to the consumers, which in the opinion of the commissioner will prove valuable or of interest to the public;

6. As to investigations, hearings and inquiries conducted as provided in this chapter, the conclusions reached as to the matters involved therein, and the orders and recommendations made as a result thereof;

7. As to any other matter which the commissioner deems proper.

Such bulletins, publications and reports and the information contained therein shall be published and distributed in the manner deemed best by the commissioner for the dissemination of knowledge as to the agricultural and dairy interests of the state and the production, sale, purchase, storage, marketing and distribution of foods, and the economic and food value of articles used as food. The cost of publishing such

bulletins, publications and reports shall be paid in the same manner as other expenses of the department out of appropriations made therefor. Copies of the bulletins, publication and reports of the department may also be sold to the public at the estimated cost thereof, in accordance with a schedule of charges which the commissioner is hereby authorized to adopt.

§ 25. Annual reports. The commissioner may require all agricultural societies receiving money from the state to make reports to the department, and may prescribe the form of such reports.

§ 26. Transfer of property and records in custody of council of agriculture and markets. The property, records, books, papers and documents, if any, in the custody, possession or control of the council of agriculture and markets at the time this section takes effect, which pertain or relate to any of the functions, powers and duties of the department of agriculture and markets or of the council, which is hereby abolished, shall be delivered and belong to the department of agriculture and markets.

§ 27. Obtaining title to real property by purchase or acquisition. 1. The commissioner, when an appropriation therefor has been made by the legislature, may obtain title to any real property which he may deem necessary for the purposes of the department, including the purposes of the state fair, by purchase or pursuant to the eminent domain procedure law, which title shall be taken in the name of and be vested in the people of the state of New York; provided, however, that title to real property shall be so obtained by purchase unless such title thereto shall be approved by the attorney general.

2. Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner shall cause to be made by the state department of transportation an accurate acquisition map as so provided in said law.

3. On the approval of such map by the commissioner, the original tracing of such map shall be filed in the main office of the department pursuant to the eminent domain procedure law.

4. If the commissioner shall determine, prior to the filing of such map in the office of the clerk or register of the county, that changes, alterations or modifications of such map as filed in the main office of the department should be made, he or she shall direct the preparation by the department of transportation of an amended map. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

5. If the commissioner shall determine, prior to the filing of a copy of such acquisition map in the office of the county clerk or register as provided in section four hundred two of the eminent domain procedure law, if applicable, that such map should be withdrawn, he or she may file a certificate of withdrawal in the offices of the department and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

6. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

7. If, at or after the vesting of title to such property in the people of the state of New York as provided for in the eminent domain procedure law, the commissioner shall deem it necessary to cause the removal of an owner or occupant from any real property so acquired, he may cause such owner or occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain

procedure law. The proceeding shall be brought in the name of the commissioner as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner, but they shall be part of the costs of the acquisition of the real property and be paid in like manner. Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; precepts or final orders shall be made for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

8. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of his or their property and the amounts so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

9. Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

10. The commissioner, with the approval of the director of the

budget, shall establish and may from time to time amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section; of actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and actual reasonable expenses in searching for a replacement business or farm; or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. In the case of a business which is to be discontinued but for which the findings and determinations set forth above cannot be made, the commissioner may prepare an estimate of what

the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving expenses. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a nonprofit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to the public; or by a nonprofit organization.

11. Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner, with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed fifteen thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner on a class, group or

individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. Any such mortgage interest differential payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to the above provisions of this subdivision, is displaced from any dwelling thereon

which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed four thousand dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four years, a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. Such payments may be made in installments as determined by the commissioner. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

12. The owner of any real property so acquired may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law a claim for the value of such property appropriated and for legal damages caused by such appropriation, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall

be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

13. If the commissioner shall determine subsequent to the acquisition of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, he shall make his certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The commissioner shall cause such certificate to be filed in the office of the department of state and upon such filing all rights acquired by the state in such property shall cease and determine. The commissioner shall cause a certified copy of such certificate as so filed in the office of the department of state to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such commissioner shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

*** § 28. Advisory group for improving urban and rural consumer access to locally produced, healthy foods.** The commissioner shall convene an advisory group with representatives from agriculture, food access organizations, food retailers and economic development agencies to identify strategies and opportunities to expand access for underserved, nutritionally deficient urban and rural communities to healthy, locally produced food in New York state, including identifying new and innovative methods to increase the production, marketing and distribution of locally produced, fresh food in such communities in New York state.

Not later than one year after the effective date of this section, a report shall be delivered by the commissioner to the governor and the legislature on the findings and recommendations of such advisory group.

* NB Repealed after the report required to this section has been delivered.

ARTICLE 2-A

DIVISION OF THE NEW YORK STATE FAIR

Section 31. Fair grounds.
31-a. Organization.
31-b. State fair.
31-c. Receipts and disbursements.

§ 31. Fair grounds. The property described in the conveyance to the state by the New York state agricultural society of its property in the town of Geddes, Onondaga County, New York, by deed dated July twenty-eight, eighteen hundred and ninety-nine, and recorded in the office of the comptroller and any other property heretofore or hereafter acquired by the state for state fair purposes shall be under the management and control of the department, and it may, from time to time, make rules and provide for the care, preservation and improvement thereof. When the exhibition buildings and facilities are not in use for state fair purposes, the commissioner of agriculture and markets may manage and lease such exhibition buildings and facilities and may lease space in such buildings, and may execute contracts in relation to such rentals and fix, impose and collect rentals and license fees therefor. All rental and license fees and such other income as may be provided by the leasing of such buildings, space and facilities shall be considered moneys payable to the state on account of said fair in accordance with the provisions of section thirty-one-c of this article. The commissioner of agriculture and markets may convey to the industrial exhibit authority certain real property in the town of Geddes, Onondaga county, New York, as heretofore or hereafter acquired by the state for state fair purposes. The commissioner is authorized to execute and file in the Onondaga county clerk's office an instrument in writing defining

specifically the plot or plots of land transferred to the industrial exhibit authority pursuant to this section provided, however, that such plot or plots of land shall be no more than is sufficient to accomplish the purposes described in the instrument. When such written instrument is so filed it shall vest the authority with the title to the real property defined therein provided, however, that nothing herein shall prevent the industrial exhibit authority from transferring back to the state and vesting title in the state for state fair purposes under the management and control of the department of agriculture and markets any land which the authority heretofore received as state fair land or any state fair land which the authority may hereafter receive pursuant to this section. In the event that the industrial exhibit authority shall be abolished or for any reason cease to exist the title to all lands held by the authority which were formerly state fair lands shall revert to the state for state fair purposes under the management and control of the department of agriculture and markets. All conveyances heretofore made between the commissioner of agriculture and markets and the industrial exhibit authority are hereby confirmed and recognized as valid and sufficient to convey good title.

The maintenance and repair of the improved roads on said property shall however be under the direct supervision and control of the superintendent of public works who is hereby authorized and directed to maintain and repair the same, and the cost of such maintenance and repair shall be paid out of any funds available for the maintenance, repair and reconstruction of improved state highways.

§ 31-a. Organization. There shall continue to be in the department a division to be known as the division of the New York state fair. The head of such division shall be a director, who shall be appointed by the commissioner. In addition to the functions, powers and duties provided in this article, such division shall continue to exercise and perform, subject to the provisions of this article, the functions, powers and duties of the former state fair commission, as provided by law immediately prior to January first, nineteen hundred and twenty-seven.

§ 31-b. State fair. It shall be the duty of the department to hold a state fair to be known as the New York state fair at such times as it may deem proper, and between January first and February fifteenth in each calendar year to publish the time for holding said fair in such year. If such fair be held on the first Monday of September, known as labor day, the department shall designate such day as "organized labor day." It shall not be lawful for any corporation, association or individual to hold or conduct any trotting or pacing race or races during the week in which the New York state fair is held, except upon half-mile tracks, and except at the fairs held by agricultural societies which have received moneys from the state, and no corporation, association or individual holding such races during said week shall be entitled to any of the benefits conferred by article twenty of the membership corporations law, or by any general or special law. The department may make, alter, suspend or repeal needed rules relating to such fair, including the times and duration thereof, the terms and conditions of entries and admissions, exhibits, sale of privileges, payments of premiums, and any other matters which it may deem proper in connection with such fair. It shall furnish to each person who, on the seventeenth day of January, nineteen hundred, was a life member of the state agricultural society, a free admission to the fair ground during the fair of each year during the life of such member.

§ 31-c. Receipts and disbursements. The department shall receive all moneys payable to the state on account of said fair and make all disbursements therefrom and also from any appropriation made for that purpose by the legislature as may be needed, from time to time, in carrying on the work of the department. The provisions of section one hundred twenty-one of the state finance law requiring that money received for or on behalf of the state shall be paid monthly into the state treasury shall not apply to the proceeds of the state fair, and the department may pay from the race and other entry fees, gate admissions and other receipts of such fair such expenses as shall be necessary for the proper conduct of the New York state fair and the purposes of the department. Any balance remaining in its hands received

in connection with the state fair shall be retained by the department of agriculture and markets as a special fund for such permanent constructions on the state fair grounds or for administration expenses as shall be approved by the director of the budget, the chairman of the finance committee of the senate and the chairman of the ways and means committee of the assembly.

ARTICLE 2-C

COMMUNITY GARDENS

Section 31-f. Legislative findings.
31-g. Definitions.
31-h. Office of community gardens; powers; duties.
31-i. Use of state or municipally owned land for community gardens.
31-j. Community gardens task force.

§ 31-f. Legislative findings. The legislature hereby finds and declares that community gardens provide significant health, educational and social benefits to the general public, especially for those who reside in urban and suburban areas of this state. Furthermore, it is the articulated public policy of this state to promote and foster growth in the number of community gardens and the acreage of such gardens. The community garden movement continues to provide low cost food that is fresh and nutritious for those who may be unable to readily afford or have easy access to fresh fruits and vegetables for themselves or their families, promotes public health and healthier individual lifestyles by encouraging better eating habits and increased physical activity by growing their own food, fosters the retention and expansion of open spaces, particularly in urban environments, enhances urban and suburban environmental quality and community beautification, provides inexpensive community building activities, recreation and physical exercise for all age groups, establishes a safe place for community involvement and helps to reduce the incidence of crime, engenders a closer relationship between urban residents, nature and their local environment, and fosters green job training and ecological education at all levels. It is

therefore the intent of the legislature and the purpose of this article to foster growth in the number, size and scope of community gardens in this state by encouraging state agencies, municipalities and private parties in their efforts to promote community gardens.

§ 31-g. Definitions. As used in this article, unless another meaning is clearly indicated:

1. "Community garden" shall mean public or private lands upon which citizens of the state have the opportunity to garden on lands which they do not individually own.

2. "Garden" shall mean a piece or parcel of land appropriate for the cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg production, maple syrup, ornamental or vegetable plants, nursery products, or vegetables.

3. "Municipality" shall mean any county, town, village, city, school district, board of cooperative educational services, other special district, or any office or agency thereof.

4. "Office" shall mean the office of community gardens.

4-a. "State agency" shall mean any department, bureau, commission, board, public authority or other agency of the state, including any public benefit corporation of which any member of whose board is appointed by the governor.

5. "Use" shall mean to avail oneself of or to employ without conveyance of title gardens on vacant public lands by any individual or organization.

6. "Vacant public land" shall mean any land owned by the state or a public corporation including a municipality that is not in use for a public purpose, is otherwise unoccupied, idle or not being actively utilized for a period of at least six months and is suitable for garden

use.

§ 31-h. Office of community gardens; powers; duties. 1. The commissioner shall establish within the department an office of community gardens which shall have the authority and responsibility for carrying out the provisions of this article in cooperation with the state department of environmental conservation, the state education department, the department of state, cooperative extensions and other state agencies and municipalities.

2. The duties of the office shall include:

a. Upon request, the office shall assist in the identification of vacant public land within a given geographical location and provide information regarding agency jurisdiction and the relative suitability of such lands for community gardening purposes;

b. Serve as a coordinator on behalf of interested community groups and the appropriate state or local agencies to facilitate the use of vacant public lands for community garden use for not less than one growing season by receiving and forwarding with recommendation completed applications to the appropriate state or municipal agency. Provided, further, that the office may develop a single recommended application form to be used by community groups when applying to state agencies or municipalities for use of vacant public land for community garden purposes;

c. Support and encourage contact between community garden programs already in existence and those programs in the initial stages of development;

d. Seek and provide such assistance, to the extent funds or grants may become available, for the purposes identified in this article;

e. Assist, support and encourage contact and cooperation between, and the cooperative sharing of resources between community garden groups,

school garden programs and local voluntary food assistance programs, such as community food pantries, soup kitchens, senior centers, and other community and not-for-profit organizations that provide or distribute food to the elderly, poor, and disadvantaged. Such support can include the provision of surplus community garden food or other agricultural products to such local voluntary food assistance programs; and

f. Assist, support and encourage communication, and the sharing of resources between community garden organizations, the New York Harvest For New York Kids Week program established by the department pursuant to subdivision five-b of section sixteen of this chapter and individual farm-to-school and school garden programs, and, where applicable, the department of health, the department of state, the office of children and family services and the division of housing and community renewal.

§ 31-i. Use of state or municipally owned land for community gardens. 1. Any state agency or municipality with title in fee or of a lesser interest to vacant public land may permit community organizations to use such lands for community gardening purposes. Such use of vacant public land may be conditioned on the community organization possessing liability insurance and accepting liability for injury or damage resulting from use of the vacant public land for community gardening purposes.

2. State agencies and municipalities which have received an application for use of public lands for community garden purposes shall respond to the applicant within thirty days and make a final determination within one hundred eighty days.

§ 31-j. Community gardens task force. 1. The commissioner shall convene a community gardens task force to identify and develop ways to encourage state agencies, municipalities and private parties to establish and expand community gardens and the activities conducted by such gardens.

2. The task force shall be chaired by the commissioner, or by such officer or employee of the department as shall be designated by the commissioner. The membership of the task force may include representation from appropriate state agencies and members that represent existing community gardens, counties, cities, towns, villages, school districts, other special use districts, public authorities and cooperative extension services. Membership of the task force shall include at least two representatives from organizations dedicated to the promotion, expansion or protection of community gardens.

3. The commissioner, may request the assistance of state agencies to carry out the work of the task force.

4. (a) The goals of the task force may include, but are not limited to, the study, evaluation and development of recommendations: (i) to encourage the establishment and expansion of community gardens by state agencies, municipal governments and private parties, (ii) to encourage cooperation between the activities and operations of community gardens and provision of donated food to local voluntary food assistance programs for the poor and disadvantaged, (iii) to increase the benefits that community gardens may provide to the local community in which they are located, (iv) to encourage cooperation with community-based organizations to increase the opportunities for seniors, those aged sixty years of age or older, to participate in community gardens, (v) to encourage the expansion of the production of fresh fruits and vegetables in areas served by community gardens so that such fresh produce can be consumed locally to help encourage healthier life styles and wellness, and to help reduce the incidence of adult and childhood obesity, (vi) to develop after school programs that establish, maintain and expand community gardens, and (vii) to encourage the development and expansion of community gardens in food deserts as defined in section two hundred sixty of this chapter.

(b) In achieving the goals of the task force, the task force may consider recommendations that: (i) encourage the execution of conservation easements by state agencies, municipalities or private parties to establish or protect community gardens, (ii) encourage the

creation of mechanisms to transfer development rights to protect community gardens or encourage the donation or lease of lands for community gardens, (iii) development of model zoning codes, local land use laws or other municipal policies that could encourage the establishment or retention of community gardens, and (iv) any other activity to achieve the goals deemed appropriate by the task force according to the provisions of this article.

5. The task force shall submit a report to the governor and the legislature on or before January first, two thousand twenty-three and on or before January first of each fifth year thereafter on the status of community gardens in New York state. Such report shall include:

(a) the number, nature and geographic location of community gardens;

(b) a description of the costs, benefits and impacts of community gardens;

(c) an assessment of the successes, failures and barriers in developing, maintaining and expanding community gardens;

(d) lists of funding sources available to develop and expand community gardens along with the requirements for obtaining the funding;

(e) an assessment of the funding, requirements and barriers for double the number of existing community gardens;

(f) a discussion of the goals outlined in subdivision four of this section and a description of the steps and projects undertaken to meet the goals for the task force as established in this section;

(g) an action plan for doubling the number of community gardens in the state of New York;

(h) recommendations for developing, maintaining and expanding community gardens in food deserts; and

(i) any other recommendations or assessments the task force deems appropriate for the report.

Between report due dates, the commissioner shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the governor and the legislature between such report due dates.

ARTICLE 3.

Investigation; Practice and Procedure; Violations; Penalties.

Section 32. Investigations and proceedings.
33. Immunity of witnesses.
34. Practice on hearings; attendance and examination of witnesses.
35. Proceedings in court.
36. Orders and service thereof.
36-a. Petition for revocation or modification of rule or order of the commissioner.
37. Review by court.
38. When injunction may be obtained.
38-a. Costs and expenses relating to extraordinary sanitary reinspection services.
39. Penalties for violation of chapter or other laws.
40. Penalty for violation of rule or order.
40-a. Deposit of money.
41. Violation of chapter a misdemeanor.
42. Act of officer or agent deemed act of principal.
43. Evidence.
44. Prosecution for penalties.
45. Disposal of fines and moneys recovered.
45-a. Refunds.
45-b. Unauthorized possession, sale, or exchange of food order stamps issued under food stamp plan.
45-c. Misuse of food commodities donated by the United States.

§ 32. Investigations and proceedings. 1. The commissioner, or any officer of the department when authorized by the commissioner, may investigate and report as to all matters within or pertaining to the powers and jurisdiction of the department, and for the purposes of carrying into effect the provisions of this chapter or of any other law relative to matters within its jurisdiction and the rules of the department.

2. Proceedings may be instituted before the commissioner against a

corporation, association or person upon the written complaint of any person or corporation aggrieved complaining of practices in the production, sale, transportation, purchase, storage, marketing and distribution of foods, in violation of any provision of law or the rules of the department or of the terms of an order issued pursuant to law by the commissioner, under the provisions of this chapter or of any other law the enforcement of which is within the jurisdiction of the department, or the rules of the department, made in conformity therewith.

3. Upon the presentation of such complaint the commissioner may cause inquiries to be made as to the matters alleged therein and if such complaint appears to present a sufficient cause for investigation a copy of such complaint shall be forwarded to the person, association or corporation complained of and answer may be made thereto in accordance with the rules of the department.

4. The commissioner shall thereupon cause the charges presented by such complaint to be investigated as herein provided, and such action shall be taken as the facts justify and as may be authorized by law.

§ 33. Immunity of witnesses. In any investigation, hearing or inquiry, conducted pursuant to this chapter or the rules of the department, the commissioner, or his deputy or other officer presiding at such investigation, hearing or inquiry, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

§ 34. Practice on hearings; attendance and examination of witnesses. 1. The practice on all investigations and hearings conducted or instituted as provided in this chapter shall be governed by the rules of the department, and in all such hearings or investigations where testimony is taken, the commissioner, or other officer conducting the same, shall not be bound by the technical rules of evidence.

2. All subpoenas shall be signed and issued by the commissioner, a deputy commissioner or the counsel of the department.

The fees of witnesses shall be audited and paid in the same manner as other expenses of the department. Whenever a subpoena is issued at the instance of a complainant, respondent or other party to the proceeding, the cost of the service thereof and the fees of the witness shall be borne by the party at whose instance the witness is subpoenaed.

3. If a person subpoenaed to attend before the commissioner or other officer of the department, fails to obey the command of such subpoena, without reasonable cause, or if a person in attendance upon an investigation or hearing shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered so to do by the officer or officers conducting such an investigation or hearing, or to subscribe and swear to his deposition after it has been correctly reduced to writing, if required so to do, he shall be guilty of a misdemeanor and may be prosecuted therefor in any court of competent criminal jurisdiction.

4. A subpoena issued under this section shall be regulated by the civil practice law and rules.

5. Any person who shall wilfully testify falsely as to any material matter pending in an investigation or proceeding under this chapter shall be guilty of perjury.

§ 35. Proceedings in court. If it appear after an investigation or hearing conducted as herein provided that any person, association or corporation is guilty of a violation of the provisions of this chapter or of any other act the enforcement of which is within the jurisdiction of the department, an action or proceeding may be instituted in a court of competent jurisdiction to recover a penalty for such violation or to compel a compliance with such provisions, or prevent a continuance of such violations.

§ 36. Orders and service thereof. 1. If it be ascertained after an investigation or hearing conducted as herein provided, that any person, association or corporation has failed to comply with or is guilty of a violation of the provisions of this chapter or of a rule of the department, or of any other general or special law relative to any matter within the jurisdiction of the department, an order may be made by the commissioner, under the seal of the department, compelling a compliance with such law or rule.

2. Every such order shall be served upon every person, association or corporation affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof with postage prepaid to the person affected thereby, or in case of a corporation or association, to an officer or agent thereof, upon whom a summons may be served in accordance with the provisions of the civil practice act.

3. It shall be the duty of the person, association or corporation upon whom such order is so served to notify the department forthwith, in writing, of the receipt of such order, and in the case of an association or corporation such notification must be signed and acknowledged by a person or officer duly authorized by such association or corporation to admit service. Within a time specified in the order, every person, association or corporation upon whom it is served must, if so required in the order, notify the department in like manner whether the terms of the order are accepted and will be obeyed.

4. Every such order shall take effect at a time therein specified, and shall continue in force either for a period to be designated therein or until changed or abrogated by the commissioner.

5. If such hearing is held before a deputy commissioner, a report shall be made upon the termination of the hearing to the commissioner, with recommendation as to the determination which should be made as to the issues raised on such hearing. If the commissioner find upon such report or upon a hearing conducted by him, that the rule or order complained of is reasonable and valid he shall render his decision

ratifying or confirming such rule or order; if he find that such rule or order is unreasonable or invalid, he shall revoke or modify it, or substitute a new rule or order in its place. If such modified or new rule or order is substantially different from the rule or order complained of, the parties affected thereby may bring before the commissioner, by a new petition, in the manner above provided, objections to its reasonableness or validity.

6. The decision of the commissioner shall be final, unless within thirty days after its issuance one of the parties shall institute a proceeding for the review thereof, as provided in section thirty-seven.

§ 36-a. Petition for revocation or modification of rule or order of the commissioner. Any person subject to a rule or order of the commissioner, promulgated under the provisions of article four, article four-a, or article twenty-one of this chapter, may file a written petition with the commissioner stating that any such rule or order or provision thereof or any obligation imposed in connection therewith is not in accordance with law and praying for the revocation or modification thereof. He shall thereupon be given an opportunity for a hearing and ruling upon such petition in accordance with the provisions of subdivision five of section thirty-six of this article. The decision of the commissioner shall be final unless within thirty days after its issuance one of the parties shall institute a proceeding for the review thereof, as provided in the next section, provided further that the pendency of any such proceeding shall not impede or prevent the commissioner from taking any action authorized under section thirty-five of this article.

§ 37. Review by court. A decision by the commissioner rendered as provided in the preceding section shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules. The pleadings upon which such review proceeding is instituted shall be served upon the commissioner or upon an assistant commissioner, personally, in the manner provided for the personal service of a summons

in an action unless a different manner of service is provided in an order to show cause granted by the supreme court.

§ 38. When injunction may be obtained. In an action in the supreme court or county court for the recovery of a penalty or forfeiture incurred for the violation of any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, an application may be made on the part of the people to the court or any justice thereof or to the county judge if the defendant be a resident of such county for an injunction to restrain the defendant, his agents and employees from the further violation of such provisions. The court or justice to whom such application is made, shall grant such injunction on proof, by affidavit, that the defendant has been guilty of the violations alleged in the complaint, or of a violation of any such provision subsequent to the commencement of the action. No security on the part of the plaintiff shall be required, and costs of the application may be granted or refused in the discretion of the court or justice. If the plaintiff shall recover judgment in the action for any penalty or forfeiture demanded in the complaint, the judgment shall contain a permanent injunction, restraining the defendant, his agents and employees from any further violation of such provision of this chapter or of any other law the enforcement of which is within the jurisdiction of the department or of the rules of the department. Any injunction, order or judgment obtained under this section may be served on the defendant by posting the same upon the outer door of the defendant's usual place of business, or where such violation was or is committed, or in the manner required by the civil practice act, and the rules and practice of the court. Personal service of the injunction shall not be necessary when such service cannot be secured with reasonable diligence, but the service herein provided shall be deemed sufficient in any proceeding for the violation of such injunction.

§ 38-a. Costs and expenses relating to extraordinary sanitary reinspection services. 1. (a) The total costs and expenses, in excess of

ordinary costs and expenses, incurred by the department in connection with the administration and or enforcement of any provision of this chapter or of any other law the administration and or enforcement of which is within the jurisdiction of the department or any order, rule or regulation relating to sanitary conditions and practices and the protection of the public from the sale of adulterated food administered and or enforced by the division of food inspection services shall be charged to and paid by every establishment requiring extraordinary sanitary reinspection services or other necessary action by the department to correct deficiencies.

(b) "Ordinary costs and expenses" shall mean costs and expenses incurred by the department, in the administration of the provisions of law, orders, rules or regulations enumerated in paragraph (a) of this subdivision, provided the establishments covered thereby have been determined to be in compliance therewith without the need for extraordinary sanitary reinspection services or any other necessary action by the department to bring about compliance therewith.

(c) "Extraordinary sanitary reinspection services" shall mean those services which occur subsequent to an inspection, a reinspection, an educational session for an establishment relating to sanitation or the opportunity to attend such educational session in the event of an establishment's failure or refusal to attend, notice of a compliance inspection and a determination at the compliance inspection that an establishment is in violation of any law, order, rule or regulation enumerated in paragraph (a) of this subdivision.

2. Costs and expenses that shall be assessed for extraordinary sanitary reinspection services or other necessary action shall include the cost of direct and indirect personal service including but not limited to the cost of salaries and wages, monetary and non-monetary fringe benefits, retirement contributions made and workmen's compensation premiums paid by the state for or on behalf of personnel, the cost of necessary traveling, meals and lodging, the cost of rentals for space occupied in state-owned or state-leased buildings, the cost of maintenance and operation and the cost of all other actual, direct and indirect costs apportioned to the specific division, bureau or other unit and program involved excluding, however, ordinary expenses.

3. Costs and expenses as specified in subdivision two of this section shall be presented to the establishment requiring extraordinary sanitary reinspection services or other necessary action in the form of a copy of an itemized bill therefor as certified by the commissioner, deputy commissioner, or duly authorized employee of the department. Upon receipt of such bill, the establishment shall have the duty to pay and shall pay forthwith such charges to the commissioner.

4. On written demand made within thirty days of the rendition of any bill, the party so charged shall be afforded an opportunity to be heard as to liability hereunder and the amount thereof. Any amounts of such bills not paid within thirty days from the date of determination upon such hearing, or, if none shall be demanded, on the date upon which such payment is due, shall bear interest at a rate of interest prescribed by section five thousand four of the civil practice law and rules.

5. A right of action for the recovery of such costs and expenses as specified in subdivision two of this section may be released, settled or compromised by the department either before or after an action is brought to recover such expenses. The commissioner may in his discretion for good cause shown waive the collection of such expenses or any part thereof.

6. All moneys collected or recovered as costs and expenses as specified in this section shall be the property of the state and paid into the state treasury.

7. The commissioner may promulgate, after public hearing, rules and regulations necessary to supplement and give full effect to this section.

§ 39. Penalties for violation of chapter or other laws. Every person violating any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department shall, except where other penalties are hereinafter prescribed, be subject to a

penalty in the sum of not more than six hundred dollars for the first violation, nor more than one thousand two hundred dollars for the second and each subsequent violation and provided further, however, that for a violation of subdivision thirteen or fifteen of section two hundred of this chapter, the minimum penalty shall be five hundred dollars and the maximum penalty shall be one thousand dollars and that for the second and subsequent offenses such person may also be subject to an administrative order suspending the manufacture and/or sale of such confectionery for a period of time up to three months for each such violation. When such violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. When the violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. If the sale be of milk and it be in cans, bottles or containers of any kind and if the milk in any one of such containers be adulterated, it shall be deemed a violation whether such vendor be selling all the milk in all of his containers to one person or not. When the use of any such article or substance is prohibited, each day during which or any part of which such article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. When the storage of any article is prohibited beyond a certain period, each day during which or any part of which any article is so stored beyond the period provided for by this chapter, shall constitute a separate violation. A right of action for the recovery of, or a liability for, penalties incurred as provided in this chapter, or in any other law the enforcement of which is within the jurisdiction of the department, may be released, settled or compromised before the matter is referred to the attorney general as provided in section forty-four of this article, and thereafter may be released, settled or compromised by the attorney general, either before or after an action is brought to recover such penalties.

§ 40. Penalty for violation of rule or order. Every person, association or corporation and all agents, officers and employees thereof, shall obey every order made as provided in this chapter, so long as such order shall be in force. A person, association or corporation who shall fail by himself, itself or through his or its agents, officers and employees, to obey any order of the commissioner, or who shall violate any rule of the department shall be subject to a penalty not exceeding the sum of four hundred dollars for each and every first offense, and a penalty not exceeding the sum of eight hundred dollars for a second and each subsequent offense. Every violation of such order, or of the rules of the department, shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

§ 40-a. Deposit of money. The commissioner is hereby authorized and directed to deposit all money recovered or received by the department in satisfaction of penalties assessed for violations of this chapter and rules and regulations promulgated pursuant thereto to the credit of the general fund.

§ 41. Violation of chapter a misdemeanor. Except as otherwise provided by the penal law, a person who by himself or another violates any of the provisions of this chapter or of any other law the enforcement of which is within the jurisdiction of the department, is guilty of a misdemeanor, and upon conviction shall, except as otherwise provided in this chapter, be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment for not less than one month, nor more than six months, or by both such fine and imprisonment, for the first offense; and by not more than one year's imprisonment for the second offense.

§ 42. Act of officer or agent deemed act of principal. In construing and enforcing the provisions of this chapter relating to penalties, the

act of a director, officer, agent or other person acting for or employed by a person, association or corporation subject to the provisions of this chapter and acting within the scope of his employment, shall be deemed the act of such person, association or corporation.

§ 43. Evidence. The doing of anything prohibited by this chapter shall be evidence of the violation of the provisions of this chapter relating to the thing so prohibited, and the omission to do anything directed to be done shall be evidence of a violation of the provisions of the chapter relative to the thing so directed to be done. The intent of any person doing or omitting to do any such act is immaterial in any prosecution for a violation of the provisions of this chapter. Any person who suffers, permits or allows any violation of the provisions of this chapter in any room or building occupied or controlled by him, shall be guilty of such violation and liable accordingly. Any person who shall keep, store or display any article or product, the manufacture or sale of which is prohibited or regulated by this chapter, with other merchandise or stock in his place of business, shall be deemed to have the same in his possession for sale.

Every certificate, duly signed and acknowledged, of a chemist, analyst or other expert employed by the commissioner or any analysis, examination or investigation made by such analyst, chemist or expert with respect to any matter or product which the commissioner has authority to examine or cause to be examined, shall be presumptive evidence of the facts therein stated.

§ 44. Prosecution for penalties. 1. Whenever the commissioner shall know or have reason to believe that any penalty has been incurred by any person for a violation of any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, or that any sum has been forfeited by reason of any such violation, the commissioner may report the facts to the attorney general who may cause an action or proceeding to be brought in the name of the people for the recovery of the same.

Such action may be brought in the county where the defendant resides or the violation, or any part thereof, occurred.

2. In an action for a penalty or forfeiture incurred by reason of the violation of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, when the complaint charges a violation of any two or more of such provisions, the plaintiff shall not be compelled to elect between the counts under such different provisions but shall be entitled to recover if it is found that a violation of any of such provisions has been committed for which a penalty or forfeiture is imposed.

3. If the defendant in such an action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of a rule or order of the department, the defendant was actually and in good faith prosecuting a suit, action or proceeding before the department or in the courts to set aside such rule or order, the court shall remit the penalties or forfeitures incurred during the pendency of such action or proceeding.

§ 45. Disposal of fines and moneys recovered. Except as otherwise provided in this chapter, all moneys recovered, either as fines, penalties, forfeitures or otherwise, for the violation of any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department, or of the rules of the department, and all bail forfeited by persons charged with such violations, shall be the property of the state. Moneys so recovered by town justices shall be paid to the state comptroller in accordance with the provisions of section twenty-seven of the town law and moneys so recovered by village justices shall be paid to the state comptroller in accordance with the provisions of section 4-410 of the village law. The same disposal shall be made of all moneys recovered upon any bond given by any officer by virtue of the provisions of this chapter. Provided, however, that any such moneys collected as fines, penalties or forfeitures as a result of a prosecution for a violation of any of the

provisions of article sixteen and sixteen-a of this chapter and all bail forfeited by persons charged with such violations shall be the property of the county or city, as the case may be, in which the alleged offense was prosecuted and shall be paid to the treasurer, or corresponding fiscal officer, of such county or city, except that any such moneys and any such bail forfeitures, collected by the town justices or by village justices shall be paid to the state comptroller in accordance with section twenty-seven of the town law and section 4-410 of the village law, respectively.

§ 45-a. Refunds. 1. Moneys heretofore or hereafter received by the department pursuant to this chapter may, within one year from the receipt thereof, be refunded to the party for whose account same were received, on proof satisfactory to the commissioner that:

a. Such moneys were in excess of the amount required by law.

b. The license for which application was made has been refused by the commissioner.

c. Such moneys were received as payment for services or materials and such services have not been rendered or such materials furnished.

d. Such moneys were received as rental or concession fees and the applicant for such concession or lease has, by acts or omissions of the department, been deprived of the use of the leased premises or has been prevented from operation of the concession for the whole or a portion of the term of such lease or concession agreement; provided, however, that no such refund shall be for a greater proportion of the total rental or concession fee than the period of such loss of use bears to the period of such lease or concession agreement.

2. Such refunds shall, upon approval by the commissioner and after audit by the comptroller, be paid from any moneys in the custody of the department received as license fees, sales of materials, fees for services or for rentals, or fees for grants of concessions.

3. Whenever any person, firm, corporation or cooperative association has filed with the commissioner any surety bond or other security and fails to perform the conditions for which such surety bond or security was pledged, the commissioner may, after audit by the comptroller, distribute any proceeds therefrom in the manner provided by this chapter.

4. When the conditions under which any security (other than a surety bond) filed with the commissioner have been fully discharged, the commissioner may return such security to the person filing the same, together with any interest or income which may have accrued thereon; and the commissioner may also, from time to time and after audit by the comptroller, pay to the depositor any intermediate interest or income accruing from such security.

5. Nothing contained in this section shall in any way supersede, alter or amend the provisions of section thirty-one-c of this chapter.

§ 45-b. Unauthorized possession, sale, or exchange of food order stamps issued under food stamp plan. Any person, other than a person authorized by the regulations and conditions prescribed by the secretary of agriculture of the United States governing the food stamp plan, who shall have in his possession, or who shall purchase sell or exchange any food stamps, books, book covers or any other instruments or documents relating to food stamps, for money or for any article or articles other than those foods authorized by the regulations and conditions prescribed by the secretary of agriculture of the United States governing the food stamp plan, or for food the value of which is less than the face amount of such food stamps, or in any other manner in violation of the regulations and conditions prescribed by the secretary of agriculture of the United States governing the food stamp plan, shall be guilty of a misdemeanor. As used herein, the word "person" shall mean any individual, partnership, corporation, or association, whether or not such individual, partnership, corporation or association is eligible to participate or is participating in the food stamp plan.

§ 45-c. Misuse of food commodities donated by the United States. Any person who shall wilfully sell or make any other unauthorized disposition of any food commodity donated under any program of the United States government or whoever, not being an authorized recipient thereof, willfully converts to his own use or benefit any such food commodity shall be guilty of a misdemeanor.

ARTICLE 4.
Dairy Products.

Section 46. Declaration of policy.
46-a. Regulations.
47. Care and feed of cows, and care and keeping of milk.
47-a. Regulating the handling and sale of products made from recovered milk fat and solids.
48. Receptacles to be cleansed before returning; receptacles may be seized; evidence; violation.
49. Insanitary cans and receptacles condemned.
50-e. Legislative finding and declaration of policy.
50-f. Definitions and standards of identity.
50-g. Licenses to manufacturers of melloream.
50-h. Entry, inspection and investigation.
50-i. Labeling of melloream and vegetable oil blends.
50-j. Serving melloream, vegetable oil blends and cream in restaurants and other public eating places.
50-k. Rules and regulations.
51. Milk inspection.
52. Presumptions in regard to cream and skim milk.
54. Regulations in regard to manufactories, plants or places where milk or cream is brought or received.
55. Skimmed milk, whey, buttermilk or milk container or plant equipment rinsings to be heated before being used for feeding.
56. Determination of the content of milk and/or cream where purchase or settlement therefor is made on the basis of

such content.

56-a. Taking of composite sample; record of tests.

56-b. Determination of bacteria in milk and/or cream where purchase or settlement is made therefor on the basis of bacterial count.

57. Licensing of persons in charge of milk-gathering stations, manufactories or plants; licensing of persons sampling milk and/or cream and/or determining weight or volume of milk and/or cream; and of persons making milk component tests.

57-a. Licensing of persons making bacterial counts of milk and/or cream or making tests of milk and/or cream to detect certain abnormalities.

59. Powers of the department concerning oleomargarine.

61. Manufacture, sale, and use of oleomargarine.

62. Coloring matter, dairy terms, size of package, labeling, false advertising.

63. Labeling of imitation cheese; imitation cheese food and products containing imitation cheese.

67. Manufacturers identification markings and grade brands for cheese.

67-b. Pasteurization of cheese.

68. Use of false brand prohibited.

69. County trade marks.

70. Branded cans, jars, bottles, cases, boxes or barrels not to be sold, remarked or used without consent of owner.

71. Registration of mark; defacing mark; seizure.

§ 46. Declaration of policy. It is hereby declared that the dairy industry is a paramount industry of the state and the production, processing, packaging, distribution and sale of milk products has become an enterprise of vast economic importance to the state and of vital importance to the consuming public of the state, and which should be encouraged and promoted in the public interest. It is further declared that milk and milk products have long been accepted by the consuming public as wholesome and nutritious articles of food. Advances in food

technology have resulted in the development of a variety of products for similar usage including dairy foods with different composition than products now defined as well as products made with vegetable oils and proteins from sources other than dairy products, products which are similar in appearance, odor, or taste to dairy products, and which are difficult to differentiate from dairy products. It is further declared to be in the interest of the dairy industry and the consuming public to promote and encourage the development of new and different dairy products with varying proportions of fat, solids and other ingredients, including wholesome ingredients not now permitted in dairy products but which may be used without restriction in non-dairy products which are similar in appearance, odor or taste to dairy products. It is also declared to be in the interest of the dairy industry and particularly in the interest of the consuming public, that to the fullest extent possible, there be uniformity of definitions and standards for milk and milk products and in the labeling of milk and milk products between the various states to the end that there may be free movement of milk and milk products between states, and further to the end that the inefficiency, needless expense, and confusion caused by differences in products sold under the same name, and differences in labeling of identical products may be eliminated.

§ 46-a. Regulations. The commissioner shall, after public hearing, promulgate definitions and standards for milk and milk products, and for products other than milk and milk products, which products are similar in appearance, odor or taste to milk and milk products, together with rules and regulations for the packaging and labeling of all such products, and other conditions relating to the manufacture, processing, packaging, distribution and sale of all such products including sanitation pertaining to manufacture, processing, handling, distribution, surroundings, grounds, equipment, personnel and pasteurization of such products. Such regulations shall apply to all sources including farms where such milk is produced. A copy of all such rules and regulations governing sanitation shall be provided to the state commissioner of health fifteen days prior to the public hearing. The commissioner is further empowered to promulgate rules and

regulations by which milk may be standardized, including the plants at which such standardization may be done and may provide that standardization may be done only at plants which are duly licensed and specifically approved by the commissioner to perform such standardization. The commissioner may provide in such rules and regulations for different standards and labeling for products manufactured within the state and sold out of state.

§ 47. Care and feed of cows, and care and keeping of milk. No person shall keep cows, for the production of milk for market or for sale or exchange, or for manufacturing the milk or cream from the same into any article of food, in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings and no person shall keep such cows or the product therefrom in such condition or surroundings or in such places as shall cause or tend to cause the produce from such cows to be in an unclean, unhealthful or diseased condition, if the produce from such cows is to be sold, offered or exposed for sale upon the markets for consumption or to be manufactured into any food product, nor shall such cows or the produce therefrom be handled or cared for by any person suffering with or affected by an infectious or contagious disease, nor shall any such cows be fed on any substance that is in a state of putrefaction or fermentation, or upon any food that is unhealthful or that produces or may produce impure, unhealthful, diseased or unwholesome milk. But this section shall not be construed to prohibit the feeding of ensilage.

No person having milk in his possession for the purpose of selling the same for consumption as such or for manufacturing the same into butter, cheese, evaporated or condensed milk or other food shall keep the same in utensils, cans, vessels, rooms or buildings that are unclean or have insanitary surroundings or drainage or in any condition whatsoever that would tend to produce or promote conditions favorable to unhealthfulness or disease. The commissioner shall notify all persons violating this section to clean said utensils, cans, vessels, rooms or buildings or to so improve the sanitary conditions that the foregoing provisions will not be violated; and if such notice is complied with within ten days no

presecution, civil or criminal, for a violation of this section shall be instituted.

§ 47-a. Regulating the handling and sale of products made from recovered milk fat and solids. Notwithstanding any other provisions of this chapter, it shall not be unlawful to recover milk fat and other milk solids

(a) from mixtures of milk and potable water produced in the operation of high-temperature short-time pasteurizers or

(b) from rinsings or drippings recovered from cans or equipment used in the handling of milk and milk products, provided such rinsings or drippings do not contain excessive foreign substance, or

(c) from whey or to use such fat and such other milk solids in

(1) products in the manufacture of which milk fat, other milk solids and water are permitted ingredients, or

(2) in the manufacture of butter and skimmed milk powder (nonfat dry-milk solids).

The commissioner is hereby authorized to promulgate regulations governing the handling, manufacturing and marketing of such mixtures, rinsings, drippings and whey and the products made therefrom, and may prescribe standards for such products.

§ 48. Receptacles to be cleansed before returning; receptacles may be seized; evidence; violation. Whenever any can or receptacle is used for transporting or conveying milk, cream or curd to market for the purpose of selling or furnishing the same for consumption as human food, or for manufacturing into human food, which can or receptacle, when emptied, is returned or intended to be returned to the person so selling, furnishing or shipping such substance to be again thus used, or which is liable to continued use in so transporting, conveying, selling or shipping such substance as aforesaid, the consumer, dealer or consignee using, selling or receiving the milk, cream or curd from such can or receptacle, shall, before so returning such can or receptacle remove all substances foreign to milk therefrom, by rinsing with water or otherwise. When any such

milk, cream or curd is sold within any city of this state or shipped into any such city, the fact of such shipment or sale shall be prima facie evidence that the same was so shipped or sold for consumption as human food or to be manufactured into human food. When any such can or receptacle is returned or delivered or shipped to any person or creamery so selling such substance within, or shipping the same into such city, it shall be deemed that such can or receptacle is liable to such continued use in so selling or shipping such substance therein for consumption as human food within the meaning and purposes of this article. No person shall place or suffer to be placed in any such can or receptacle any sweepings, refuse, dirt, litter, garbage, filth or any other animal or vegetable substance, nor shall any such consignee or other person through himself, his agent or employee, bring or deliver to any person or railroad or other conveyance any such can or receptacle for the purpose of such return, or any milk, cream or curd can or receptacle for the purpose of delivery or shipment to any person or creamery engaged in so selling or shipping such substances for consumption as human food, which can or receptacle contains such foreign substance or which has not been rinsed as herein provided. The word "curd" as used in this article applies to the substance otherwise known as "pot cheese" or "cottage cheese." Whenever any such can or receptacle is used, returned, delivered or shipped in violation of this article every such use, return, delivery or shipment of each such can or receptacle shall be deemed a separate violation thereof. Such cans or receptacles so used, returned, delivered or shipped in violation of this article may be seized by the commissioner, his assistants or agents and held as evidence of such violation.

§ 49. Insanitary cans and receptacles condemned. All cans, or receptacles used in the sale of milk, cream or curd for consumption, or in transporting or shipping the same to market or the delivery thereof to purchasers for consumption as human food, when found by the commissioner or his assistants or agents to be in unfit condition to be so used by reason of being worn out, badly rusted, or with rusted inside surface, or unclean or insanitary or in such condition that they can not be rendered clean and sanitary by washing, and will tend to produce or

promote in milk, cream or curd when contained therein, bad flavors, unclean or unwholesome conditions favorable to unhealthfulness or disease, shall be condemned by the commissioner or his assistants or agents. Every such can or receptacle when so condemned shall be marked by a stamp, impression or device, designed by the commissioner, showing that it has been so condemned, and when so condemned shall not thereafter be used by any person for the purpose of so selling, transporting or shipping milk, cream or curd.

§ 50-e. Legislative finding and declaration of policy. It is hereby declared that cream, half and half, milk and mixtures of milk and cream have long been accepted by the consuming public; recognized as wholesome and nutritious articles of food, and their composition generally understood by consumers.

Advances in food technology have resulted in the development of a variety of products for similar usage including dairy foods of lower butterfat and blends made with vegetable oils and with proteins from sources other than dairy products; products which are so similar in appearance, odor and taste that they are difficult to differentiate from dairy products. It is further declared to be the purpose of this article to promote honesty and fair dealing in the interest of consumers, to insure fair competition with a highly regulated dairy industry which is of considerable economic importance to the economy of the state and to prevent confusion and deception in the sale of such foods by establishing definitions and standards of identity for such foods, and by providing for rules and regulations which will effect their orderly marketing and insure similar sanitary standards.

It is the further intent of the legislature, in view of the well known nutritional qualities of whole milk (including standardized milk) and other dairy products that the burden of proof of nutritional claims of products offered for sale to consumers which have the appearance, odor and taste of whole milk (including standardized milk) or other dairy products is placed on the persons or corporations offering the product or products for sale to consumers.

§ 50-f. Definitions and standards of identity. As used in this section the terms "melloream" or "a vegetable oil blend" mean any substance, mixture or compound regardless of the name by which it is represented, which contains vegetable fats or oils and proteins derived from animal or vegetable sources, and whose appearance, odor and taste is similar to cream, half and half, milk or a mixture of milk and cream, to the point of rendering these products difficult to differentiate from each other.

§ 50-g. Licenses to manufacturers of melloream. 1. No person shall engage in the manufacture or production of melloream in the state of New York or for sale or distribution in the state of New York unless duly licensed as provided in this article or unless licensed as a milk dealer pursuant to article twenty-one of the agriculture and markets law.

2. Application for a license shall be made upon a form prescribed by the commissioner and shall include such facts concerning the applicant's status and operations as are deemed necessary by the commissioner for administration of this article. A license shall be for a period not to exceed two years and a renewal of license must be duly made at least thirty days in advance of the expiration date. The license fee pursuant to this article for the license period for a person who is not otherwise licensed as a milk dealer pursuant to article twenty-one of the agriculture and markets law shall be fifty dollars for each manufactory, plant or place where melloream is manufactured or produced.

3. No license issued pursuant to this article to a manufacturer of melloream shall be denied or revoked unless the commissioner finds by a preponderance of evidence, after due notice and opportunity of a hearing to the applicant or licensee, that such person is not in compliance with or is in violation of any of the provisions of this article or regulations of the commissioner governing the manufacture and labeling of melloream.

§ 50-h. Entry, inspection and investigation. Any person designated for the purpose shall have access to and may enter at all reasonable hours all places where melloream is being manufactured, packaged or stored for sale or distribution in the state of New York, where melloream is otherwise being handled or sold in the state of New York, or where the books, papers, records or documents relating to such transactions are kept, and shall have power to inspect and copy the same, and may administer oaths and take testimony for the purpose of ascertaining facts which in the judgment of the commissioner are necessary to administer this article. The commissioner may inspect a plant beyond the boundary of the state, and when he does, the applicant or licensee shall, prior to such inspection, agree to pay, in addition to the license fee provided pursuant to subdivision two of section fifty-g of this article, fees for the inspection of the plant by the commissioner or his representatives. Such fees shall be twenty-five dollars for each day consisting of seven hours or part thereof during which an employee of the commissioner spends traveling to and from and inspecting the plant. In addition the applicant or licensee shall agree to pay all necessary expenses including but not limited to expenses for traveling, lodging and meals. The commissioner may, if satisfied with the adequacy of inspection by some other regulatory agency, and if satisfied that there is substantial compliance with the regulations of the commissioner, forego actual inspection of such out-of-state plant or plants.

§ 50-i. Labeling of melloream and vegetable oil blends. Whenever the brand name of melloream or a vegetable oil blend, as defined in section fifty-f, appears on the container so conspicuously as to be seen under customary conditions of purchase, there shall immediately and conspicuously precede or follow the brand name or product designation without intervening written, printed or graphic matter in letters at least one-third of the size of the brand name and on a contrasting background, any one of the following statements: "melloream," "a vegetable blend," "a vegetable oil product," "not a dairy product," and the words "milk," "cream," "half and half," or "a mixture of milk and cream" shall not be used on the package label of melloream or vegetable

oil blends except to the extent that there shall also appear on the label an accurate list of ingredients. In the event that a product under this section shall contain an ingredient which has been derived from milk or a milk by-product or during its formation has used milk or a milk by-product, the ingredient labeling shall after specifying the name of the ingredient, place in parentheses the words "milk derived".

Persons or corporations offering such products for sale shall upon request by the commissioner submit to him evidence in support of any nutritional claims made for such products through advertising, labeling or public announcement, and failure to submit such evidence or to revise such claims in the manner suggested by the commissioner shall be presumed to be a misbranding of said products within the meaning of section two hundred one of this chapter.

§ 50-j. Serving melloream, vegetable oil blends and cream in restaurants and other public eating places. Whenever melloream, a vegetable oil blend, cream, half and half, milk or a mixture of milk and cream is served in a restaurant, hotel, boarding house, lunch counter, place of entertainment, public eating place or any establishment where food is sold for consumption on the premises, the name of the product served should be clearly stated by label, sign or menu statement in a manner likely to be read by the customer.

§ 50-k. Rules and regulations. The commissioner shall from time to time, after inquiry and public hearing, promulgate and adopt rules and regulations to supplement and give full effect to the provisions of section fifty-e. Such rules and regulations shall establish sanitary regulations pertaining to the manufacture, packing and distribution of melloream and vegetable oil blends, including the sanitary condition of buildings, ground, and equipment where melloream and vegetable oil blends are manufactured and the sanitary condition of the ingredients and of the persons in direct physical contact with melloream and vegetable oil blends during manufacture. Such sanitary rules and regulations shall be equal to those established for dairy products.

§ 51. Milk inspection. The commissioner or his agent, in inspecting milk for the purpose of analysis to determine the percentage of fat or other milk solids, shall take duplicate samples thereof and shall seal both samples, and shall tender, and, if accepted, deliver one sample to the person from whom the milk was taken. When samples are taken from the producer of the milk sampled or his agent, at a place other than the dairy where the milk was produced, the commissioner or his agent shall within ten days thereafter, with the consent of the producer, take duplicate samples of the mixed milk of the herd of cows from which the milk first sampled was drawn, and shall deliver one such sample to the producer or his agent and shall submit the other to analysis. If upon analysis it proves to contain no higher percentage of milk solids, or no higher percentage of fat, or has no lower freezing temperature than the sample first taken, then no action shall lie against the producer for violation of standards as established by the commissioner pursuant to the provisions of section forty-six-a. If the producer refuses to allow such herd sample to be taken, then the producer shall be precluded from offering any evidence that the milk from which the first sample was taken was just as it came from the cow. Where a sample of milk taken by the commissioner or his agent consists of the entire contents of a container unopened at the time of taking, no duplicate need be taken or tendered or delivered.

§ 52. Presumptions in regard to cream and skim milk. When cream is separated or skimmed from milk at any station or establishment where milk is received from producers for the purpose of selling the same or shipping the same to market for consumption as food and the supply of milk on hand thereat at the time of the next regular daily shipment of milk therefrom, consisting of the total amount of milk in such shipment, together with that remaining on hand immediately after such shipment, is not thereby decreased or correspondingly less than the total quantity received during any period extending from some point of time before such skimming was done until the time of such shipment, together with the amount of milk on hand at the commencement of such period, and such

decrease is not equal in amount to the quantity of milk that must have been used in so separating such cream in addition to the quantity otherwise there used or disposed of during such period, such fact is conclusive that skim milk or other foreign substance was added to such milk supply within such period and shall be presumptive evidence within the meaning of this section that the same was added to each can or vessel of milk in such shipment. When cream or skim milk is found to have been on the premises of any such station or establishment or is sold or shipped therefrom, such cream or skim milk so found or so sold or shipped therefrom shall be presumed to have been produced by separating or skimming at such station or establishment. In any action or proceeding relative to the adulteration of milk by removing cream therefrom or adding skim milk or other foreign substance thereto, it shall be presumed that when cream has been produced by so skimming or separating or butter has been manufactured, there was made at least five quarts of milk in the production of each quart of cream so produced and there was necessarily so produced thereby at least four quarts of skim milk to each quart of cream so produced, and that there was used at least nine quarts of milk in the production of each pound of butter so manufactured.

§ 54. Regulations in regard to manufactories, plants or places where milk or cream is brought or received. No person shall sell, supply or bring to any butter or cheese factory or to any plant or place which manufactures a food product from milk or which ships or sells milk for consumption any milk diluted with water, or any unclean, impure, unhealthy, adulterated or unwholesome milk, or milk from which any of the cream has been taken, except pure skim milk to skim-cheese factories. No person shall sell, supply or bring to be manufactured to any butter or cheese factory or to any plant or place which manufactures a food product from milk or which ships or sells milk for consumption any milk that is sour or from which has been kept back any part of the milk commonly known as strippings, except pure skim milk to skim-cheese factories. The owner or proprietor or the person having charge of any such manufactory, plant or place where milk is received for any such purpose, not buying all the milk used by him, shall not use for his own

benefit, or allow any of his employees or any other person to use for his own benefit, any milk, cream, butter or cheese or any other product thereof, brought to such factory, without the consent of the owners of such milk or the products thereof. Every such manufactory, plant or place not buying all the milk used, shall keep a correct account of all the milk or cream daily received, of the number of packages of butter and cheese made each day, and the number of packages and aggregate weight of cheese and butter disposed of each day; which account shall be open to inspection to any person who delivers milk to such manufactory, plant or place. Every purchaser or receiver of milk from the producer thereof, for manufacturing purposes or for reselling the same, shall on written request therefor, tender daily thereafter at time of delivery to such producer, or to the person delivering such milk to such purchaser in behalf of such producer, a written statement of the amount of milk so received or purchased until or unless such producer notifies such purchaser in writing that he no longer desires such statement; such statement shall give, first, the name of the producer or seller, second, the date of delivery, third, the amount so delivered, fourth, shall be signed by the purchaser or his duly authorized representative; such statement shall be given in the terms of the unit used as a basis for determining the value thereof. Such purchaser or receiver shall, at each periodical time of payment for such milk, give each such producer, so delivering milk, a statement showing the amount of milk delivered during the periodical time for which payment is made, and the average per centum of butter fat test of same, provided payment is made on basis of butter fat content.

Any person having charge of a milk gathering station or establishment as aforesaid shall keep a true and correct monthly record of the receipts of milk or other dairy products received at such station or establishment, and also a true and correct monthly record of all sales or shipments of milk, cream or other dairy products shipped or sold from such station or establishment, and shall also keep a true and correct monthly record of the amount of skim milk produced in such station or establishment and of the disposition of said skim milk. Such record shall be preserved at such station or establishment for at least two years after the same shall have been made and such records shall at all

times be open to the inspection of the commissioner, his assistants or agents. When cream is sold or shipped from any such station or establishment so selling or shipping milk for consumption as aforesaid, each original bottle or package of one quart or less of cream so shipped or sold shall bear a label securely attached to the side of such bottle or package on which shall be conspicuously printed the word "cream" in black letters of at least one-fourth of an inch in length or else the word "cream" shall be blown in the side of such bottle in plain raised letters of at least one-half an inch in length, and the top and side of each and every other original package or can containing cream or original crate or case containing bottles of cream so shipped or sold shall bear a label securely attached on which shall be conspicuously printed the word "cream" in black letters of at least one inch in length and also a plainly written or printed statement on the label stating from whom and what station the same is shipped and the name of the consignee and point of destination and date on which the cream therein was produced by such separation or skimming. The shipment of each and every such original package of cream so shipped and not so labeled as herein required shall constitute a separate violation.

§ 55. Skimmed milk, whey, buttermilk or milk container or plant equipment rinsings to be heated before being used for feeding. Any person operating any butter factory, cheese factory or other milk plant, before delivering to any person any skimmed milk, whey, buttermilk or milk container or plant equipment rinsings, to be used for the feeding of domestic animals, shall cause such by-product to be uniformly heated to a temperature of not less than one hundred and forty-three degrees Fahrenheit and held at such temperature for at least thirty minutes, or to be uniformly heated to a temperature of one hundred and seventy degrees. No such by-product shall be used for the feeding of domestic animals until heated as provided herein.

§ 56. Determination of the content of milk and/or cream where purchase or settlement therefor is made on the basis of such content. 1. The commissioner shall, after public hearing, prescribe, by rules and

regulations, the methods, equipment, and procedures, including the calibration and use of electronic equipment, which shall be used in determining the percentage of the components of milk and/or cream where the result of such determination is to be used wholly, or in part, as a basis for payment or settlement for such milk and/or cream, or where the proceeds of co-operative creameries or such milk-receiving or manufacturing plants are allotted on the basis of the determination of a component or components of milk, or where the result of such test is used for the purpose of official inspection or for public record.

2. Whenever the amount of a milk component or components contained in milk and/or cream is used wholly or in part as a basis for payment or settlement for such milk and/or cream, or whenever such component, or components, of milk and/or cream are made a matter of public record or official inspection, no person or persons shall report or record a greater or lesser percentage or average percentage of such milk component than is actually contained in such milk and/or cream. The commissioner or persons employed by him for that purpose may at any time inspect the equipment and assist in making tests of milk and/or cream received at any milk-receiving or manufacturing plant or other place of testing for the purpose of determining the accuracy of tests so made.

3. Any person or persons using other than the method, equipment and procedures prescribed by the commissioner pursuant to this section, or crediting any patron delivering milk and/or cream with a greater or lesser percentage or average percentage of a milk component than is actually contained in such milk and/or cream so delivered and as determined by such prescribed method or methods shall be deemed to have violated the provisions of this chapter.

4. For the purposes of this article, components of milk or cream shall include non-fat solids, milk fat, protein, lactose and total solids contained in milk or cream.

§ 56-a. Taking of composite sample; record of tests. Corporations, associations or persons buying milk and/or cream from producers of milk

and/or cream to be paid for on the basis of the percentage of a component or components of such milk or cream and taking samples therefrom to form a composite sample to be tested periodically to determine its value on such basis, shall, at the request of the producer, or of his agent designated in writing, take such samples in duplicate and subject them to the same treatment. At the end of the period for which the composite samples were taken, such corporation, association or person shall tender same to the producer thereof, or to his authorized agent, and give such producer, or his authorized agent, the choice of one of the two composite samples so taken. Such producer, or his authorized agent, may send such duplicate composite sample, properly marked for identification of the component or components upon which payment or settlement for the milk is based and with the producer's name and post office address, to the New York State food laboratory of the department within three days from the receipt thereof. Such laboratory shall cause such sample to be tested for the per centum of such component or components contained therein, and shall cause a report of such test to be sent to the producer or to his authorized agent, from whom it was received within ten days thereof, or as soon thereafter as possible. Persons testing composite samples of milk and/or cream taken from milk or cream bought or received from producers, where the value thereof is determined by the percentage of a component or components contained in such milk or cream, shall preserve intact the remaining portion of the sample from which the test was made, and in the case of milk keep the same for at least ten days and in the case of cream keep the same for at least one day after the making of such test, for the purpose of permitting the commissioner or his duly authorized representative to examine and test the same. Whenever a producer shall designate in writing his authorized agent, the period for which such authorization shall be in effect shall be stated and the time or times when such duplicate composite sample or samples shall be tendered to the authorized agent. The corporation, association or person buying such milk and/or cream shall permit the authorized agent to collect the samples so chosen.

Persons making such tests of samples of milk and/or cream so purchased or received shall, immediately after such tests are completed, prepare a

list containing the names or numbers of the producers whose milk and/or cream was so tested, and place opposite each such producer's name or number the percentage of each component or components, upon which payment or settlement is based, found to have been contained in the sample of milk and/or cream representing the milk and/or cream delivered by each such producer. Such lists so prepared shall be made with indelible pencil or permanent ink and shall be filed in the plant or place where such milk and/or cream is bought or received, and each such list shall be duly signed by the person making such tests and preparing such lists, and such person shall place beneath his signature the number of the state license under which he is testing.

All such lists shall be kept as a record for at least one year and shall be open to examination at all times by the commissioner or his duly authorized representative. At any time, upon request of any producer, or his authorized agent, the purchaser or receiver of such milk and/or cream shall permit such producer to examine such part of said record as contains information concerning the samples of milk and/or cream representing the milk and/or cream delivered by such producer. Every such purchaser or receiver of milk and/or cream from the producer thereof shall, on written request therefor, made by the producer or by his authorized agent, mail or deliver to the producer or his authorized agent, at each time thereafter when such list is made a written statement of the percentage of the component or components, upon which payment or settlement was based, found to have been contained in the sample or samples representing the milk and/or cream delivered by such producer.

Without the written permission of the commissioner, no sample of milk and/or cream so tested by the purchaser or his representative shall be tested at a plant or place other than the one where received, nor without such permission shall any such sample of milk be removed from any such plant or place where tested within ten days from the date of testing, nor shall any such sample of cream be removed therefrom within one day from such date of testing.

§ 56-b. Determination of bacteria in milk and/or cream where purchase or settlement is made therefor on the basis of bacterial count. In milk-receiving or manufacturing plants and other places using methods approved by the commissioner for determining the bacterial count in milk and/or cream, where the result of such determination is to be used wholly or in part as a basis for payment or settlement for such milk or cream, or where the proceeds of co-operative creameries or such milk-receiving or manufacturing plants are allotted on the basis of the bacterial count, no pipette or syringe shall be used in such determination unless the same has been legibly and indelibly marked with the letters "N. Y." by the commissioner or by his duly authorized representative. No such pipette or syringe shall be so marked unless it has been found upon examination to be so constructed and graduated as to deliver accurately the amount of liquid required for the determination. The provisions of this article, however, shall not preclude the use of a pipette already marked "S. B." or "N. Y.", by the director of the New York state agricultural experiment station.

Whenever the bacterial count of such milk and/or cream is used wholly or in part as a basis for payment or settlement for such milk and/or cream, or whenever the bacterial count affects the classification of the milk and/or cream as received from the producer, or the acceptance or rejection of such milk and/or cream by the operator of a milk-receiving or manufacturing plant, no person or persons shall report or record a larger or smaller bacterial count than that obtained by the actual examination of the milk and/or cream so delivered by the producer. The commissioner or persons employed by him for that purpose may at any time inspect the equipment and assist in making bacterial counts of milk and/or cream received at any milk-receiving or manufacturing plant or other place where counts are made for the purpose of determining the accuracy of the counts so made.

Any person or persons using other than the properly marked pipettes or syringes or crediting any patron delivering milk and/or cream with a larger or smaller bacterial count than that obtained by the actual count of the bacteria in the milk and/or cream so delivered and as determined by the method or methods approved by the commissioner shall be deemed to

have violated the provisions of the agriculture and markets law.

§ 57. Licensing of persons in charge of milk-gathering stations, manufactories or plants; licensing of persons sampling milk and/or cream and/or determining weight or volume of milk and/or cream; and of persons making milk component tests. 1. No person shall take charge, either as superintendent, manager or otherwise, of any milk-gathering station, manufactory or plant where milk and/or cream is received from producers for sale or resale or for manufacture, unless licensed by the commissioner.

2. No person shall measure, weigh, or otherwise determine the volume or weight of milk and/or cream received from or offered for sale by the producer thereof or sample such milk and/or cream, or handle, or prepare such milk and/or cream samples when such samples are to be used for the purpose of determining the amount of a milk component or components contained therein, and/or to determine the bacterial count thereof, or for any other purpose where the result of such test or examination is used as a basis for payment for such milk and/or cream, for the classification of such milk and/or cream, for the rejection or acceptance of such milk and/or cream, or for official inspection, or for public record, unless licensed by the commissioner provided, however, that the provisions of this section shall not be deemed to apply to any person employed by the state department of health or any municipal department of health in New York state when performing his official duties for such health agency. Such license shall be designated as a "milk receiver's license."

3. No person shall prepare or test milk and/or cream samples by any method, for the purpose of determining the amount of any milk component contained therein, where the result of such test is used as a basis for payment for such milk and/or cream, or for official inspection or for public record, unless licensed by the commissioner.

4. Application for a license, or licenses shall be made upon a form prescribed by the commissioner. The applicant shall furnish satisfactory

evidence of good moral character, and shall give proof of his ability to perform the functions for which a license is applied, to the satisfaction of the commissioner. The commissioner, in his discretion, may combine in one license authority to perform any of the functions for which a license is required pursuant to the provisions of subdivisions one, two and three of this section. A license shall be for a period not exceeding five years, and may be renewed, in the discretion of the commissioner, for successive periods of not exceeding five years each.

Each license shall be kept at the place where the licensee is employed and shall be open to inspection.

A license may be revoked by the commissioner, after a hearing upon due notice to the licensee, for false statement in the application, dishonesty, incompetency, inaccuracy or a violation of the provisions of this article, and a license to take charge of a milk-gathering station, manufactory or plant may also be revoked for dishonesty, incompetency, inaccuracy, or a violation of the provisions of this article by any person working under the direction of the licensee and subject to his orders.

§ 57-a. Licensing of persons making bacterial counts of milk and/or cream or making tests of milk and/or cream to detect certain abnormalities. No person shall test milk and/or cream in order to determine the bacterial or leucocyte count or make other tests to determine the presence or absence of abnormal milk, where the results of such test affects the rate of payment to the producer for such milk and/or cream, the classification of milk and/or cream as received from the producer, or the acceptance or rejection of such milk and/or cream by the operator of a milk-receiving or manufacturing plant, unless licensed by the commissioner. Application for such license shall be made upon a form prescribed by the commissioner. The applicant shall furnish satisfactory evidence of good moral character, and shall demonstrate his ability to make such tests by an examination under the direction of the commissioner. A license shall be for a period not exceeding five years. A license may be renewed in the discretion of the commissioner, without

an examination, for successive periods of not exceeding five years each.

Each license shall be kept at the place where the licensee is engaged in testing milk and/or cream and shall be open to inspection.

A license may be revoked by the commissioner, after a hearing upon due notice to the licensee, for dishonesty, incompetency, inaccuracy or a violation of the provisions of this article.

§ 59. Powers of the department concerning oleomargarine. The department through the commissioner shall have power and it shall be its duty to:

1. Investigate, inspect and supervise the sale and exposure for sale of oleomargarine for home consumption.

2. Investigate, inspect and supervise the sale and serving in public eating places of oleomargarine.

3. Make and enforce reasonable rules and regulations implementing the provisions of this chapter relating to the manufacture, production and sale of oleomargarine.

Nothing contained in this section shall be deemed or construed to limit in any way the effect of any other provision of this chapter conferring a power or imposing a duty upon the department or the commissioner.

§ 61. Manufacture, sale, and use of oleomargarine. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Person" means any person, firm, corporation, copartnership, association, co-operative corporation, or unincorporated co-operative association.

(b) "Oleomargarine" or "margarine" means any oleaginous substance,

sold or exposed for sale, as a substitute for, or to take the place of, or used for the same purpose or purposes as butter, or having the appearance, odor, or taste which is similar to butter, and which is not made exclusively of milk or cream, or any substance into which any oil or fat other than that obtained from milk or cream has been introduced to take the place of butterfat. The terms include oleomargarine of any shade or color.

(c) "Public eating place" means any hotel, boarding house, restaurant, saloon, lunch counter, place of public entertainment or any other place where prepared or cooked food is offered for sale to the public for consumption on the premises. When a hotel or other establishment operates more than one public eating place, each such place shall be deemed to be a separate public eating place. It shall be deemed to include camps, dude ranches, and other similar establishments operated for profit even though restricted to a certain age, or other distinctive group, but shall not be deemed to include religious, charitable or private camps.

2. Fat standard. Oleomargarine manufactured, sold, offered or exposed for sale shall contain not less than eighty per centum of fat.

3. Notice to consumers. Consumers shall be given notice of the use of oleomargarine in public eating places under the following conditions and in the following manners.

(a) If oleomargarine is served directly to the customer or is placed on the table or counter where the customer is served notice of such serving shall be given.

(b) If oleomargarine is served in such a manner that the customer cannot identify it, notice of such serving shall be given, provided, however, that use of oleomargarine in preparation of cooked or other foods, in which the identity of the oleomargarine is lost, shall not require notice.

(c) Form of notice. Notice shall be given in such a manner that it is likely to be seen and understood by each person being served. If the public eating place is such that a single sign can be readily seen by each person being served, such sign shall be sufficient; otherwise notice shall be given by signs so located that one can be seen by each

customer, or by notice on menus given to each customer.

(d) Wording of notice. If oleomargarine is served on the tables or counters where customers are served, the notice shall read as, "Oleomargarine served here" or "margarine served here", provided, however, that if the oleomargarine is not served or used in any other manner notice may be given by a label on or accompanying the oleomargarine and identifying it as such. If oleomargarine is served in other ways, the notice shall be the same as hereinabove provided, or may specify the food or foods with which the oleomargarine is served.

4. Rules and regulations. The commissioner is authorized, after due notice and hearing, to issue such rules and regulations as are necessary to carry out the provisions of this section.

§ 62. Coloring matter, dairy terms, size of package, labeling, false advertising. No person, manufacturing with intent to sell, any substance or article to be used as a substitute for cheese and which is not made exclusively from unadulterated milk or cream or both, with or without salt or rennet or both but into which any animal, intestinal or offal fats, or any oils or fats or oleaginous substance of any kind not produced from pure, unadulterated milk or cream, or into which melted butter, or butter in any condition or state or any modification of the same, or lard or tallow shall be introduced, shall add thereto or combine therewith any annatto or compounds of the same, or any other substance or substances whatever, for the purpose or with the effect of imparting thereto a color resembling yellow, or any shade of yellow cheese, nor introduce any such coloring matter or other substance into any of the articles of which the same is composed. No person manufacturing, selling or offering for sale any oleaginous substance not made from pure milk or cream from the same, designed to take the place of butter, shall make or sell the same under any brand, device or label bearing words indicative of cows or the product of the dairy or the names of breeds of cows or cattle, nor use terms indicative of processes in the dairy in making or preparing butter; no oleaginous substance not made from pure milk or cream from the same, designed to take the place of butter, shall hereafter be sold, offered or exposed for sale in this

state unless

(1) such substance is packaged,

(2) the net weight of the contents of any package thereof sold in a retail establishment is one pound or less,

(3) there appears on the label of the package (a) the word "oleomargarine" or "margarine" in type or lettering at least as large as any lettering on such label, (b) a statement of the net weight of the contents of the package, and (c) a full and accurate statement of the ingredients contained in such substance, and

(4) each part of the contents of the package is contained in a wrapper which bears the words "oleomargarine" or "margarine" in type or lettering not smaller than twenty point type.

No person, firm, association or corporation shall, in connection or association with the sale or exposure for sale, advertisement, or on the package, of any substance designed to be used as a substitute for butter, represent or suggest by any means whatever that such substance is a dairy product, except that nothing herein contained shall prevent an accurate statement of any of the ingredients contained in such substance.

§ 63. Labeling of imitation cheese; imitation cheese food and products containing imitation cheese. 1. Whenever the brand name or product designation of imitation cheese or imitation cheese food appears on a package, the brand name or product designation, whichever is larger, shall be immediately preceded, without intervening printed or graphic material by the word imitation and the name of the food imitated, in letters of the same color and on the same contrasting background and of equal size as the brand name or product designation, whichever is larger.

2. On the label of any product containing imitation cheese or imitation cheese food, the product designation shall be immediately preceded or followed by the words "contains imitation cheese" or "contains imitation cheese food" whichever is appropriate, in letters of the same color and on the same contrasting background and of equal size as the product designation.

3. Whenever imitation cheese or imitation cheese food is used in a product which is offered for sale for carry out or on premises consumption, a sign shall be prominently posted at the place of sale which states the product designation of the food followed immediately by the words "contains imitation cheese" or "contains imitation cheese food," whichever is appropriate. The letters on such sign shall be in block letters at least three inches in height and on a contrasting background which can be easily read by consumers under normal conditions of purchase.

4. Whenever any product which contains imitation cheese or imitation cheese food product is offered for sale on the menu of any service food establishment, the product designation on such menu shall be immediately followed by the words "contains imitation cheese" or "contains imitation cheese food", whichever is appropriate, in letters of equal size and on a contrasting background.

5. Whenever any imitation cheese or imitation cheese food product is placed on the tables or otherwise made available for use by customers in any service food establishment, the container of such product shall be conspicuously labeled "imitation cheese", or "imitation cheese food product".

6. The commissioner shall promulgate such rules and regulations as are necessary and appropriate to carry out the provisions of this section, including specific identification of imitation cheese and imitation cheese food.

§ 67. Manufacturers identification markings and grade brands for cheese. 1. Every manufacturer of cheddar type cheese made in New York state shall put a stencil, brand, stamp or label upon such cheese indicating the variety of cheese as prescribed pursuant to rules and regulations promulgated by the commissioner pursuant to section forty-six-a; and no person shall use such markings upon any cheese which has not been manufactured under sanitary conditions as set forth in

article four of this chapter and in accordance with the rules and regulations of the commissioner. The commissioner shall procure and issue on proper application therefor, and under such regulations as to the custody and use thereof as he may prescribe, a uniform stencil, brand, stamp or label bearing the words "cheddar cheese," "washed curd cheese" or "colby cheese," and a different number assigned by the commissioner for each separate factory to any manufacturer of cheese in New York state licensed by the commissioner. Every such stencil, brand, stamp or label shall be used upon the outside of the cheese and shall not be used upon any other than cheddar, washed curd or colby cheese or packages containing the same. It shall be unlawful for any person to use a cheese identification stencil, brand, stamp or label supplied by the commissioner as herein provided, to mark such cheese which does not conform to standards established by the commissioner pursuant to section forty-six-a. Every whole and uncut cheddar type cheese bearing the numbered identification stencil, brand, stamp or label markings herein provided shall be deemed to be in compliance with the provisions of subdivision five, section two hundred one of the agriculture and markets law.

2. Every manufacturer of New York state cheddar type cheese, or his registered agent as provided herein, may put a state brand stamp or stencil issued by the commissioner upon such cheese manufactured in New York state which meets the requirements of the highest grade for New York state cheese. Such requirements shall be established by the commissioner. Such state brand stamp or stencil issued by the commissioner shall have markings at least one-half inch high, reading on a first line "grade" and on a second line "New York state brand," enclosed within a miniature map of New York state and with the letters "NYS" superimposed thereon. Every such state brand stamp or stencil shall bear a different number for each manufacturer.

3. Every manufacturer of New York state cheddar type cheese, or his registered agent as provided herein, may put a New York standard stamp or stencil upon such cheese manufactured in New York state which meets the requirements of the second highest grade for cheese. Such requirements shall be established by the commissioner. Such New York

standard stamp or stencil shall be issued by the commissioner and shall have markings at least one-half inch high, reading on a first line "grade" and on a second line "New York standard," and shall bear a different number for each manufacturer, but no map of New York state shall be a part of this stamp or stencil.

4. No person shall by means of any stencil, brand, stamp, label or other device use identification or grade markings which are similar to those provided pursuant to subdivisions one, two, and three of this section, unless authorized by the commissioner to do so.

5. The commissioner shall keep a record in which shall be registered the name and location of each manufacturer to whom such identification markings are issued as provided in subdivision one of this section, and the name and location of each manufacturer and his designated agent to whom grade markings are issued as provided in subdivisions two and three of this section. Whenever evidence is found or received by the commissioner tending to show that the grade-designating stamps or stencils, as provided in subdivisions two and three of this section, have been used to mark cheese which does not meet the requirements of grade for which it is marked, he may order the custodian of such grade markings to immediately discontinue use thereof and return such stamps or stencils to the commissioner; and it is further provided that the commissioner may order the removal or obliteration of such grade markings as provided herein from the cheese which does not meet the grade represented and as established by the commissioner. The custodian to whom such a grade marking device or devices has been issued, and the use of which has been revoked, or who possesses or has possessed cheese from which grade marks have been ordered obliterated, shall, upon request, be granted a hearing before the commissioner or his designated agent, and at such hearing, said custodian may present evidence to show why use of such device or devices should be restored to him and obliterated grade marks on cheese should be replaced. The commissioner may promulgate rules and regulation pertaining to the use of the New York state identifications and grade markings issued by him as provided in this section.

§ 67-b. Pasteurization of cheese. No person manufacturing cheese or cheese curd or handling cheese or cheese curd as a wholesaler, assembler or broker in the state of New York and no person obtaining cheese from outside the state shall release any cheese or cheese curd to the retail trade or to consumers unless such cheese or cheese curd has been pasteurized or has been made from whole milk, skim milk or cream which has been pasteurized in accordance with rules and regulations promulgated by the commissioner after inquiry and public hearing; except that cheese cured for sixty days or longer after manufacture may be made from unpasteurized milk.

§ 68. Use of false brand prohibited. No person shall offer, sell or expose for sale, in any package, butter or cheese which is falsely branded or labeled.

§ 69. County trade marks. At a regular or special meeting of a county dairymen's association in any county of the state there may be adopted a county trade mark, by a majority of the members present and voting, to be used as a trade mark by a person manufacturing pure unadulterated butter or full-cream cheese in such county. The secretary of the association shall forthwith send to the commissioner a copy of such trade mark, which copy he shall place on file in his office, noting thereupon the day and hour he received the same. But one county trade mark for butter and for cheese shall be placed on file for the same county. No association shall adopt any trade mark of any county already on file, or use that of any other county in the formation of a trade mark.

§ 70. Branded cans, jars, bottles, cases, boxes or barrels not to be sold, remarked or used without consent of owner. No person shall hereafter without the consent of the owner use, sell, dispose of, buy or traffic in any milk can, jar or bottle, or any cream can, jar or bottle, or any milk bottle case, or any meat case, box or barrel having the name

or initials of the owner stamped, marked or fastened on such can, jar, bottle, box, barrel or case, or wilfully mar, erase or change by remarking or otherwise said name or initials of any such owner, so stamped, marked or fastened upon said can, jar, bottle, box, barrel or case. Nor shall any person without the consent of the owner place in any such can, jar or bottle, any substance or product other than milk or cream.

§ 71. Registration of mark; defacing mark; seizure. Any person owning milk cans, jars, bottles, bottle cases or carton cases upon which he has placed or desires to place any designating mark may register the said designating mark with the commissioner, who shall keep a record thereof, and he may also register with the commissioner, from time to time, the number of such cans, jars, bottles, bottle cases or carton cases, which he has or is to have, which do or may bear such designating mark. Such cans, jars, bottles, bottle cases or carton cases may, after such registration be numbered consecutively and such consecutive numbers may be registered in the department, as above provided, with the designating mark. If any such can, jar, bottle, bottle case or carton case, bearing such designating mark, shall be found in possession of, and being used by any person other than the one so registering the same it shall be presumptive evidence of a violation of the provisions of this article, unless such person has the consent of the owner thereof to so have and use the same.

No person, except the original owner thereof, or a person duly authorized by him so to do, shall remove, deface or erase any of the marks upon the cans, jars, bottles, bottle cases or carton cases herein provided for.

When the commissioner, or any person duly authorized by him, shall find any such cans, jars, bottles, bottle cases or carton cases, bearing such registered designating mark, in the possession of or being used by another person than the owner thereof, he may seize the same, and if evidence is produced in three days showing that such person had been given permission to have or use such cans, jars, bottles, bottle cases

or carton cases, then they shall be delivered by the commissioner, or his agents, to the person from whom taken, otherwise the commissioner shall notify the owner of such cans, jars, bottles, bottle cases or carton cases, that he has the same and upon application deliver the same to such owner.

ARTICLE 4-A

FROZEN DESSERTS

Section 71-a. Declaration of policy.
71-b. Application for license.
71-c. License fees.
71-d. Issuance of license.
71-e. Revocation or suspension of license.
71-f. Review.
71-g. Prohibitions.
71-h. Vehicles used for transportation of frozen desserts.
71-i. Illegal use of equipment.
71-j. Samples of frozen desserts for analysis.
71-k. Violations; remedies.

§ 71-a. Declaration of policy. 1. It is hereby declared that the dairy industry is a paramount industry of the state and the production, processing, packaging, distribution and sale of frozen desserts is an important segment of the dairy industry and is of vast economic importance to the state and of vital importance to the consuming public of the state, and which should be encouraged and promoted in the public interest. It is further declared to be in the interest of the dairy industry and of the consuming public that there be uniformity of standards for frozen desserts as between the various states and the federal government to the end that there may be free movement of frozen desserts between the states and to the end that the inefficiency, needless expense, and confusion caused by differences in products sold under the same name, and differences in labeling of identical products may be eliminated. Regulations pertaining to sanitary requirements, production, processing, all labeling requirements, and distribution of

frozen desserts products which are uniform and uniformily enforced are essential for the protection of consumers and the economic well being of the dairy industry. It is further declared that advances in food technology have resulted in the development of products similar to frozen desserts, including such products having a lower butterfat content and products made with oils or fats other than butterfat and with solids not fat from sources other than dairy products and that such products are recognized as wholesome and nutritious articles of food; that such products are similar in appearance, odor or taste and are difficult to differentiate from frozen desserts made with dairy products. It is further declared to be the purpose of this article to promote honesty and fair dealing in the interest of consumers, to insure fair competition as between the manufacturers and distributors of the different products and to prevent confusion and deception in the sale of all such products by establishing definitions and standards of identity for such products, to eliminate needless duplication of inspection and conflicting and diverse requirements by various agencies, and by providing for rules and regulations which will effect their orderly marketing and insure uniform sanitary standards and enforcement.

2. For the purpose of this article and for any rules and regulations promulgated pursuant thereto, the term "frozen desserts" shall be deemed to include ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice cream, ice milk, freezer made shakes, fruit sherbert, water ice, quiescently frozen confection, quiescently frozen dairy confection, manufactured desserts mix, frozen confection, mellorine frozen dessert as all such products are commonly known, together with any mix used in such frozen desserts, and any products which are similar in appearance, odor or taste to such products, or are prepared or frozen as frozen desserts are customarily prepared or frozen, whether made with dairy products or non-dairy products.

3. a. "Person" means and includes any individual, copartnership, corporation, cooperative association, cooperative corporation, or unincorporated association.

b. "Plant" means any single location or mobile manufacturing unit which manufactures frozen desserts.

4. Rules and regulations. (a) The commissioner shall, after public hearing, promulgate definitions and standards for frozen desserts including those made with dairy products, those not made with dairy products and those which are similar in appearance, odor or taste to such products or are prepared or frozen as frozen desserts are customarily prepared or frozen, together with rules and regulations for the packaging and all labeling requirements for all such products, and other conditions relating to the wholesale manufacture, processing, packaging, distribution and sale at wholesale of all such products; including, but not limited to, sanitization pertaining to manufacture, processing, handling, distribution, buildings, grounds, equipment, personnel and pasteurization or heat treatment of frozen desserts or ingredients. No municipality or county may impose any regulation or standard for frozen desserts different from those provided herein or by regulations promulgated hereunder. No municipality or county may require the inspection of frozen dessert plants beyond its borders and shall accept the certification of the commissioner that such plants conform to this act and the rules and regulations promulgated hereunder, unless there is substantial reason to believe that a manufacturer of frozen desserts, offered for sale in such county or municipality, is not in substantial compliance with the requirements of this article or the regulations promulgated pursuant thereto.

(b) Following any hearing to consider definitions and standards or rules and regulations, pursuant to paragraph (a) of this subsection, the commissioner shall issue a recommended decision and shall afford interested parties an opportunity to file exceptions to such recommended decision based upon the facts in the hearing record. After full consideration has been given to such exceptions, a final decision shall be made.

(c) No person shall manufacture, distribute or sell in this state a frozen dessert for which a definition and standard has not been promulgated pursuant to this article.

(d) Any person who desires to manufacture, distribute or sell in this state, any frozen dessert for which a definition and standard has not

been promulgated by the commissioner pursuant to this section, shall first make application to the commissioner for the promulgation of a definition and standard for such proposed frozen dessert. Such application shall include the essential details of such proposed definition and standard. Upon the receipt of such an application, the commissioner shall call a public hearing for the purpose of considering such proposed definition and standard. In determining whether or not such proposed definition and standard shall be promulgated, the commissioner shall consider, among other things, the following:

1. Is the proposed product a frozen dessert as provided pursuant to the provisions of subdivision two of this section?

2. Is the proposed frozen dessert substantially different from other frozen desserts for which definitions and standards have already been promulgated by the commissioner?

3. Is it in the public interest to promulgate such proposed definition and standard?

4. Will the promulgation of such proposed definition and standard be advantageous to consumers and not result in a lowering of health standards or promote fraud and deception?

Following the hearing to consider any such proposed definition and standard, the commissioner shall issue a recommended decision as provided pursuant to paragraph (b) of subdivision four of this section, either adopting, modifying, or denying the proposed definition and standard, giving interested parties an opportunity to file exceptions, within thirty days, to such recommended decision based upon the facts in the hearing record, and after full consideration has been given to any such exceptions, a final decision shall be made.

§ 71-b. Application for license. 1. Every wholesale manufacturer of frozen desserts produced for sale, and every person who sells, offers or exposes for sale, or has or possesses for sale other than exclusively at retail, any frozen dessert, shall, not later than the first day of

February of every other year, file with the commissioner an application for a license upon a form prescribed by the commissioner, which application shall state such facts concerning the applicant's circumstances and the nature of business to be conducted as in the opinion of the commissioner are necessary for the administration of this article. The license period shall be for twenty-four months, beginning March first following.

2. The application of a manufacturer must show that the frozen desserts to be manufactured by the applicant are to be composed of pure and wholesome ingredients and are to be produced under sanitary conditions. The application shall also show the location of each plant at which frozen desserts are to be manufactured, and the name of the brand or brands, if any, under which the same are to be sold.

3. This section shall not apply to any boarding house in respect to frozen desserts manufactured by such boarding house and served to the patrons thereof for consumption on the premises where manufactured, nor to a person, other than a manufacturer, who sells, offers or exposes for sale, or has on hand with intent to sell exclusively at retail, any frozen dessert.

§ 71-c. License fees. (1) Wholesale. The biennial license fee for each plant which engages in the manufacture of frozen desserts for sale at wholesale, shall be determined on the basis of the biennial volume of frozen desserts manufactured as shown in the application of the manufacturer in accordance with the following schedule:

Not to exceed 200,000 gallons	$ 50.00
Over 200,000 but not over 400,000 gallons	100.00
Over 400,000 but not over 1,000,000 gallons	200.00
Over 1,000,000 gallons	300.00

In the event that an audit of the records of any wholesale manufacturer of frozen desserts discloses a greater or lesser volume of frozen desserts manufactured than was shown in such manufacturer's application for license, the license fee paid by such manufacturer shall

be adjusted accordingly.

(2) Handlers. The biennial license fee for a person other than a manufacturer who in the regular course of business sells, offers or exposes for sale, or who has or possesses for sale, other than at retail, any frozen dessert shall be twenty dollars.

(3) All fees as provided herein shall be tendered to the commissioner with the application and upon issuance of the license shall be remitted by the commissioner to the state treasury.

§ 71-d. Issuance of License. No license shall be granted unless the commissioner is satisfied that the applicant is qualified by character and experience, and is equipped to conduct the proposed business properly. Prior to the issuance of a license to manufacture frozen desserts, to satisfy himself that the applicant is equipped to conduct the proposed business properly, as required in this section, and at any other time when, in his discretion, he shall deem such action necessary, the commissioner may inspect the plant and equipment of the applicant. The commissioner may enter into and effectuate reciprocal agreements with other states, covering regulation and inspection of frozen dessert plants, as will insure inhabitants of this state frozen desserts substantially complying with the requirements herein enacted or promulgated in rules and regulations hereunder and as part of such agreements may approve or accept inspections and regulation of other states covering frozen desserts plants. The commissioner may inspect a plant beyond the boundary of the state, and when he does, the applicant shall, prior to such inspection, pay by certified check, bank check, domestic or international money order in funds of the United States, in addition to the license fee set forth in section seventy-one-c of this article, fees for inspection of the plant by the department. Such fees shall include expenses for all time during which an employee of the department spends traveling to and from and inspecting the plant. In addition, the applicant shall pay all necessary and reasonable expenses incurred in making such inspection, including, but not limited to, expenses for traveling, lodging and meals and the inspector's salary, including fringe benefits, and overtime if applicable. The commissioner, if satisfied with the qualifications of the applicant as stated in this

section and if satisfied that the equipment, the vehicles used for transporting frozen desserts and the premises named in the application and used by the applicant for the manufacture, storage or sale of frozen desserts are maintained in accordance with the standards of sanitation prescribed in the rules and regulations promulgated under the authority of this article, shall issue a license for the handling of frozen desserts. No license shall be issued if any statement in the application is false or misleading, or if the brand name or any label or advertisement of the frozen dessert involved in the application gives a false indication of origin, character, composition or place of manufacture, or is otherwise false or misleading in any particular.

§ 71-e. Revocation or suspension of license. Any license may be revoked by the commissioner, after notice to the licensee by mail or otherwise and opportunity to be heard, when and if it appears that any statement upon which it was issued was false or misleading, or that any frozen dessert manufactured, sold, offered or exposed for sale, or held for sale, by the licensee is adulterated or misbranded, or is manufactured in a plant, or transported in a vehicle, or stored in equipment not maintained in accordance with the standards of sanitation prescribed in the rules and regulations promulgated under the authority of this article, or that the brand name of any label or advertising of any frozen dessert manufactured, sold, offered or exposed for sale, or held for sale, by the licensee gives a false indication of origin, character, composition or place of manufacture, or is otherwise false or misleading in any particular.

A license may also, after such notice and hearing, be suspended for any of the foregoing reasons until the licensee complies with the conditions prescribed by the commissioner for its reinstatement.

Where the commissioner has denied, revoked or suspended a license, an order to that effect may be issued and service thereof may be made either by personal delivery of a copy, or by mailing a copy in a sealed envelope with postage prepaid to such applicant or licensee, or, in case such applicant or licensee is a corporation, then to any officer or

agent of such corporation upon whom a summons may be served in accordance with the provisions of the civil practice law and rules.

§ 71-f. Review. The action of the commissioner in refusing to grant a license, or in revoking or suspending a license, shall be subject to review by a proceeding under article seventy-eight of the civil practice law and rules, but the decision of the commissioner shall be final unless within thirty days from the date of the order embodying such action such proceeding to review has been instituted.

§ 71-g. Prohibitions. It shall be unlawful for any person to buy or sell any frozen desserts unless all the parties to such purchase or sale who are required to be licensed under the provisions of this article be duly licensed in accordance therewith.

The foregoing prohibition shall not apply

(1) To any frozen desserts manufactured and sold by a church or a religious organization solely for the benefit of such church or religious organization.

(2) To any frozen dessert manufactured outside of the state of New York and shipped into and/or through this state to be sold without this state while such frozen dessert constitutes the original unbroken package delivered by the shipper to the carrier at the initial point of interstate shipment.

No person shall sell, offer for sale or advertise for sale any frozen dessert, if the brand name of the frozen dessert or the label upon it or the advertising accompanying it shall give a false indication of origin, character, composition, or place of manufacture, or is otherwise false or misleading in any particular.

§ 71-h. Vehicles used for transportation of frozen desserts. All vehicles used for the transportation and distribution of frozen desserts shall be constructed of impervious material capable of being cleaned,

shall be kept clean and sanitary, shall be so operated as to protect their contents from contamination, and shall have prominently displayed thereon the name and address of the licensee who sells, offers or exposes for sale, or holds with intent to sell, such frozen desserts.

§ 71-i. Illegal use of equipment. (1) No person shall sell or offer or expose for sale frozen desserts in any container which is falsely labeled as to the name of the manufacturer or place of manufacture, or in any other respect.

(2) No person shall misrepresent in any manner the name of the manufacturer or the place of manufacture of frozen desserts.

(3) No person shall use or cause or permit to be used, for the purpose of preserving or holding frozen desserts, any cabinet, can, container or other equipment owned by any other person without the written consent of such owner.

(4) No person shall place any frozen desserts or any other products of one manufacturer in the cabinet, cabinet compartment, can, container or other equipment belonging to another manufacturer without the written consent of the owner of such cabinet, cabinet compartment, can, container or other equipment.

(5) No person, other than the owner, shall remove, erase, obliterate, cover or conceal the owner's name or any distinguishing mark or device which may appear or be placed on any cabinet, can, container or other equipment.

§ 71-j. Samples of frozen desserts for analysis. A representative sample of frozen deserts for analysis shall consist of a quantity to be determined by the commissioner.

§ 71-k. Violations; remedies. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this article or of the rules and regulations promulgated thereunder, and, in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by

injunction if necessary to protect the public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

ARTICLE 4-B

MILK SANITATION

Section 71-l. Milk sanitation; powers, functions and duties of commissioner.
71-m. Milk sanitation; appointment of specialists; appliances.
71-n. Milk and milk products; permit required.
71-o. Violations.

§ 71-l. Milk sanitation; powers, functions and duties of commissioner. 1. The commissioner is charged with the duty of protecting and promoting the health and welfare of the people of this state by inspecting, regulating, and supervising the sanitary quality of milk and cream distributed, consumed or sold within this state, whether produced within or without the state.

2. (a) Notwithstanding the provisions of any other general, special or local law, the commissioner may, in order to secure uniformity of inspection, regulation and supervision of the sanitary quality of milk and milk products, as defined under the authority of section forty-six-a of this chapter, reverse, modify or annul in whole or in part any rule, regulation, direction, order or ordinance heretofore adopted by the board of health of any local health district or any other body exercising the powers and duties of a board of health therein, or any order, direction or requirement made pursuant thereto, pertaining to or affecting the production, processing, handling, storage, transportation, sale, resale or distribution of milk and cream, or any operations or procedures incident thereto.

(b) The order of the commissioner reversing, modifying or annulling any such rule, regulation, direction, order, ordinance or requirement,

shall state the date on which it takes effect and a copy thereof, duly signed by the commissioner shall be filed as a public record in the department.

(c) Nothing contained in this article shall affect any existing rule, regulation, direction, order, ordinance or requirement relating to the dating of milk in cities.

§ 71-m. Milk sanitation; appointment of specialists; appliances. The commissioner may, within the appropriations made therefor:

(a) appoint such milk control specialists, bacteriologists, and such other employees and assistants as may be required, and

(b) secure such equipment and appliances as may be necessary to carry out the purposes of this article.

§ 71-n. Milk and milk products; permit required. 1. (a) No person, firm, association, partnership or corporation shall engage in or carry on the business of shipping, transporting or importing into this state from any other state, territory or foreign country any milk or milk products, as defined in subdivision two of section seventy-one-l of this article, for sale, resale or distribution to consumers unless the milk and milk products to be shipped, transported, or imported into this state meet all of the sanitary requirements and standards for such milk and milk products produced or manufactured within this state.

(b) Nothing in this section shall be held or construed to apply to evaporated or condensed milk manufactured, sold or exposed for sale or exchange in hermetically sealed cans.

(c) When the commissioner inspects a plant beyond the boundary of the state, the commissioner may require such plant to reimburse the department for all necessary and reasonable expenses incurred in making such inspections. The commissioner is authorized to effectuate and enter into such reciprocal agreements with governmental units of other states, commonwealths or jurisdictions as will insure the inhabitants of this state milk and milk products complying with all the sanitary requirements and product standards and regulations now in force or hereafter promulgated by the department for the production and handling

of milk or milk products within the state, through reciprocal inspection agreements, and in aid of such agreements, may approve or accept inspections conducted by other commonwealths, states and jurisdictions with respect to milk and milk products.

2. No person, firm, association, partnership or corporation shall engage in the production, processing or manufacture of milk and milk products without a permit issued by the commissioner pursuant to this subdivision. The commissioner may decline to grant or renew or may revoke a permit, after due notice and opportunity for a hearing, when he or she is satisfied that the applicant or permit holder is not capable of complying or has not complied with the requirements relating to production, processing or manufacture of milk and milk products set forth in this chapter or the rules and regulations promulgated pursuant thereto. No fee shall be charged for a permit and it shall remain in effect until revoked or until suspended by the commissioner. With respect to a milk producer, the permit required by this section shall consist of a satisfactory sanitary inspection report of a department inspector or a certified milk industry inspector. An emergency suspension of a milk producer's permit pursuant to section four hundred one of the state administrative procedure act may be ordered by a department employee authorized by the commissioner. Such an order may be based upon facts as reported by a certified milk industry inspector.

3. The commissioner may, after public hearing, promulgate such rules and regulations as he or she deems necessary to give full force and effect to the purpose and intent of this article and to conform such rules and regulations to the provisions of the Grade A Pasteurized Milk Ordinance, published by the food and drug administration of the United States department of health and human services, including those provisions concerning the disposition of milk as a sanction for violation of such ordinance.

§ 71-o. Violations. Any person, firm, association or corporation violating any of the provisions of section seventy-one-n of this chapter shall be guilty of a misdemeanor.

ARTICLE 4-C

FOREIGN DAIRY PRODUCTS

Section 71-u. Definitions.
71-v. Labeling requirements.
71-w. Prohibitions.
71-x. Violations.

§ 71-u. Definitions. As used in this article:

1. The term "commissioner" means the commissioner of agriculture and markets of the state of New York.

2. The term "dairy product" means all milk and milk products defined by the definitions and standards of identity promulgated pursuant to section forty-six-a of this chapter and such other food products derived from milk as the commissioner shall designate by regulation.

3. The term "foreign dairy product" means any dairy product produced, processed or manufactured outside the United States.

4. The term "packaged foreign dairy product" means a foreign dairy product which is enclosed in a container or wrapper (including a shipping container or wrapping used for the transportation of such product in bulk or quantity to manufacturers, packers, processors, or to wholesale or retail distributors) or which although not so enclosed has written, printed, or graphic matter pertaining to such foreign dairy product affixed or attached.

§ 71-v. Labeling requirements. 1. The commissioner shall, by regulation, require that packaged foreign dairy products be labeled in such a manner that, at each stage of distribution within this state, such packaged foreign dairy product will be readily identifiable as being imported. The commissioner may, to the extent he deems

appropriate, establish different labeling requirements for packaged foreign dairy products:

a. of different types or classes;

b. with different types of packaging;

c. in different stages of distribution; and

d. intended for delivery to different types or classes of users.

2. If the commissioner determines that, at any stage of distribution:

a. the nature of the container or wrapping of a packaged foreign dairy product makes labeling impractical or inappropriate; and

b. such packaged foreign dairy product will, by means other than labeling, be identifiable by any person, other than a common carrier, to whom such packaged foreign dairy product is displayed or delivered as being imported;

he may exempt such packaged foreign dairy product, at such stage of distribution, from the labeling requirements established pursuant to subdivision one.

§ 71-w. Prohibitions. No person shall distribute, or cause to be distributed commercially any packaged foreign dairy product which he knows or has reason to know is a foreign dairy product, unless such product is labeled in accordance with the regulations promulgated pursuant to section seventy-one-m.

§ 71-x. Violations. 1. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this article and any rules and regulations promulgated by the commissioner to carry out the provisions of this article and in addition may apply for relief by injunction if necessary to protect the

public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

2. Whenever the commissioner or his duly authorized representative shall find distributed, offered or exposed for sale within this state, any dairy product produced, processed or manufactured outside the United States which he has probable cause to believe is not labeled in accordance with this article or the rules and regulations promulgated pursuant thereto, or which is otherwise misbranded or adulterated, he may seize or quarantine such product. Following such seizure or quarantine the commissioner shall hold a hearing in accordance with the provisions of section two hundred two-b of this chapter. The determination of the commissioner following such hearing shall be subject to judicial review in the manner and within the time limits set forth therein.

ARTICLE 4-D
LIABILITY FOR CANNED, PERISHABLE FOOD OR FARM PRODUCTS DISTRIBUTED FREE OF CHARGE

Section 71-y. Definitions.
71-z. Liability for canned, perishable food or farm products distributed free of charge.

§ 71-y. Definitions. As used in this article: 1. "Perishable foods" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen, or otherwise require refrigeration to remain nonperishable. This definition shall not include game or wild game.

2. "Canned foods" means any canned food that has been hermetically sealed and commercially processed and prepared for human consumption, including canned or preserved fruits, vegetables or other articles of food. There is specifically excluded for purposes of this section canned goods that are rusted, leaking, swollen or canned goods that are defective or cannot be otherwise offered for sale to members of the general public.

3. "Farm products" means any agricultural, dairy or horticultural product or any product designed or intended for human consumption or prepared principally from an agricultural, dairy or horticultural product.

4. "Charitable or nonprofit organization" means any organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell such donated items of food.

5. "Organized gleaning" means the harvest of an agricultural crop that has been donated by an owner, lessee, or occupant of premises or occupant of a farm by persons who are sponsored by a charitable not-for-profit organization.

6. "Game or wild game" means any deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting.

7. "Public food service establishment" means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure where food is prepared, served or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

§ 71-z. Liability for canned, perishable food or farm products distributed free of charge. 1. Notwithstanding any other provision of

law, a good-faith donor of any canned or perishable food, farm product, game or wild game, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, for free distribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food, if the said donor reasonably inspects the food at the time of donation and finds the food apparently fit for human consumption and unless the donor has actual or constructive knowledge that the food is adulterated, tainted, contaminated or harmful to the health or well-being of the person consuming said food. Such good-faith donor shall include, but not be limited to, public food service establishments.

2. This section includes the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but shall not be deemed or construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of such food for human consumption.

3. A not-for-profit charitable organization shall provide liability insurance to persons engaged in gleaning activities organized or sponsored by such charitable organization.

ARTICLE 5

Diseases of Domestic Animals; Calves and Veal; Pure Bred Stock; Certificates of Registry.

Section 72. Control and suppression of disease.
72-a. Feeding of garbage, offal or carcasses to cattle, swine or poultry prohibited.
73. Report of disease.
73-a. Unlawful sale of tuberculous cattle.
73-b. The New York state veterinary diagnostic laboratory.
74. Regulations relating to importation.
75. Sanitary regulations.
76. Quarantine on animals or premises.
77. Examination by veterinarian prerequisite to destruction of

animal.
78. Examination of domestic animals.
79. Examination at request of owner; segregation; grading of herds.
80. Certificate to healthy herds.
81. Sale, removal or slaughter of animals affected with tuberculosis.
82. Appraisers.
83. Appraisal of diseased animals.
85. Destruction of animals; disposition of carcasses.
86. Post-mortem examination of animals.
87. Payments for animals killed.
87-a. Domestic fowl and fertile eggs thereof.
88. Indemnity.
89. Control of vaccines, serums and other preparations.
90. Examination of cattle for Bang's disease.
90-a. Declaration of policy and purposes.
90-b. Definitions.
90-c. Prohibitions.
90-d. Application and permit fees.
90-e. Refusing and revoking permits.
90-f. Proceedings to review.
90-g. Records.
90-h. Violations; remedies.
91. Hog cholera and pseudorabies control; indemnity.
95. Protecting the breeding of pure bred stock.
95-a. Animal ear tags or other identification.
95-b. False pedigree of animals.
95-c. Examination of horses for equine infectious anemia.
96. Certificates of registry of domestic animals.

§ 72. Control and suppression of disease. 1. The commissioner may cause investigations to be made as to the best method for the control, suppression or eradication of infectious or communicable disease affecting domestic animals or carried by domestic animals and affecting humans. Whenever any infectious or communicable disease affecting

domestic animals or carried by domestic animals and affecting humans shall exist or shall have recently existed outside this state, the commissioner shall take measures to prevent such disease from being brought into the state. Whenever any such disease shall exist or be brought into or break out in this state, the commissioner shall take measures promptly to suppress the same and to prevent such disease from spreading.

2. He may issue and publish a notice stating that a specified infectious or communicable disease exists, may exist or has recently existed in the state, or in any designated county or other geographical district thereof, and warning all persons to seclude, in the premises where they maybe at the time, all animals within this state, or within such county or district, or an adjoining county or district, that are of a kind susceptible to contract such disease; and ordering all persons to take such precautions against the spreading of the disease as the nature thereof may, in his judgment, render necessary or expedient and which he may specify in such notice. Such notice shall be published in such manner as the commissioner may designate. The commissioner may cause such notice to be posted on buildings where animals are harbored which are believed to be diseased or exposed to disease, or on poles, gates or fences within an area in which diseased or exposed animals are harbored or kept. No person shall tear down, mutilate, deface or destroy any such notice or order issued by the commissioner and posted, as provided herein, during the pendency of such notice or order. The commissioner may alter or modify, from time to time, as he may deem expedient, the terms of any notice or order issued or made pursuant to this article and may at any time cancel or withdraw the same.

3. The commissioner may adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases in domestic animals or for the purpose of preventing the spread of infection and contagion among such animals, or from such animals to humans, and may, in behalf of the state, accept, in whole or in part, rules and regulations adopted by the secretary of agriculture of the United States under any act of congress providing for the control, suppression or eradication of communicable diseases in domestic animals.

The commissioner may cooperate with the authorities of the United States government within this state in the carrying out of such rules and regulations and the enforcement of the provisions of any such act so passed which are not in conflict with the statutes of this state. Whenever the commissioner finds that an emergency situation exists in relation to the prevention or control of communicable disease among domestic animals, or from such animals to humans, the commissioner may by regulation require that all domestic animals of any designated species be immunized against any designated disease. Such regulations may specify the immunizing agent to be used and the method of immunization. The regulations may prescribe that such immunization shall be performed by the agents of the department or require that all owners or harborers of the designated species shall cause such immunization to be performed by a licensed veterinarian.

4. Whenever a program for the control, suppression or eradication of a disease of domestic animals has been adopted and instituted by the commissioner pursuant to this article, the owner or harborer of each domestic animal of the species involved shall, on or at the premises where such animal is kept, present and restrain such animal for tests, examination, immunization, or identification at such times as the commissioner on not less than forty-eight hours notice shall direct.

§ 72-a. Feeding of garbage, offal or carcasses to cattle, swine or poultry prohibited. 1. Garbage fed to cattle, swine or poultry contributes to the spread of vesicular exanthema, cholera, erysipelas, foot and mouth disease, trichinosis and other infectious animal diseases. Meat from animals so afflicted, when consumed by human beings, is a primary source of trichinosis and other human sickness. It is therefore declared to be the public policy of this state to prohibit the feeding of garbage, offal or carcasses to cattle, swine or poultry to assist in the eradication of animal diseases and for the protection of the public health and public welfare.

2. Definitions. When used in this section:

a. "Garbage" means putrescible animal and poultry wastes from the handling, processing, preparation, cooking and consumption of foods.

b. "Offal" means the waste parts of butchered animals or poultry.

c. "Carcasses" means the dead bodies of animals or poultry.

d. "Person" means any individual, firm, partnership, public or private corporation, public or private institution, public authority, municipal corporation and the state.

e. Notwithstanding anything in the preceding paragraphs of this subdivision to the contrary, animal feeds which have been heat rendered by a rendering plant at a temperature sufficient to make the product commercially sterile shall not be considered garbage, offal or carcasses within the meaning of this section.

3. a. It shall be unlawful for any person to feed garbage, offal, or carcasses, whether cooked or uncooked, to cattle, swine or poultry.

b. This section shall not apply to any individual who feeds garbage from his own household only, to cattle, swine or poultry on his own premises.

c. Violation of this section shall constitute a class A misdemeanor.

§ 73. Report of disease. Every person shall immediately report to the commissioner the existence among animals of any infectious or communicable disease coming to his knowledge. Every report shall be in writing and shall include a description of the diseased animal or animals, the location thereof, the name of the disease suspected, and, if known, the name and address of the owner or person in charge of such animal or animals.

§ 73-a. Unlawful sale of tuberculous cattle. A person who knowingly

sells, except under the supervision of the commissioner of agriculture and markets, any bovine animal in which tuberculosis shall have been indicated as a result of the tuberculin test, is guilty of a misdemeanor.

§ 73-b. The New York state veterinary diagnostic laboratory. 1. The commissioner is authorized to establish and maintain, by contract or otherwise, a New York state veterinary diagnostic laboratory and to contract for other diagnostic services, as he or she may deem necessary or beneficial, to improve the health of food and fiber producing animals, companion animals, sport and recreational animals, exotic animals and wildlife.

2. The New York state veterinary diagnostic laboratory shall:

(a) evaluate domestic and wild animal populations for evidence of disease agents that may cause human disease;

(b) maintain capability to respond to disease outbreaks in animals;

(c) establish diagnostic testing capabilities to establish herd health status and evaluation of disease programs;

(d) support disease surveillance and monitoring programs of domestic, zoo and wild animals;

(e) support veterinarians by analyzing and interpreting samples obtained from clinical cases; and

(f) evaluate, adjust and improve New York's ability to recognize diseases that impact animal populations.

3. "The New York state veterinary diagnostic laboratory advisory board" is hereby created. Such board shall be composed of ten members, as follows:

(a) the commissioner or his or her designee;

(b) the commissioner of environmental conservation or his or her designee;

(c) the commissioner of health or his or her designee;

(d) the dean of the New York state college of agriculture and life sciences or his or her designee;

(e) the director of the division of animal industry of the department;

(f) the director of the New York state veterinary diagnostic laboratory, who shall serve as a non-voting member;

(g) one member to be appointed by the governor, upon recommendation by the commissioner;

(h) one member to be appointed by the governor, upon recommendation by the commissioner, from nominations received from a statewide organization representing dairy producers;

(i) one member to be appointed by the governor, upon recommendation by the commissioner, from nominations received from a statewide organization representing veterinarians licensed in this state; and

(j) one member to be appointed by the governor, upon recommendation by the commissioner, from nominations received from a statewide organization representing agricultural interests.

4. The appointed members of the veterinary diagnostic laboratory advisory board shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, two shall be appointed for a term of one year, one shall be appointed for a term of two years and one shall be appointed for a term of three years. Members shall serve without salary, but shall be entitled to actual expenses incurred while engaged in performing the duties herein authorized.

5. The advisory board, which shall be chaired by the commissioner, shall:

(a) evaluate and prioritize the veterinary diagnostic laboratory needs of industry, government and consumer entities;

(b) provide advice and recommendations to the dean of the New York state college of veterinary medicine for strategic direction of diagnostic laboratory services;

(c) make recommendations to the dean regarding appointment of the director of the laboratory;

(d) assess the feasibility of the consolidation, expansion and modernization of the current physical facilities of the laboratory;

(e) provide advice and recommendations to the director of the diagnostic laboratory regarding industry needs and the effectiveness of veterinary diagnostic laboratory services; and

(f) provide advice and recommendations to the commissioner, the New York state veterinarian, and the director of the diagnostic laboratory regarding animal health programs administered by the department, to include but not be limited to the New York state cattle health assurance program and the egg quality assurance program.

6. The director of the New York state veterinary diagnostic laboratory shall be appointed by the dean of the college of veterinary medicine, after consultation with the advisory board. The dean shall provide direction and guidance to the director to ensure that the resources of the college of veterinary medicine are integrated with those of the laboratory to meet current and anticipated industry, state and consumer needs for diagnostic services.

§ 74. Regulations relating to importation. The following regulations shall apply to the importation of domestic or feral animals:

1. No person shall knowingly bring into this state any domestic or feral animal which has an infectious or communicable disease, except in the case of pure bred registered bovine animals which have been removed from this state and have reacted to the tuberculin or other recognized test subsequent to such removal, may be returned to this state upon written permission from the commissioner subject to such rules as he may prescribe in relation thereto.

2. Any person bringing into this state domestic or feral animals for any purpose other than immediate slaughter without taking precaution to ascertain whether such animals have an infectious or communicable disease shall be presumed to have brought them in knowingly in violation of this section, if they are found to have such disease.

3. Animals received from outside the state under the supervision of the United States department of agriculture or the department of agriculture and markets of the state of New York, or for which a permit or certificate shall have been issued by either of such departments, shall be deemed to have been handled with due precaution.

4. Any person importing or bringing into this state meat cattle for dairy or breeding purposes shall report immediately upon bringing such cattle into the state to the department, in writing, stating the number of cattle thus brought in, the places where they were procured, the lines over which they were brought, their destination within the state and when they arrive thereat; and if there be filed with the department at the time of filing such report or within ten days thereafter, a certificate by a duly authorized veterinary practitioner approved by the authorities of the state in which he resides or by an authorized veterinary inspector of the United States bureau of animal industry to the effect that he has duly examined such animals and that they are free from any infectious or communicable disease, the commissioner may issue a permit to such person to remove such cattle immediately. Otherwise such person shall detain such animals at the point of destination for at least twenty days for inspection or examination by the commissioner or his duly authorized agent. The provisions of this subdivision relating to advance reports to the department shall not apply to cattle imported into this state at a point where there is federal inspection.

5. Persons bringing into this state or receiving domestic or feral animals from without the state shall give such other information to the department as it may from time to time request relating to such animals.

6. The commissioner may order all or any animals coming into the state to be detained at any place or places for inspection and examination, and if any of them after due examintion be found affected with any infectious or communicable disease, such animals shall be condemned and slaughtered or held in strict quarantine.

7. Each animal brought into the state in violation of any of the provisions of this article shall constitute a separate and distinct violation.

8. Nothing contained in this section shall be construed to prevent or make unlawful the transportation of domestic or feral animals through this state on railroads or boats.

9. The commissioner is hereby authorized, after public hearing, to adopt and promulgate rules and regulations to implement and give full effect to the provisions of this section, including rules and regulations requiring a permit for the importation of domestic or feral animals into the state.

10. For the purposes of this section, a feral animal shall mean an undomesticated or wild animal.

§ 75. Sanitary regulations. The commissioner may adopt and enforce rules regulating the sanitation and physical requirements of stables, livestock auction buildings or other buildings used for the housing of domestic animals for the purpose of preventing the spread of infection and contagion among such animals and may provide for the inspection and examination of such stables and buildings. The commissioner may adopt and enforce rules concerning the equipment for and the method of the sanitary production of milk and may provide for the examination and scoring of dairies in accordance with such rules. He may also prescribe such rules as may be necessary for disinfecting and cleaning premises, buildings, railway cars, boats and other objects, from or by means of which infection or contagion of animals may be spread or conveyed. Vehicles used for the transportation of livestock shall be cleaned and disinfected at least weekly, or as otherwise directed by the commissioner, with a disinfectant approved by the commissioner. Vehicles used by a farmer in transporting his own livestock need not be cleaned and disinfected as prescribed by the preceding sentence unless directed by the commissioner.

§ 76. Quarantine on animals or premises. 1. The commissioner, any department employed veterinarian authorized by the commissioner, any veterinarian in the employ of the United States department of agriculture who is working in this state in connection with disease control programs cooperatively conducted by the United States department of agriculture and the department, or, when acting under the direction

of any department employed veterinarian authorized by the commissioner to provide such direction, any accredited veterinarian and any licensed veterinary technician in the employ of the department may order any animal to be put in quarantine if such animal (a) is affected with communicable disease, (b) has been exposed to a communicable disease, (c) is believed to be suffering from or exposed to a communicable disease, or (d) is suspected of having biological or chemical residues in its tissues which would cause the carcass or carcasses of such animal, if slaughtered, to be adulterated within the meaning of this chapter, and may order any premises or farm where such disease or condition exists or shall have recently existed to be put in quarantine so that no domestic animal shall be removed from or brought to the premises quarantined during the time of quarantine. The commissioner shall prescribe such regulations affecting animals, persons or property as he may deem necessary or expedient to prevent the dissemination of the disease or condition from the premises so quarantined.

2. Any employee of the department so authorized by the commissioner may impose pursuant to subdivision one hereof a quarantine (a) upon cattle, swine or poultry whenever there is a reasonable cause to believe that such animals have been fed garbage, offal or carcasses in violation of section seventy-two-a of this chapter and (b) upon any horse required to have been tested in accordance with section ninety-five-c of this chapter if the custodian of such animal does not produce for examination a negative test certificate.

3. Whenever the owner of any bovine animal refuses or neglects to have any such animal tuberculin tested or whenever the owner of any domestic animal of a species for which a disease control program has been adopted and instituted by the commissioner pursuant to this article refuses or neglects to subject such animal to such tests or examinations as may have been established under such disease control program, the commissioner may order the premises or farm on which such animal is harbored to be put in quarantine so that no animal of the same species shall be removed from or brought to the premises quarantined, and so that no product of such animals on the premises so quarantined shall be removed from the said premises. Nothing provided in this section shall

prevent the addition of new animals to a herd under quarantine or the removal for immediate slaughter of any animals from the premises or herd quarantined if such addition or removal is by written permission of the commissioner and pursuant to rules and regulations adopted by him.

§ 77. Examination by veterinarian prerequisite to destruction of animal. No animal shall be destroyed by the commissioner or by his order unless first examined by a veterinarian in the employ of the department, or whose work is approved by the commissioner, nor until such veterinarian renders a certificate to the commissioner, to the effect that he has made such examination, that, in his judgment, such animal is infected with a specified infectious or communicable disease, or that its destruction is necessary in order to prevent or suppress, or to aid in preventing or suppressing such disease.

§ 78. Examination of domestic animals. 1. The commissioner shall cause a physical examination and a tuberculin test to be made by competent and authorized veterinarians of all bovine animals, irrespective of age or sex, and cause all such bovine animals to be subjected to periodic retests when deemed necessary by the commissioner. The commissioner may also cause a physical examination and a tuberculin test to be made by competent and authorized veterinarians of any domestic animal or herds of domestic animals, irrespective of age or sex, when deemed necessary in his or her judgment to prevent or suppress disease. If, from such examination or test, any animal be deemed by the commissioner to be infected with tuberculosis or any other communicable disease or its condition be such as to render it undesirable for the production of milk or meat, or a menace to the health of other animals or persons, such animal shall be immediately removed from the herd, slaughtered or otherwise disposed of as the commissioner may prescribe.

2. No person shall possess, maintain, transport, or otherwise handle farmed deer except under conditions by which such animals are biologically segregated from bovine animals in a manner prescribed by the commissioner, provided however that such separation shall not be

required with respect to any farmed deer maintained under circumstances where contact with bovine animals would not pose a threat to the state's cattle population as determined by the commissioner pursuant to regulation. For purposes of this subdivision: (a) "farmed deer" shall mean members of family Cervidae which are raised or bred in confinement; and (b) "bovine animals" shall mean cattle and bison. This subdivision shall take effect on the one hundred eightieth day after it shall have become a law.

§ 79. Examination at request of owner; segregation; grading of herds. The owner of a herd of cattle kept for dairy or breeding purposes within the state may apply to the commissioner for examination of his herd by the tuberculin, or other approved tests, subject to the following regulations:

1. The application therefor shall be upon a blank form provided by the commissioner and shall include an agreement on the part of the owner of the herd to improve faulty sanitary conditions, to disinfect his premises if diseased cattle be found, and to follow directions of the commissioner designed to prevent the reinfection of the herd and to suppress the disease and prevent the spread thereof.

2. The commissioner shall cause such cattle to be examined accordingly, subject to the provisions of this article, and if any animal responds to such test, he may cause it to be slaughtered or held in strict quarantine.

3. If after examination an animal be found to be suffering from tuberculosis such animal shall be slaughtered under the provisions of this article, or the commissioner may enter into a written agreement with the owner for keeping such animal in segregation or the commissioner may, if the condition of such animal warrants it, consign such animal to any one of the experiment stations or farms owned or controlled by the state, or by any county of the state, or to the farms of such public institutions in the state as the commissioner shall approve, or to hospitals, sanitariums or other institutions existing in

whole or in part for the purpose of suppressing tuberculosis, there to be kept and used for breeding, dairy or experimental purposes under regulations to be prescribed by the commissioner.

4. Subject to the rules of the commissioner, an animal found to be diseased after such examination may continue to be used for breeding purposes, but the milk from such animal shall not be used for any purpose until pasteurized at such temperature and for such period as the commissioner may prescribe.

5. The young of any such diseased animal shall immediately be separated from its mother and shall not be permitted to receive or be fed the milk from such affected animal until such milk has been pasteurized as provided in subdivision four of this section.

6. The commissioner may make rules for classifying herds tested under this section and for the purpose of giving recognition to herds which are in a healthy condition, he is hereby authorized to issue such certification as he may deem proper in relation to such herds. If such rules and such certification provide for periodical retests of accredited herds, or other herds not yet accredited, the cost of such retests, after January first, nineteen hundred and thirty, shall be borne by the state and there shall be appropriated annually to the department a sum sufficient to defray the expense of the veterinary service for such required retests.

§ 80. Certificate to healthy herds. For the purpose of giving recognition to other than segregated herds which are certified to him, after competent examination satisfactory to him, to be in a healthy condition, the commissioner is hereby authorized to issue such certificates as he may deem proper to the owner of such herd; to use such terms to designate such herds as will harmonize with federal designations of such herds and to adopt such rules as he may deem proper for the tagging, branding or marking of any animal or animals affected or believed to be affected with any communicable disease, or exposed thereto. In the event that such animals are branded it shall not be

construed as cruelty to animals within the meaning of article twenty-six of this chapter.

§ 81. Sale, removal or slaughter of animals affected with tuberculosis. No animal showing physical evidence of tuberculosis or in which such disease shall have been indicated as a result of the tuberculin test shall be sold, except under the supervision of the commissioner. No such animal shall be removed from the premises where examined, or from any other premises, except upon the written permission of the commissioner. No such animal shall be slaughtered except under the supervision of a veterinarian designated by the commissioner as provided in section eighty-six of this chapter.

§ 82. Appraisers. The commissioner may employ from time to time appraisers of condemned animals. The chief or any assistant veterinarian shall have all the powers of any appraiser of condemned animals under this article.

§ 83. Appraisal of diseased animals. Each animal directed to be slaughtered shall be appraised at its market value. The appraiser shall make and transmit to the commissioner a certificate of appraisal and shall deliver to the owner a copy of such appraisal certificate. If the owner is dissatisfied with the amount of the appraisal he may, within ten days after the delivery of the copy of appraisal certificate, make written application to the commissioner for a review of the appraisal. Upon receipt of such application, the commissioner shall cause an investigation to be made as to the market value of the animals referred to in the application for a review. Upon completion of such investigation, the commissioner shall render a decision either confirming the appraisal or modifying it by an increase or a decrease of the amount of the appraisal as justice may require, and shall state in his decision the reasons therefor and shall transmit a copy of the decision to the owner. The decision of the commissioner may be reviewed by a proceeding under article eight of the civil practice law and rules.

§ 85. Destruction of animals; disposition of carcasses. The commissioner may prescribe rules for the destruction of animals affected with infectious or communicable disease, and for the proper disposal of their hides and carcasses and all objects which might carry infection or contagion. Whenever in his judgment necessary for the more speedy and economical suppression or prevention of the spread of any such disease he may cause to be slaughtered and afterward disposed of, in such manner as he may deem expedient, any animal or animals which by contact or association with diseased animals or other exposure to infection or contagion may be considered or suspected to be liable to contract or communicate the disease sought to be suppressed or prevented. The commissioner may seize and cause to be destroyed a carcass or any portion thereof affected with any communicable disease.

§ 86. Post-mortem examination of animals. The carcass of every animal duly condemned and killed under the provisions of this article shall be examined by a veterinarian designated by the commissioner for the purpose of determining whether or not disease existed in such animal and the person making the examination shall file promptly with the commissioner a report of the examination, in a form prescribed by the commissioner; but such an examination, and the filing of such a report thereof, by an inspector of the United States government engaged in meat inspection service may be accepted by the commissioner in lieu of an examination and report by a designated veterinarian.

§ 87. Payments for animals killed. The commissioner shall determine all claims which may be presented to him for indemnity to owners of animals killed by the state under the provisions of this article, and shall file in his office a certificate of his determination and, provided the claim is determined complete, shall within five days of having received the claim, issue his order for the amount due to the comptroller for payment. All claims allowed shall bear interest computed as provided in section one hundred seventy-nine-g of the state finance

law. A claim shall be considered an invoice within the meaning of the provisions of article eleven-A of the state finance law. Anyone having a right of reimbursement pursuant to the provisions of this article shall be deemed to be a "contractor" having a "contract" with a "state agency" as such terms are defined in section one hundred seventy-nine-e of the state finance law. The commissioner shall issue his order for the amount due as determined by the certificate, which amount shall be paid from the treasury, on the warrant of the comptroller, out of moneys appropriated therefor.

§ 87-a. Domestic fowl and fertile eggs thereof. Domestic fowl and fertile eggs of domestic fowl are included within the meaning of the words "animal" and "domestic animal" as used in sections seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven, eighty-two, eighty-three, eighty-five, eighty-six and eighty-seven of this article.

§ 88. Indemnity. The following provisions shall govern the payment of indemnity to owners of animals killed pursuant to the provisions of this article:

1. In the case of a bovine animal so killed to prevent the spread of tuberculosis, the owner shall be entitled to receive the net proceeds of the sale of the animal, and in addition thereto shall be paid indemnity in a sum sufficient to secure to the owner the full appraised value of the animal, but not exceeding the sum of six hundred dollars for a registered pure bred animal or for a pure bred animal less than three years of age, not registered but eligible for registry, for which a reasonable time shall be granted for the presentation of registration papers to the department, and not exceeding the sum of five hundred dollars for any other bovine animal. In the case of a pure bred animal three years of age or over not registered at the time of appraisal, such animals shall be appraised at grade value, and in computing indemnity to be paid for such animal any other appraised value shall be excluded. The total amount receivable by the owner from the net proceeds of the sale

of the animal and indemnity from the federal government and indemnity from the state shall, in every case except as otherwise specifically limited by this subdivision, equal but not exceed the full appraised value of the animal.

If a bovine animal for which indemnity has not been paid is slaughtered at an establishment under state or federal meat inspection and the carcass thereof is found upon post mortem examination and laboratory analysis to contain tubercular lesions and such carcass is condemned and destroyed pursuant to state or federal regulations, the owner thereof shall be entitled to receive as indemnity four hundred dollars for carcasses weighing four hundred pounds or less, and six hundred dollars for carcasses weighing more than four hundred pounds.

2. No indemnity shall be paid to any person who shall have made any false representation, oral or written, in applying to the commissioner for an examination of his or her animals, or who shall have violated any agreement with the state regarding such animals, entered into pursuant to a provision of this chapter, or who shall have failed to comply with any instructions or directions given by the commissioner in respect to the control or eradication of any infectious or communicable diseases among animals, or who shall have failed to comply with any provision of this article or rule or regulation promulgated pursuant to such article, relating to the prevention, control, suppression or eradication of such disease; provided that indemnity may be allowed when payment is deemed by the commissioner to further the public interest in preventing, controlling, suppressing, or eradicating the disease with respect to which indemnity is sought.

3. If upon post-mortem examination of an equine animal evidence of glanders be found, and such animal shall not have exhibited physical symptoms of such disease, indemnity equal to ninety per centum of the appraisal value, or so much thereof as shall not exceed the sum of one hundred and twenty-five dollars, shall be paid. If the animal shall have exhibited such physical symptoms of glanders, indemnity equal to twenty-five per centum of the appraised value, or so much thereof as shall not exceed the sum of one hundred and twenty-five dollars, shall

be paid.

4. No indemnity shall be paid unless the animal, if an equine, shall at the time ordered destroyed, have been within the state of New York for at least twelve months; and if a bovine shall at the time ordered destroyed have been within the state for at least three months, except that in the discretion of the commissioner, indemnity may be paid for a bovine which has not been within the state three months, provided that the animal at the time of entry into the state was accompanied by a tuberculin test chart, authenticated by the chief livestock sanitary official by whatever name known of the state or province from which the animal was brought, showing that the animal had originated in a herd under official supervision, and that such herd, including the animal in question, had been subjected to a tuberculin test under the regulations of the accredited herd plan and had passed such test negatively within one year preceding the order of destruction.

5. If animals are slaughtered or property destroyed by order of the commissioner to control, suppress or eradicate the disease known as aphthous fever, or foot and mouth disease, compensation shall be made to the owners of the animals slaughtered or the property destroyed, but not more than two hundred dollars shall be paid on account of any bovine animal.

6. In the case of any poultry, or all or part of any flock which has been exposed to salmonella enteritidis and which the commissioner has ordered to be slaughtered pursuant to section eighty-five of this chapter, the owner shall be entitled to receive, within the amount appropriated for such purpose, indemnity for each poultry, in a sum equal to the full appraised value of the poultry, or to not more than three dollars per poultry, whichever is less.

Final payment of state monies due to the owner of poultry slaughtered as set forth in this subdivision shall be made within sixty calendar days after the order is signed by the commissioner. In the event payment is not made within such period, interest thereafter at the rate of eight per centum per annum on the amount of the said monies owed shall be paid

to the owner in a single lump sum calculated from the end of the sixty day period until the final payment is made.

7. In the case of any farmed deer, or all or part of any herd which has been exposed to tuberculosis and which the commissioner has ordered to be slaughtered pursuant to sections eighty-one and eighty-five of this article, the owner shall be entitled to receive the net proceeds of the sale of the animal, and in addition shall be paid indemnity in the sum sufficient to secure to the owner the full appraised value of the animal, but not exceeding the sum of two hundred fifty dollars. The total amount receivable by the owner from the net proceeds of the sale of the animal and indemnity from the federal government and indemnity from the state shall, in every case except as otherwise specifically limited by this subdivision, equal but not exceed the full appraised value of the animal.

Indemnity payments shall be subject to the provisions set forth in section eighty-seven of this article. The amount of indemnity payments made by the state for testing and owner indemnification related to tuberculosis in animals by the department shall be limited to the amount of funds appropriated for such purposes by the legislature, and, notwithstanding any other provision of law to the contrary, shall represent fulfillment of the state's obligation for this program.

For purposes of this subdivision, the term "farmed deer" shall mean members of family cervidae which are raised and bred in confinement.

§ 89. Control of vaccines, serums and other preparations. For the purpose of detection, prevention, control or eradication of infectious or contagious diseases of domestic animals and fowls, the commissioner may make such exemptions and promulgate such orders, rules and regulations as he may deem necessary for the proper control, use, and distribution of any and all therapeutic preparations of microbiological origin used in the detection, prevention, control or eradication of such diseases within the state. The following provisions shall govern the disposition and use of such preparations.

(1) Such preparations used, sold, or given away in this state shall be labeled in conformity with the provisions of the federal virus-serum-toxin act of nineteen hundred thirteen, and any act or acts amendatory thereof or supplemental thereto.

(2) No person shall falsely label or mark any package or container of any such preparation, or alter any label or mark on any package or container of such preparation so as to falsify such label or mark.

(3) Such preparations, except those prepared by a federal or a designated state agency, prepared within or brought into the state to be retained, sold or given away within the state, for use in the detection, prevention, control or eradication of infectious or contagious diseases of domestic animals or fowls, or for the administration thereto for whatever purpose, shall be reported to the commissioner unless exempted by him. Such reports shall be made by the individual, firm, corporation or institution preparing or selling such preparations within the state, or receiving such preparations within the state to be retained, sold or given away. The reports shall show the character and purpose of the preparation, the quantity, the name and address of the manufacturer and the name and address of the person or firm to whom the product was sold or given away.

(4) Except by permission of the commissioner, the sale, or gift, or use of such preparations shall be confined to legally qualified veterinarians.

(5) Legally qualified veterinarians using such preparations, except those preparations exempted by the commissioner, in the detection, prevention, control, or eradication of infectious or contagious diseases of domestic animals or fowls shall make a report of such use to the commissioner immediately after the application or administration of such preparation. The report shall include the name and address of the owner or custodian of the animals, the character and purpose of the preparation employed, the amount used, and, if required by the commissioner, the identification of each animal and/or other necessary information.

(6) No person shall treat with or inject into any domestic animal any preparation, material or substance for the purpose of or with the effect of fraudulently interfering in any manner with a normal reaction to an officially prescribed test.

(7) No veterinarian shall certify or make a statement showing or tending to show that any domestic animal has been tested or examined and found free from an infectious or contagious disease, unless such certification shall show the character of the test, and bear a statement that the test was made by an officially accepted method, and that upon such test or examination the animal failed to give evidence of such disease.

§ 90. Examination of cattle for Bang's disease. 1. The commissioner, within the amounts appropriated for such purpose, may cause an appropriate test for ascertaining the presence or absence of bovine infectious abortion, commonly known as and hereafter termed "Bang's disease," to be made by competent and authorized veterinarians and cause such bovine animals to be subjected to periodic retests when deemed necessary by the commissioner. If, from such examination or test, any animal be deemed by the commissioner to be infected with Bang's disease and its condition be such as to render it undesirable for the production of milk or a menace to the health of other animals or persons, such animal may be immediately removed from the herd, slaughtered or otherwise disposed of as the commissioner may prescribe.

2. If after examination an animal be found to be suffering from Bang's disease such animal may be slaughtered under the provisions of this section, or the commissioner may enter into a written agreement with the owner for keeping such animal in segregation, or the commissioner may, if the condition of such animal warrants it, consign such animal to any one of the experiment stations or farms owned or controlled by the state, or by any county of the state, or to the farms of such public institutions in the state as the commissioner shall approve, or to hospitals, sanitariums or other institutions existing in whole or in part for the purpose of suppressing such bovine disease; there to be kept and used for breeding, dairy or experimental purposes under regulations to be prescribed by the commissioner.

3. No animal showing evidence of Bang's disease as a result of the official test shall be sold, except under the supervision of the

commissioner. No such animal shall be removed from the premises where examined, or from any other premises, except upon the written permission of the commissioner. No such animal shall be slaughtered except under the supervision of a veterinarian designated by the commissioner as provided in section eighty-six of this chapter.

4. In the case of a bovine animal killed on account of positive reaction to Bang's disease, the owner shall, in the discretion of the commissioner, and within the amount appropriated for such purpose, be entitled to receive indemnity in a sum equal to seventy-five per cent of the difference between the full appraised value of the animal and the total of the amounts received by the owner from the federal government as indemnity and from the sale of the animal as salvage, but not exceeding the sum of one thousand five hundred dollars for a registered pure bred animal and not exceeding the sum of five hundred dollars for any other bovine animal.

The commissioner may, in his discretion at the request of the owner, order the slaughter of non-reactor animals if he finds that they have been exposed to Bang's disease as a member of an infected herd and that the entire herd should be depopulated to control the spread of the disease. In such case, the owner shall be entitled to receive, within the amount appropriated for such purpose, indemnity in an amount equal to the difference between the full appraised value of the animal and the total of the amounts received by the owner from the federal government as indemnity and from the sale of the animal as salvage, but not exceeding the sum of three hundred dollars for a registered pure bred animal or one hundred seventy-five dollars for any other bovine animal.

The commissioner may, in his discretion, order the slaughter of any animal, or of all or part of any herd, which he finds has been exposed to Bang's disease by association with a positive reactor or by any other manner of exposure which he finds may make the animal or herd liable to contract or communicate the disease. In such case, the owner shall be entitled to receive, within the amount appropriated for such purpose, indemnity for each reactor animal and for each non-reactor animal as set forth in this subdivision unless the commissioner finds that such owner

has failed to comply with any laws, rules or regulations relating to the control or eradication of brucellosis.

Final payment of state moneys due the owner of animals slaughtered as set forth in this subdivision shall be made within sixty calendar days after the order is signed by the commissioner. In the event payment is not made within such period, interest thereafter at the rate of eight per centum per annum on the amount of the said moneys owed shall be paid to the owner in a single lump sum calculated from the end of the sixty day period until the final payment is made.

For purposes of this section, the term "registered pure bred animal" shall include a pure bred animal less than three years of age, not registered but eligible for registry, for which application for registry has been duly made prior to the appraisal. Pure bred animals three years of age or over, not registered at the time of appraisal, shall be appraised at grade value.

5. No indemnity shall be paid unless the animal shall, at the time ordered destroyed, have been within the state for at least three months, and provided further that the animal came into the state in accordance with the then existing laws and regulations relative to Bang's disease.

6. The commissioner, within the limits of the amount appropriated for such purpose or purposes, may initiate an official program of calfhood vaccination, may cause blood samples to be taken, may have such samples tested, and may make necessary rules and regulations relative thereto, and provide for identifying and recording all vaccinated animals in order that all such animals may be properly and officially supervised. The commissioner may cooperate for such purpose or purposes with federal or county officials upon such terms as he approves.

§ 90-a. Declaration of policy and purposes. Infectious and communicable disease affecting domestic animals continues to exist in this state, and the existence thereof endangers the health and welfare of the people of the state. Despite the moneys spent to control,

suppress and eradicate such infection and disease its incidence is the concern of the legislature. The powers of quarantine and condemnation held and exercised by the department of agriculture and markets tend to suppress but do not constitute an adequate control. It is hereby declared to be a matter of legislative determination that a more exacting supervision of those who, as a business, whether for profit or not-for-profit, deal in, handle, transport, and rescue domestic animals is needed in the public interest and that in the exercise of the police power such persons be required to hold a permit before engaging in such activities.

§ 90-b. Definitions. As used in this article unless otherwise expressly stated:

1. The term "auctioneer" means a person who sells, or makes a business of selling cattle, swine, sheep, goats, camelids or horses, at auction.

2. The term "auction" means a public sale of cattle, swine, sheep, goats, camelids or horses.

3. The term "cattle" means the entire family of bovidae.

4. The term "camelid" means the entire family of camelidae.

5. The term "cervid" means any member of the family of cervidae.

6. The term "dealer" means any person who buys and sells cattle, horses, swine, cervids, camelids, poultry, goats, or sheep as a business enterprise. The term shall not include persons who buy and sell such animals as part of a bona fide breeding, feeding or farming operation, or receive such animals exclusively for slaughter on their own premises, or purchase or sell horses either as part of a bona fide riding or racing operation or for their own personal use.

7. The term "goat" means any member of the genus capra.

8. The term "horse" means the entire family of equidae.

9. The term "live poultry market" means any premises where poultry are assembled and held for sale and slaughter. It does not include livestock auction buildings.

10. The term "official backtag" means a unique, tamper-resistant device approved by the United States department of agriculture, which, when affixed to cattle, cervid, swine or camelid, identifies and distinguishes animals that shall be moved directly to slaughter.

11. The term "official ear tag" means a unique, tamper-resistant device approved by the United States department of agriculture, which, when affixed to the ears of cattle, cervid, swine, sheep, goat, or camelid, identifies and distinguishes such animals.

12. The term "poultry" means a domesticated fowl including chickens, turkeys, waterfowl, guinea fowl and game birds commonly used for the production of meat and eggs. It does not include pigeons.

13. The term "poultry transporter" or "transporter of poultry" means any person who transports poultry or otherwise moves poultry to a live market.

14. The term "registration number" means the number assigned to and that identifies a particular domestic animal, where such number and the identifying characteristics of such domestic animal are set forth in a registry maintained by a breed association recognized by the department.

15. The term "rescue" means the action by a person that accepts cattle, swine, horses, sheep, goats, cervids, or camelids from any source and attempts to find permanent homes through adoption, transfer, sale, lease, sponsorship, or gift of such livestock.

16. The term "sheep" means any member of the genus ovis.

17. The term "swine" means the entire super family of suidoidae.

§ 90-c. Prohibitions. 1. It shall be unlawful for any person to purchase, deal in, sell, or rescue cattle, swine, horses, cervids, camelids, sheep, goats or poultry; to operate or conduct an auction where cattle, swine, horses, cervids, camelids, sheep, goats or poultry are sold; or to transport poultry, unless such dealer, auctioneer, poultry transporter, or rescue holds a domestic animal health permit granted by the commissioner.

2. No person who holds or is required to hold a domestic animal health permit shall purchase, sell, rescue, or otherwise deal in cattle, cervids, swine, camelids, sheep or goats unless and until an ear tag is securely affixed to the ear of such animal, unless such animal is otherwise identified by a registration number, distinctive tattoo, electronic identification device or some other unique permanent mark or, for an animal that is moved directly to slaughter, an official backtag.

3. No person shall deface, obliterate or remove an official ear tag or other identification mark affixed to an animal under their control, or shall affix an official ear tag to the ear of an animal that has previously been affixed to the ear of another animal.

§ 90-d. Application and permit fees. Application for an animal health permit shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by an animal health permit fee of fifty dollars. The applicant shall satisfy the commissioner of their character and responsibility and shall set forth such information as the commissioner shall require regarding the past record of infection or contagion among domestic animals dealt in, or handled, or sold, or rescued by the applicant during the past five years. A permit shall be issued for a two year period and a renewal application shall be submitted to the commissioner on or before the thirtieth day prior to the expiration of the permit.

§ 90-e. Refusing and revoking permits. The commissioner, after due notice and opportunity of hearing to the applicant or permittee, may deny an application for or revoke or refuse to renew a permit when the commissioner is satisfied that the applicant or permittee has:

1. violated the statutes of the state of New York or of the United States or the official regulations of the commissioner governing the interstate or intrastate movement, shipment or transportation of cattle or horses, swine, camelids, cervids, sheep, goats or poultry;

2. made false or misleading statements in their application for an animal health permit or has made false or misleading statements as to the health or physical condition of cattle, horses, swine, camelids, cervids, sheep, goats or poultry; regarding official tests;

3. knowingly sold for purposes other than slaughter cattle, horses, swine, camelids, cervids, sheep, goats or poultry which were affected with a communicable disease;

4. failed to observe sanitary measures in barning, stabling premises or vehicles used for the stabling, holding or transportation of cattle, horses, swine, camelids, cervids, sheep, goats or poultry;

5. engaged in a course of dealing of such a nature as to satisfy the commissioner of their inability or unwillingness properly to conduct the business for which an animal health permit has been issued;

6. been convicted of a felony;

7. had their animal health permit terminated or revoked;

8. ceased to operate the business for which the animal health permit was issued; or

9. failed to comply with any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto.

§ 90-f. Proceedings to review. The action of the commissioner in denying an application or revoking an animal health permit may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules and the decision of the commissioner shall be final unless within thirty days from the date of service thereof upon the applicant or permittee affected thereby the court proceeding is instituted to review such action. The pleadings upon which such review proceeding is instituted shall be served upon the commissioner or upon an assistant commissioner, personally, in the manner provided for the personal service of a summons in an action unless a different manner of service is provided in an order to show cause granted by a justice of the supreme court.

§ 90-g. Records. All records as now required by the commissioner respecting the health of domestic animals shall be continued and the commissioner may require such other and further records as from time to time may seem to him to be necessary or desirable in his enforcement of disease control.

§ 90-h. Violations; remedies. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of the statutes, rules and orders committed to his administration in regard to animal health permits and infectious or communicable disease affecting domestic animals, and in addition to any other remedy under article three of this chapter or otherwise may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

§ 91. Hog cholera and pseudorabies control; indemnity. 1. The commissioner, to control, suppress or eradicate hog cholera and

pseudorabies, may cause to be made appropriate examinations or tests for ascertaining the presence or absence of such diseases in swine. If, from such examinations or tests, any swine be found to be infected with or exposed to hog cholera or pseudorabies and such condition be such as to cause the swine to be a menace to the health of other animals the commissioner may order such swine to be immediately slaughtered or otherwise disposed of as he may prescribe.

2. No swine infected with or exposed to hog cholera or pseudorabies shall be sold or removed from the premises where examined, or from any other premises, except upon written permission of the commissioner. No swine so infected or exposed shall be slaughtered or killed except under the supervision of the commissioner.

3. The commissioner, within the appropriation for such purpose, may cause blood samples of swine to be taken and tested.

4. Swine killed on account of hog cholera or pseudorabies shall be appraised and indemnity shall be paid to the owner as provided in this article, except as otherwise specifically limited by this section. The owner shall be entitled to receive the net proceeds, if any, of the sale of the swine, and in addition thereto, within the appropriation for such purpose, shall be paid indemnity in a sum not exceeding one hundred dollars for a registered purebred, inbred or hybrid swine, and not exceeding forty dollars for any other swine. A purebred swine is any breeding swine upon which a certificate of pure breeding has been issued by a purebred swine association; an inbred or hybrid swine is any breeding swine upon which a certificate or registration has been issued by a recognized inbred or hybrid registry association. Certificates of pure breeding or registration for inbred or hybrid swine shall be presented at the time of appraisal or such swine will be appraised as grades, provided, however, that in the absence of such certificates or registrations the commissioner may grant a reasonable time for the presentation of such certificates or registrations to the appraiser. The total amount receivable by the owner from the net proceeds of the sale of the swine and indemnity from the federal government and indemnity from the state shall, in every case, except as otherwise

specifically limited by this section, equal but not exceed the full appraised value of the swine.

5. The commissioner may adopt and enforce rules and regulations, and may cooperate with the authorities of the United States government and with local officials, to implement the provisions of this section.

§ 95. Protecting the breeding of pure bred stock. It shall be unlawful for any person or persons owning or in the possession of any bull of the age of more than six months, any stallion of the age of more than eighteen months, or buck or boar over five months of age, to suffer or permit such animal or animals to go, or range, or run at large on any lands or premises without the consent of the person entitled to the possession of such land or premises.

No right of action shall accrue under this section to any person who, being liable to contribute to the erection or repair of a division fence as required by the town law, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, for damages done by any animal described in this section coming, by reason of such defective fence, from adjoining lands where such animal was lawfully kept.

§ 95-a. Animal ear tags or other identification. A person who without authorization by the commissioner, (a) cuts out, removes, obliterates or destroys a New York state department of agriculture and markets official ear tag or other official New York state identification tag, device or mark on any cattle, camelid, deer, sheep, goats or swine, as defined in this article, other than such identification which may be used for the owner's own records in the state of New York, or (b) inserts or attaches to the ear of any cattle, camelid, deer, sheep, goats or swine, as defined in this article, in the state of New York a New York state department of agriculture and markets official ear tag or inserts in or attaches to any such animal any other official New York state identification tag, device or mark other than such identification which

may be used for the owner's own records that has not been duly issued for said animal by the department is guilty of a misdemeanor.

§ 95-b. False pedigree of animals. Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society or company or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor.

§ 95-c. Examination of horses for equine infectious anemia. 1. The commissioner or his authorized agent may cause to be administered to any horse within the state any test he finds appropriate for ascertaining the presence or absence of equine infectious anemia, also known as "swamp fever." Upon order of the commissioner or his authorized agent, the owner, custodian or harborer of any horse shall confine, present, control and restrain such animal or animals for the examinations, tests and identification procedures the commissioner deems necessary and if exposure to equine infectious anemia is apparent, the commissioner shall order confinement for a period up to sixty days or until a negative test can be obtained. During the period of such test, and until the commissioner or his agent shall otherwise direct, the owner, custodian or harborer of any animal being tested shall keep such animal in segregation or confinement as the commissioner's agent shall direct, and no person shall remove a horse under test from the premises where the test is being conducted, nor remove from the horse, or alter or deface any temporary identification marks or devices affixed for the purpose of the test, except with the written consent of the commissioner's authorized agent.

2. (a) Any horse found by the commissioner after testing to be infected with equine infectious anemia may be freeze branded in a manner prescribed by the commissioner. Upon notification of the results of such test, the owner, custodian or harborer of any animal found by the

commissioner to be infected with equine infectious anemia shall confine, present and restrain such animal for freeze branding by any duly authorized agent of the commissioner at such time as he may direct.

(b) Notwithstanding any other provisions of law, the owner, harborer or custodian of any horse freeze branded pursuant to this section shall not be indemnified for any loss in value of such animal.

(c) The term "horse" as used throughout this section shall apply to the entire family of equidae. The commissioner may by regulation exclude from the provisions of this section horses within defined age categories.

3. No person shall import or bring into the state any horse unless such horse has been tested for equine infectious anemia and reacted negatively within a period prior to entry, and in a manner, prescribed by the commissioner in regulations.

4. No person shall transport on any public highway within this state any horse unless such horse has been tested for equine infectious anemia and reacted negatively within a period prior to such transportation, and in a manner, prescribed by the commissioner in regulations.

5. No person shall sell, exchange, barter or give away any horse unless such horse has been tested for equine infectious anemia and reacted negatively within a period prior to such transfer of ownership, and in a manner, prescribed by the commissioner in regulations.

6. Subdivisions three, four and five of this section shall not apply to horses which are imported, sold, exchanged, bartered, given away or transported under permit from the commissioner or his authorized agent for immediate slaughter, research or such other purposes as the commissioner finds are consistent with the control and eradication of equine infectious anemia, as prescribed by the commissioner in regulations.

§ 96. Certificates of registry of domestic animals. Certificates of registry, and of transfer of domestic animals when issued by and under

seal of a duly organized and recognized corporation or association formed for the purpose of registering pure-bred domestic animals, may be received in evidence in any action or proceeding, and shall be presumptive evidence of the facts and circumstances stated therein.

ARTICLE 5-A
LICENSING OF SLAUGHTERHOUSES

Section 96-a. Declaration of policy and purpose.
96-b. License required.
96-c. Posting of inspection results required.
96-d. Application of article.
96-e. Unlawful acts.
96-f. Denial, revocation and suspension of licenses.

§ 96-a. Declaration of policy and purpose. Whereas unsanitary conditions in the slaughtering of animals and fowl for food have been found to exist in this state, and whereas such conditions endanger the health and welfare of the people of the state, it is hereby declared to be a matter of legislative determination that the supervision of the slaughtering of animals and fowl is in the public interest, and that this article is enacted in the exercise of the police power of the state and its purposes are the protection of the public health.

*** § 96-b. License required.** 1. No person, firm, partnership or corporation not granted inspection pursuant to the federal meat inspection act, the federal poultry products inspection act, article five-B or article five-D of this chapter shall operate any place or establishment where animals or fowls are slaughtered or butchered for food unless such person, firm, partnership or corporation be licensed by the commissioner. In addition to any other requirements established by the commissioner, such license shall prohibit the slaughter or butchering by slaughterhouses of domesticated dog and domesticated cat to create food, meat, meat by-products or meat food products for human or animal consumption. An application for license shall be made upon a

form prescribed by the commissioner on or before the first day of May in every other year, for a two year license period commencing upon the following first day of June. With the application there shall be paid a license fee of two hundred dollars.

2. In a city with a population of one million or more, the commissioner shall not license any person, firm, partnership or corporation to operate any place or establishment where animals and/or fowls are slaughtered or butchered for food within a fifteen hundred foot radius of a residential dwelling. This subdivision shall not apply to any premises upon which a person, firm, partnership or corporation has been continuously conducting business as described in this subdivision from a date prior to the effective date of this subdivision.

3. In addition to any other requirements established by this chapter, an applicant for a license pursuant to this article shall furnish evidence: (a) of his or her good character, experience and competency, (b) that the establishment has adequate facilities and equipment for the business to be conducted, (c) that the establishment is such that the cleanliness of the premises can be maintained and (d) that the product produced therein will not become adulterated.

* NB Effective until August 5, 2028

* § 96-b. License required. No person, firm, partnership or corporation not granted inspection pursuant to the federal meat inspection act, the federal poultry products inspection act, article five-B or article five-D of this chapter shall operate any place or establishment where animals or fowls are slaughtered or butchered for food unless such person, firm, partnership or corporation be licensed by the commissioner. In addition to any other requirements established by the commissioner, such license shall prohibit the slaughter or butchering by slaughterhouses of domesticated dog and domesticated cat to create food, meat, meat by-products or meat food products for human or animal consumption. An application for license shall be made upon a form prescribed by the commissioner on or before the first day of May in every other year, for a two year license period commencing upon the following first day of June. With the application there shall be paid a license fee of two hundred dollars.

In addition to any other requirements established by this chapter, an applicant for a license pursuant to this article shall furnish evidence: (a) of his or her good character, experience and competency, (b) that the establishment has adequate facilities and equipment for the business to be conducted, (c) that the establishment is such that the cleanliness of the premises can be maintained and (d) that the product produced therein will not become adulterated.

* NB Effective August 5, 2028

§ 96-c. Posting of inspection results required. Each person, firm, partnership or corporation licensed pursuant to this article shall post a copy of the date and results of its most recent sanitary inspection by the department in a conspicuous location near each public entrance, as prescribed by the commissioner. Such copies shall also be made available to the public upon request.

§ 96-d. Application of article. Except for the absolute prohibition against the slaughtering or butchering of domesticated dog and domesticated cat to create food, meat, meat by-products or meat food products for human or animal consumption contained in this article which shall continue to apply notwithstanding the following exclusions from this article, the remaining provisions of this article shall not apply to (a) any bona fide farmer who butchers his own domestic animals or fowl on his farm exclusively for use by him and members of his household and his non-paying guests and employees, or (b) any custom slaughterer, (as used in this section, "custom slaughterer" means a person, firm, corporation or association who or which operates a place or establishment where animals are delivered by the owner thereof for slaughter exclusively for use, in the household of such owner, by him, and members of his household and his non-paying guests and employees, provided, that such custom slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat products of any animal), or (c) any person who slaughters not more than two hundred fifty turkeys or an equivalent number of birds of all other

species raised by him on his own farm during the calendar year for which an exemption is sought (four birds of other species shall be deemed the equivalent of one turkey), provided that such person does not engage in buying or selling poultry products other than those produced from poultry raised on his own farm, or (d) any person who donates, and any charitable or not-for-profit organization that possesses, prepares or serves game or wild game pursuant to section 11-0917 of the environmental conservation law (and any person who processes game or wild game on behalf of such donor).

§ 96-e. Unlawful acts. 1. It shall be unlawful for any person, firm, partnership or corporation to operate any slaughterhouse, abattoir or other place or establishment where animals or fowl are slaughtered or where meat or meat food products are prepared or processed for food unless such place or establishment is maintained and operated in a clean and sanitary manner, and conducted in accordance with the provisions of this article and with the regulations of the commissioner.

2. It shall be unlawful to expose any meat, fowl or meat food product in any slaughterhouse, abattoir or other place or establishment to insects, live animals or injurious contamination; or to slaughter, possess or sell unwholesome meat. Meat shall be unwholesome within the meaning of this article if it be from a diseased animal or one which shall have died other than by slaughter, or if such meat shall be contaminated with filth or shall have been slaughtered, processed or handled under insanitary conditions.

3. It shall be unlawful to feed hogs uncooked offal from a slaughterhouse.

4. It shall be unlawful for any slaughterhouse, abattoir or other place or establishment, or for any person, to slaughter or butcher domesticated dog (canis familiaris) or domesticated cat (felis catus or domesticus) to create food, meat or meat products for human or animal consumption. A violation of this subdivision shall subject the offender to a civil penalty of up to one thousand dollars for an individual and

up to five thousand dollars for a corporation for the first violation. Any subsequent violation shall be subject to a civil penalty of up to twenty-five thousand dollars. Any civil penalties collected pursuant to this subdivision shall be paid to the animal population control fund established by section ninety-seven-xx of the state finance law.

§ 96-f. Denial, revocation and suspension of licenses. 1. The exposure of meat, fowl or meat food product to insects, live animals or injurious contamination, or the slaughter, possession or sale of unwholesome meat, or the slaughtering, butchering, possession or sale of the fur, hair, skin or flesh of a domesticated dog (canis familiaris) or domesticated cat (felis catus or domesticus) shall be cause for the denial of an application for license, or the revocation or suspension of a license already granted. Any such denial, revocation or suspension may be reviewed by a proceeding instituted under article seventy-eight of the civil practice law and rules.

2. After due notice and opportunity to be heard, the license issued to any person, firm, partnership or corporation to operate any place or establishment where animals or fowls are slaughtered or butchered for food pursuant to subdivision one of this section shall be revoked upon establishing failure of three consecutive inspections. Nothing in this subdivision shall prohibit the commissioner from taking licensing action prior to failure of three consecutive inspections.

3. Each licensee shall post a copy of the date and results of its most recent sanitary inspection by the department in a conspicuous location near each public entrance, as prescribed by the commissioner. Such copies shall also be made available to the public upon request. Any licensee that violates the provisions of this subdivision shall be subject to a penalty of five hundred dollars for each day of violation.

4. In addition to any other grounds established by this article for the denial, revocation and suspension of licenses, the commissioner may decline to grant a new license, may decline to renew a license, or may suspend or revoke a license after due notice and opportunity for hearing

whenever he or she finds that:

(a) any statement contained in an application for license is or was false or misleading;

(b) the establishment does not have facilities or equipment sufficient to maintain adequate sanitation for the activities conducted;

(c) the establishment is not maintained in a clean and sanitary condition or is not operated in a sanitary or proper manner;

(d) the maintenance and operation of the establishment is such that the product produced therein is or may be adulterated;

(e) 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;

(f) the applicant or licensee, or an officer, director, partner, holder of ten percent 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

(g) 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 and that there is a direct relationship between that felony and the license sought or held by the individual.

ARTICLE 5-B

SALE OF MEAT

Section 96-g. Definitions.
96-h. Application of article.
96-i. General powers.
96-j. Farmer and custom processors.
96-l. Inspection legend required.
96-m. Sale of inspected meat.
96-p-2. Mishandling and improper transportation of meat, meat by-products and meat food products.
96-q. Unmarked and unlabeled meat.
96-r. Unlawful possession of inspection legend and meat label.

96-s. Rules and regulations.
96-t. Enforcement.
96-w. Severability.

§ 96-g. Definitions. As used in this article, unless otherwise expressly stated, or unless the content or subject matter otherwise requires;

1. "Department" means the department of agriculture and markets.

2. "Commissioner" means the commissioner of agriculture and markets.

3. "Person" means any person, firm, corporation, or association.

4. "Inspection legend" means a mark or a statement authorized by the provisions of the federal law, on a carcass, meat, meat by-product, or meat food product indicating the product has been inspected and passed.

5. "Meat label" means a display of written, printed, or graphic matter authorized by the provisions of the federal law on a container indicating the meat, meat by-products, or meat food products contained therein have been inspected and passed.

6. "Meat" means the edible part of the muscle of cattle, swine, sheep, goats, horses and other large domesticated animals which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying or overlying fat, and the portions of bone, skin, nerve and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout or ears. Any edible part of the carcass which has been manufactured, cured, smoked, processed or otherwise treated shall not be considered meat.

7. "Meat by-product" means any edible part other than meat which has been derived from cattle, swine, sheep, goats, horses and other large domesticated animals. This term shall apply only to those parts which

have not been manufactured, cured, smoked, processed or otherwise treated.

8. "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any animal, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products.

9. "Custom slaughterer" means a person, firm, corporation or association who or which operates a place or establishment where animals are delivered by the owner thereof for slaughter exclusively for use, in the household of such owner, by him and members of his household and his non-paying guests and employees, provided, that such custom slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat products of any animal.

10. "Custom slaughtered meat" means meat from animals which have been slaughtered by a custom slaughterer for the owner exclusively for use, in the household of such owner, by him and members of his household and his non-paying guests and employees.

11. "Farm dressed meat" means meat from animals slaughtered by a bona fide farmer who, as an incident of such farm operation, slaughters his own domestic animals on his own premises exclusively for use, in his household, by him and members of his household and his non-paying guests and employees.

12. "Edible" and "for human consumption" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or is naturally inedible by

humans.

13. "Animal" means cattle, swine, sheep, goats, horses and other large domesticated mammals.

14. "Carcass" means all parts, including viscera of a slaughtered animal, that are capable of being used for human food.

15. "Federal inspection" means the meat inspection maintained by the United States department of agriculture.

16. "Federal law" means the federal meat inspection act and all acts amendatory thereof and supplementary thereto.

17. "Game or wild game" means any deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting.

§ 96-h. Application of article. Notwithstanding any other provisions of this article, the knowing sale, exposure for sale, exchange or transportation at any and all places within the state of the fur, hair, skin or flesh of domesticated dog (canis familiaris) or domesticated cat (felis catus or domesticus) as food, meat, custom slaughtered meat, farm dressed meat, meat by-product or meat food product edible by humans or animals is hereby prohibited. A violation of this section shall subject the offender to a civil penalty of up to one thousand dollars for an individual and up to five thousand dollars for a corporation for the first violation. Any subsequent violation shall be subject to a civil penalty of up to twenty-five thousand dollars. Any civil penalties collected pursuant to this section shall be paid to the animal population control fund established by section ninety-seven-xx of the state finance law. Any authorization given by or pursuant to the provisions of this article to handle, sell, expose for sale, exchange or transport the carcasses of animals, parts thereof, meat, meat by-products and meat food products within the state and any exclusion from the application of this article applicable to custom slaughtered

meat or contained in section ninety-six-j or another provision of this article shall not apply to the knowing sale, exposure for sale, exchange or transportation of the fur, hair, skin or flesh of domesticated dog or domesticated cat as food, meat, custom slaughtered meat, farm dressed meat, meat by-product or meat food product edible by humans or animals which is prohibited by the provisions of this section. In the case of any conflict with another provision of this article, the provisions of this section shall prevail over such other provision of this article.

§ 96-i. General powers. The department, through the commissioner, is hereby vested with the power to administer and enforce the provisions of this article.

§ 96-j. Farmer and custom processors. This article shall not apply to any bona fide farmer who butchers his own domestic animals on his own farm exclusively for use by him and members of his household and his non-paying guests and employees, custom slaughterers, custom slaughtered meat, farm dressed meat, custom meat by-products, custom meat food products, and establishments where only such products are prepared, produced, processed or packaged, provided, however, that custom slaughtered meat, farm dressed meat, custom meat by-products and custom meat food products shall be identified as such in such manner as may be required by the commissioner by duly promulgated rules and regulations.

§ 96-l. Inspection legend required. Except as exempted by the provisions of this article no carcasses of animals, parts thereof, meat, meat by-product or meat food product for human consumption, shall be sold, exposed for sale, exchanged or transported within the state unless the same shall bear an official inspection legend or a meat label affixed pursuant to a federal inspection.

§ 96-m. Sale of inspected meat. All carcasses of animals, parts thereof, meat, meat by-products, and meat food products bearing an

inspection legend or meat label affixed after a federal inspection may be sold, exposed for sale, exchanged or transported at all places within the state, except that dressed carcasses of equines or other large domesticated animals, parts, meat, meat by-products and meat food products thereof may be sold, exposed for sale, exchanged or transported only in accordance with such rules and regulations as may be enacted by the commissioner.

§ 96-p-2. Mishandling and improper transportation of meat, meat by-products and meat food products. (1) No person, firm, association, partnership or corporation engaged in carrying or transporting meat, meat by-products or meat food products shall transport such products except in an enclosed vehicle in such a manner as to assure delivery of the aforesaid products so that frozen products remain frozen and such other products do not rise above forty degrees Fahrenheit, provided, however, that this section shall not apply to establishments engaging in meat handling operations at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments, nor to household consumers. This section shall not apply to meat food products which because of their method of manufacture, processing, and packaging, require no special handling temperatures to prevent adulteration or unwholesomeness including, but not limited to, commercially sterile meat food products in hermetically sealed containers.

(2) The commissioner may promulgate rules and regulations to further define standards for the transportation of meat, meat by-products or meat food products to further ensure that they are delivered in an unadulterated and wholesome condition.

(3) A violation of the provisions of this section shall be a violation as defined in subdivision three of section 10.00 of the penal law.

§ 96-q. Unmarked and unlabeled meat. Inasmuch as it cannot be determined for certain by any presently known method of inspection whether meat is unsound, unhealthful, unwholesome, or otherwise unfit or

unsafe for food unless the organs and other tissues of an animal are inspected when slaughtered, or whether meat, meat by-products or meat food products are unsound, unhealthful and unwholesome or contain dyes, chemicals, preservatives or ingredients which render such products adulterated unless inspected where processed, and as uninspected meat, meat by-products and meat food products may be unfit or unsafe for human consumption, the commissioner shall seize and destroy for food purposes any meat, meat by-product or meat food product that does not bear an official inspection legend affixed pursuant to a federal inspection; provided nothing herein shall affect the possession by a custom slaughterer or custom processor, or the possession and transportation by the owner of custom slaughtered meat or farm dressed meat when meats are identified as such in accordance with rules and regulations duly promulgated pursuant to the federal meat inspection act and all acts amendatory thereof; and provided, further, nothing herein shall affect the transportation of dead animals, properly identified, condemned carcasses and parts of carcasses, and other condemned or inedible product or material to rendering plants.

§ 96-r. Unlawful possession of inspection legend and meat label. It shall be unlawful for any person to possess, keep, or use an inspection legend or meat label or to possess, keep or use any stamp or label simulating the inspection legend and meat label unless authorized pursuant to the federal meat inspection act.

§ 96-s. Rules and regulations. The commissioner is hereby authorized to enact, amend and repeal rules and regulations necessary to carry out and give full force and effect to the provisions of this article.

The commissioner is hereby authorized to adopt, insofar as appropriate, the regulations, from time to time promulgated under such federal act or acts, and to change or amend the regulations promulgated under this chapter so as to conform, insofar as appropriate, to those promulgated under the federal meat inspection act and all acts amendatory thereof and supplementary thereto, particularly the wholesome

meat act.

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 applicable regulations promulgated under the federal act or acts.

§ 96-t. Enforcement. 1. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this article and the rules and regulations adopted and promulgated hereunder and, in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application may be made to the supreme court in any county pursuant to the civil practice law and rules or to the supreme court in any county of the third judicial district.

2. Whenever the commissioner is authorized or directed hereunder to render unfit for food or seize and destroy any meat, meat by-product, or meat food product, the destruction and disposition of such meat, meat by-product, or meat food product, as well as any necessary storage, handling or other incidentals, shall be the responsibility both financially and otherwise, of the owner of the establishment or other person having custody or possession of such meat, meat by-product, or meat food product; provided, however, that such destruction or disposition shall be carried out only under the direction and supervision of the commissioner. Nothing in this subdivision shall be construed as preventing the commissioner from destroying or disposing of meat, meat by-products, or meat food products found to be unfit or unsafe for use as food where such action is necessary for the protection of public health.

§ 96-w. Severability. If any provision of this article or the application thereof 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.

ARTICLE 5-C

LICENSING OF RENDERING PLANTS

Section 96-x. Declaration of policy and purposes.
96-y. Definitions.
96-z. Exemptions.
96-z-1. License required.
96-z-2. Application.
96-z-3. Granting, suspending or revoking licenses.
96-z-4. Review.
96-z-5. Rules and regulations.
96-z-6. Violations; remedies.
96-z-7. Labeling.
96-z-8. Access to premises; records.
96-z-9. Criminal slaughter, processing or possession of inedible meat.
96-z-10. Criminal sale of inedible meat.
96-z-11. Criminal transporting of inedible meat.
96-z-12. Unlawful decharacterization and labeling of inedible meat.

§ 96-x. Declaration of policy and purposes. The use as food of meat or meat products derived from dead, dying, disabled, diseased or condemned animals endangers the health and welfare of the people of the state. The powers of seizure, quarantine and condemnation held and exercised by the department tend to suppress but do not constitute adequate controls to prevent such adulterated and unfit meat and meat products from being sold for consumption. It is hereby declared to be a matter of legislative determination that regulation and supervision of those who deal in, handle, transport, process or dispose of such animals and the products therefrom are needed in the public interest, and that

in the exercise of the police power such persons be required to be licensed before engaging in such activities and that such activities be regulated and supervised. The general purpose of this article is to protect the public health, safety and welfare by controlling the use, movement and disposition of dead, dying, disabled, diseased, or condemned animals, and the meat and meat products derived therefrom.

§ 96-y. Definitions. As used in this article, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

(1) "Disposal plant" means the premises or place where bodies, carcasses or portions thereof of dead, dying, diseased, disabled or condemned animals or inedible meat are received and held for the purpose of burning, processing or rendering or otherwise obtaining the hides, skins, grease or meat therefrom in any manner whatsoever.

(2) "Processing" means any method whereby meat or meat products derived from animals are cut, boned, mixed, blended, canned, cured or otherwise prepared for purposes other than for human consumption.

(3) "Inedible meat" means meat and meat products derived from dead, dying, disabled, diseased or condemned animals, and meat or meat products, regardless of origin, which are adulterated within the meaning of section two hundred of this chapter.

(4) "Rendering" means the method by which animal bodies, carcasses or portions thereof, and meat or meat product are melted down and the fat or grease extracted therefrom.

(5) "Decharacterization" means the uniform application of sufficient quantities of dye, charcoal, malodorous fish oil, acid, or any other agent approved by the commissioner upon and into the freely slashed flesh of meat or meat product not being rendered so as to unequivocally preclude its use for human food.

(6) "Transportation service" means the operation within the state of a vehicle or vehicles by a person not otherwise licensed to operate a disposal plant, for the purpose of transporting for hire unprocessed animal bodies, carcasses or portions thereof, and meat or meat products which are not intended for eventual use for human consumption.

(7) "Vehicle" means a conveyance or any piece of equipment whatsoever

used in transportation service.

(8) "Animal" means any animal, domestic or feral, or any domesticated bird.

(9) "Dead animal" means an animal that has died otherwise than by slaughter.

(10) "Meat" means the entire bodies, carcasses or portions thereof of animals or birds.

(11) "Meat product" means any product which is made or derived wholly or in part from the body, carcass or portions thereof of animals or birds.

§ 96-z. Exemptions. This article shall not apply to disposal plants operated under federal inspection or under inspection pursuant to article five-B of this chapter; to any person, who, in the regular course of a refuse collection business, gathers up and disposes of the bodies of dead fowls, cats, dogs or other small animals; or to any person, including but not limited to members of state or municipal highway maintenance crews or state or municipal officials or employees who in the pursuit of their duties, are charged with or responsible for the protection of the health, safety and welfare of the people of the state.

§ 96-z-1. License required. It shall be unlawful for any person to operate a disposal plant or transportation service unless licensed as provided in this article.

§ 96-z-2. Application. Application for a license to operate a disposal plant or transportation service shall be made upon a form prescribed by the commissioner. The applicant shall satisfy the commissioner of his or her character and that he or she has adequate physical facilities for the operation of a disposal plant or transportation service. If so satisfied, the commissioner shall issue to the applicant a non-transferable license which will expire on the thirtieth day of September of the next even numbered year following its issuance.

Application for renewal of such license for a period of two years shall be made biennially upon a form prescribed by the commissioner and submitted no later than thirty days prior to the expiration of the existing license.

§ 96-z-3. Granting, suspending or revoking licenses. The commissioner may decline to grant a license or may suspend or revoke a license already granted, after written notice to the applicant or licensee and an opportunity to be heard, when (1) any statement in the application or upon which it was issued is or was false or misleading, (2) the applicant or licensee does not have adequate physical facilities for the operation of a disposal plant or transportation service, (3) facilities are not maintained in a manner and as required by rules and regulations duly promulgated by the commissioner, (4) applicant, an officer, director, partner, or holder of ten per centum or more of the voting stock of an applicant has been convicted of a felony by a court of the United States or any state or territory thereof, without subsequent pardon by the governor or other appropriate authority of the state or jurisdiction in which such conviction occurred, or the receipt of a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law, (5) when applicant or licensee is a partnership or corporation, any partner, officer, director, holder or owner of ten percent or more of the stock, has previously been responsible, in whole or in part, for any act on account of which a license may be denied, suspended or revoked pursuant to the provisions of this article, or (6) the applicant or licensee has failed to comply with any of the provisions of this chapter or rules or regulations promulgated pursuant thereto.

§ 96-z-4. Review. The action of the commissioner in refusing to grant a license, or in suspending or revoking a license may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, and the decision of the commissioner shall be final unless within thirty days from this date of service thereof on the applicant or licensee a proceeding is instituted to review such action.

§ 96-z-5. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt and promulgate such rules and regulations to supplement and give full effect to the provision of this article as he may deem necessary.

§ 96-z-6. Violations; remedies. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this article or of any rules and regulations promulgated thereunder, and in addition to any other remedy under article three of this chapter or otherwise, apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

§ 96-z-7. Labeling. All products except hides, tallow, meat meal or bone meal, leaving a disposal plant shall be packed in containers approved by the commissioner, and the containers shall be clearly marked or stamped with the legend "unfit for human consumption" in such manner as prescribed by the commissioner.

§ 96-z-8. Access to premises; records. The commissioner may inspect as often as he deems necessary, each disposal plant or vehicle licensed under the provisions of this article. For the purpose of making such inspection, the commissioner and his authorized agents shall have free access to all disposal plants licensed hereunder and to all premises where vehicles used in a transportation service are located. Licensees shall maintain such records as the commissioner may require pertaining to the origin, movement, storage, distribution or other disposition of inedible meat and such records shall be open to inspection by the commissioner or his authorized agents at any time during normal working

hours.

§ 96-z-9. Criminal slaughter, processing or possession of inedible meat. A person is guilty of criminal slaughter, processing or possession of inedible meat when he knowingly and unlawfully (a) slaughters, for the purpose of human consumption, any animal from which such meat would be derived, (b) adds, mixes or otherwise combines any such meat with food intended for human consumption, or bones, cuts, grinds or otherwise processes such meat for the purpose of human consumption, or (c) possesses such meat with intent to sell the meat for human consumption. Criminal slaughter, processing or possession of an inedible meat is a class E felony.

§ 96-z-10. Criminal sale of inedible meat. A person is guilty of criminal sale of inedible meat when he knowingly and unlawfully sells such meat for the purpose of human consumption. Criminal sale of inedible meat is a class E felony.

§ 96-z-11. Criminal transporting of inedible meat. A person is guilty of criminal transporting of inedible meat when he knowingly and unlawfully transports such meat for human consumption or when he knowingly and unlawfully transports inedible meat which is not marked or stamped with the legend "unfit for human consumption", as required by the commissioner. Criminal transporting of inedible meat is a class E felony.

§ 96-z-12. Unlawful decharacterization and labeling of inedible meat. A person is guilty of unlawful decharacterization and labeling of inedible meat when he knowingly and unlawfully fails to decharacterize and label such meat in a manner prescribed by the commissioner. Unlawful decharacterization and labeling of inedible meat is a class A misdemeanor.

ARTICLE 5-D

SALE OF POULTRY AND POULTRY PRODUCTS

Section 96-z-21. Definitions.
96-z-28. Inspection legend required.
96-z-29-a. Mishandling and improper transportation of poultry products.
96-z-32. Uninspected poultry and poultry products.
96-z-33. Unlawful possession of official devices.
96-z-34. Rules and regulations.
96-z-35. Enforcement.
96-z-36. Severability.

§ 96-z-21. Definitions. As used in this article, unless otherwise expressly stated, or unless the content or subject matter otherwise requires:

1. "Person" means any person, firm, corporation, or association.

2. "Adulterated" means the same as set forth in section two hundred of this chapter.

3. "Poultry" means any domesticated bird, whether live or dead.

4. "Poultry product" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relative small portion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the commissioner from definition as a poultry product under such conditions as the commissioner may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

5. "Federal inspection" means the poultry and poultry products inspection maintained by the United States department of agriculture.

§ 96-z-28. Inspection legend required. Except as exempted by the provisions of the Federal Poultry Products Inspection Act, no poultry or poultry product for human consumption, shall be sold, exposed for sale, exchanged or transported within the state unless the same shall bear an official inspection mark affixed pursuant to a federal inspection.

§ 96-z-29-a. Mishandling and improper transportation of poultry products. (1) No person, firm, association, partnership, or corporation engaged in carrying or transporting poultry products shall transport such poultry products except in an enclosed vehicle in such a manner as to assure delivery of the aforesaid products so that frozen products remain frozen and such other products do not rise above forty degrees Fahrenheit, provided, however, that this section shall not apply to (a) household consumers; (b) retail dealers with respect to poultry products sold directly to consumers in retail stores; (c) poultry products derived from either the slaughter by any person of poultry of his own raising, or the custom slaughter by another person of poultry delivered by the owner thereof for such slaughter, when such poultry products are used exclusively by such owner and members of his household and his non-paying guests and employees. This section shall not apply to poultry products which because of their method of manufacture, processing, and packaging, require no special handling temperatures to prevent adulteration or unwholesomeness including, but not limited to, commercially sterile poultry products in hermetically sealed containers.

(2) The commissioner may promulgate rules and regulations to further define standards for the transportation of poultry products to further ensure that they are delivered in an unadulterated and wholesome condition.

(3) A violation of the provisions of this section shall be a violation as defined in subdivision three of section 10.00 of the penal law.

§ 96-z-32. Uninspected poultry and poultry products. The commissioner shall seize and destroy for food purposes any poultry or poultry product

subject to federal inspection that does not bear the official inspection legend affixed pursuant to federal inspection.

§ 96-z-33. Unlawful possession of official devices. It shall be unlawful for any person:

1. To forge any official federal device or mark.

2. Knowingly to possess, without authority granted by the United States department of agriculture, any official federal device or any counterfeit, simulated, forged or improperly altered official federal device, mark or label, or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged or improperly altered official federal mark.

3. Knowingly to represent that any article has been federally inspected and passed, or exempted, when it has not been so inspected and passed, or exempted.

§ 96-z-34. Rules and regulations. The commissioner is hereby authorized to enact, amend and repeal rules and regulations necessary to carry out and give full force and effect to the provisions of this article. This chapter and the regulations promulgated thereunder shall be so interpreted and construed as to effectuate a general purpose to enact state legislation uniform with and at least equal to the federal wholesome poultry products act and all acts amendatory thereof and supplementary thereto.

The commissioner is hereby authorized to adopt, insofar as appropriate, the regulations from time to time promulgated under such federal act or acts, and to change or amend the regulations promulgated under this chapter so as to conform, insofar as appropriate, to those promulgated under the federal act 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 applicable regulations promulgated under such federal act or acts.

§ 96-z-35. Enforcement. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this article and the rules and regulations adopted and promulgated hereunder and, in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application may be made to the supreme court in any county pursuant to the civil practice law and rules or to the supreme court in any county of the third judicial district.

§ 96-z-36. Severability. If any provision of this article or the application thereof 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.

ARTICLE 6-A

INDEMNIFICATION FOR RABIES

Section 105-c. Temporary emergency.
105-d. Indemnification for rabies.
105-e. Damage appraisal and report.
105-f. Review by commissioner.
105-g. Review by court.
105-h. Payment to claimant, by county.
105-i. Partial reimbursement by state.
105-j. Enforcement of this article.

§ 105-c. Temporary emergency. The present losses to livestock in certain areas of the state resulting from the disease in animals known as rabies threaten to impair the agricultural economy of the communities affected. This article is enacted in the exercise of the police power and its purposes generally are to protect the public welfare. The provisions of this article shall not apply to the city of New York.

§ 105-d. Indemnification for rabies. Each county shall be liable for damages resulting within the county to domestic animals from the disease known as rabies and indemnification therefor shall be made in the manner provided by this article. The term "domestic animals" as used in this article shall mean domesticated sheep, horses, cattle, swine and goats. Such indemnification shall not exceed the actual damage and shall in no event exceed the sum of five hundred dollars for each animal in the case of damage to horses or cattle, or one hundred fifty dollars for each animal in the case of damage to swine, goats or sheep, provided, however, that in the case of registered purebred bovine animals indemnification may be made in an amount not to exceed seven hundred dollars for each animal.

The board of supervisors of each county shall have power to cause to be assessed, levied and collected in the same manner as other charges against the county, such sums of money as shall be necessary to pay indemnification on account of damages resulting from rabies as provided in this article.

§ 105-e. Damage appraisal and report. The owner of a domestic animal which has died as a result of rabies shall immediately upon discovery thereof notify any assessor of the city or town where the death occurred of the fact thereof, and that he claims indemnity therefor, and requires that the damages be determined. Such assessor, immediately upon receiving such notification, shall inquire into the matter. If he deems it necessary, he shall examine witnesses in relation thereto. No indemnification shall be paid unless there shall be presented to the assessor a report from a laboratory officially approved for rabies

examination by the state commissioner of health, showing the presence of rabies in each animal for which indemnity is claimed. If the assessor is satisfied that the animal or animals died of rabies, he shall determine the amount of the damages resulting therefrom and shall thereupon make a report in the form prescribed by the commissioner and shall state therein the amount of damages. The report shall be signed by the assessor, one copy of which shall be accompanied by an official laboratory report showing the presence of rabies. Two copies of the report shall be filed by the assessor in the office of the county treasurer, and a third copy shall be delivered by the assessor to the claimant. The county treasurer shall immediately approve or disapprove the claim. If he shall approve the claim, he shall endorse a copy of the report with a statement in accordance with the form prescribed by the commissioner certifying that the amount of the damage so reported by the assessor has been set aside by him for payment to the claimant from funds made available by the county for such purpose, and he shall immediately forward the copy of the report with such endorsement thereon to the commissioner. Upon receipt of such report, the commissioner shall examine the same and may investigate the same on his own part. The commissioner shall either confirm the amount of the damage reported by the assessor or modify it by such increase or decrease of the amount thereof as may appear proper and adequate in view of the facts and, if the facts so warrant, may disallow the same. The decision of the commissioner shall be in writing, and a copy thereof shall be mailed to the county treasurer and to the claimant.

§ 105-f. Review by commissioner. If the claimant desires to appeal the county treasurer's disapproval of his claim or if he is dissatisfied with the amount of the damage as set forth in the assessor's report, he may, within ten days after the receipt of the report, present to the commissioner a request for a review. The county treasurer may, within ten days after receiving the report of the assessor, if dissatisfied with the damages stated in the report, present to the commissioner a request for a review. Upon receipt of such request, from either the claimant or the county treasurer, the commissioner shall cause an investigation to be made of the facts surrounding the death of the

animal or animals described therein and the amount of damage incurred thereby for which indemnification should be made in accordance with the intent of this article. The claimant shall permit the commissioner or his duly authorized representative to enter the premises where the animal or animals for which indemnification is claimed were kept, harbored or pastured, and shall furnish to the commissioner or his duly authorized representative whatever information and proof may be available to the claimant and deemed necessary by the commissioner or his representative to complete the investigation. After the completion of such investigation the commissioner shall make his decision in writing as set forth in the preceding section.

§ 105-g. Review by court. The decision of the commissioner may be reviewed by the claimant or the county treasurer in the manner provided by article seventy-eight of the civil practice law and rules, but such review must be instituted within twenty days after receipt of the commissioner's decision, otherwise the commissioner's decision shall be final.

§ 105-h. Payment to claimant by county. If the decision of the commissioner increases or decreases the amount to be paid to the claimant above or below the amount originally approved by the county treasurer, the county treasurer shall, upon receipt of the commissioner's decision, adjust the county's share in accordance therewith. Upon receipt of the commissioner's decision and provided a review thereof has not been instituted as herein provided, the county treasurer shall forward to the claimant the county's check for the amount of indemnity allowed. If the commissioner shall disallow the claim, the county shall not be liable for the payment of any amount of indemnity.

§ 105-i. Partial reimbursement by state. Each county shall be entitled to partial reimbursement by the state for payments by the county of indemnification on account of damages resulting from rabies as

provided in this article, to the extent of fifty per centum of the amount of its approved expenditures for such indemnification. Not later than the last day in each of the months of June, September, December and March the county treasurer of each county which has made payments to claimants during the three months' period ending on such days pursuant to the provisions of this article shall make a report to the commissioner of agriculture and markets of the amount of its expenditures for payments to claimants under this article and apply for state reimbursement to the extent of fifty per centum of its approved expenditures therefor. Such report and application shall be in such form and contain such information as may be required by such commissioner. The commissioner shall thereupon promptly certify to the comptroller for payment the amount of state reimbursement due the county thereon. The amounts so certified by the commissioner of agriculture and markets, after audit by and on the warrant of the comptroller, shall be paid to the county treasurers of the respective counties to which such reimbursement is due, from any moneys available by appropriation therefor.

§ 105-j. Enforcement of article. The commissioner shall supervise the enforcement of this article. It shall be unlawful for any officer to neglect or refuse to perform his duties under the provisions of this article and such neglect or refusal shall be cause for his removal from office.

ARTICLE 7
LICENSING, IDENTIFICATION AND CONTROL OF DOGS

Section 106. Purpose.
107. Application.
108. Definitions.
109. Licensing of dogs required; rabies vaccination required.
110. License fees.
111. Identification of dogs.
111-a. Microchipping standards.
112. Change of ownership; lost or stolen dog.

113. Dog control officers.
114. Pounds and shelters.
115. Funds expended by municipality for services.
116. Spaying and neutering facilities authorized.
117. Seizure of dogs; redemption periods; impoundment fees; adoption.
117-a. Animal population control program.
118. Violations.
119. Disposition of fines.
120. Protection of deer.
121. Night quarantine.
122. Local laws or ordinances.
123. Dangerous dogs.
123-a. Exemption from civil liability.
123-b. Offenses against service animals and handlers.
124. Powers of commissioner.

§ 106. Purpose. The purpose of this article is to provide for the licensing and identification of dogs, the control and protection of the dog population and the protection of persons, property, domestic animals and deer from dog attack and damage.

§ 107. Application. 1. This article shall apply to all areas of the state except any city having a population of over two million.

2. In the event that any dog owned by a resident of any city having a population of over two million or by a non-resident of this state is harbored within this state outside of any such city, the licensing municipality in which such animal is harbored may exempt such dog from the identification and licensing provisions of this article for a period of thirty days provided such dog is licensed pursuant to the provisions of law of the area of residence.

3. This article shall not apply to any dog confined to the premises of any public or private hospital devoted solely to the treatment of sick

animals, or confined for the purposes of research to the premises of any college or other educational or research institution.

4. This article shall not apply to any dog confined to the premises of any person, firm or corporation engaged in the business of breeding or raising dogs for profit and licensed as a class A dealer under the Federal Laboratory Animal Welfare Act.

5. Nothing contained in this article shall prevent a municipality from adopting its own program for the control of dangerous dogs; provided, however, that no such program shall be less stringent than this article, and no such program shall regulate such dogs in a manner that is specific as to breed. Notwithstanding the provisions of subdivision one of this section, this subdivision and sections one hundred twenty-three, one hundred twenty-three-a and one hundred twenty-three-b of this article shall apply to all municipalities including cities of two million or more.

6. Nothing contained in this article shall be construed to prohibit a county from administering a dog licensing program for the municipalities within its jurisdiction.

§ 108. Definitions. As used in this article, unless otherwise expressly stated or unless the context or subject matter requires otherwise:

1. "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog, seized or surrendered, or any cat.

3. "Clerk" means the clerk of any county, town, city or village where licenses are validated or issued pursuant to this article.

4. "Commissioner" means the state commissioner of agriculture and markets.

5. "Dog" means any member of the species canis familiaris.

6. "Dog control officer" means any individual appointed by a municipality to assist in the enforcement of this article or any authorized officer, agent or employee of an incorporated humane society or similar incorporated dog protective association under contract with a municipality to assist in the enforcement of this article.

7. "Domestic animal" means any domesticated sheep, horse, cattle, fallow deer, red deer, sika deer, whitetail deer which is raised under license from the department of environmental conservation, llama, goat, swine, fowl, duck, goose, swan, turkey, confined domestic hare or rabbit, pheasant or other bird which is raised in confinement under license from the state department of environmental conservation before release from captivity, except that the varieties of fowl commonly used for cock fights shall not be considered domestic animals for the purposes of this article.

8. "Euthanize" means to bring about death by a humane method.

9. "Guide dog" means any dog that is trained to aid a person who is blind and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose.

10. "Harbor" means to provide food or shelter to any dog.

11. "Identification tag" means a tag issued by the licensing municipality which sets forth an identification number, together with the name of the municipality, the state of New York, contact information, including telephone number, for the municipality and such other information as the licensing municipality deems appropriate.

12. "Identified dog" means any dog carrying an identification tag as provided in section one hundred eleven of this article.

13. "Municipality" means any county, town, city and village.

15. "Owner" means any person who harbors or keeps any dog.

16. "Owner of record" means the person in whose name any dog was last licensed pursuant to this article, except that if any license is issued on application of a person under eighteen years of age, the owner of record shall be deemed to be the parent or guardian of such person. If it cannot be determined in whose name any dog was last licensed or if the owner of record has filed a statement pursuant to the provisions of section one hundred twelve of this article, the owner shall be deemed to be the owner of record of such dog, except that if the owner is under eighteen years of age, the owner of record shall be deemed to be the parent or guardian of such person.

17. "Person" means any individual, corporation, partnership, association or other organized group of persons, municipality, or other legal entity.

18. "Police work dog" means any dog owned or harbored by any state or municipal police department or any state or federal law enforcement agency, which has been trained to aid law enforcement officers and is actually being used for police work purposes.

19. "Recognized registry association" means any registry association that operates on a nationwide basis and issues numbered registration certificates.

20. "War dog" means any dog which has been honorably discharged from the United States armed services.

21. "Hearing dog" means any dog that is trained to aid a person who is deaf or hard of hearing and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose.

22. "Service dog" means any dog that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability.

23. "Person with a disability" means any person with a disability as that term is defined in subdivision twenty-one of section two hundred ninety-two of the executive law.

24. (a) "Dangerous dog" means any dog which (i) without justification attacks a person, companion animal as defined in subdivision five of section three hundred fifty of this chapter, farm animal as defined in subdivision four of section three hundred fifty of this chapter or domestic animal as defined in subdivision seven of this section and causes physical injury or death, or (ii) behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more persons, companion animals, farm animals or domestic animals or (iii) without justification attacks a service dog, guide dog or hearing dog and causes physical injury or death.

(b) "Dangerous dog" does not include a police work dog, as defined in subdivision eighteen of this section, which acts in the manner described in this paragraph while such police work dog is being used to assist one or more law enforcement officers in the performance of their official duties.

25. "Working search dog" means any dog that is trained to aid in the search for missing persons and is actually used for such purpose.

26. "Therapy dog" means any dog that is trained to aid the emotional and physical health of patients in hospitals, nursing homes, retirement homes and other settings and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose, and does not qualify under federal or state law or regulations as a service dog.

27. "Detection dog" means any dog that is trained and is actually used for such purposes or is undergoing training to be used for the purpose of detecting controlled substances, explosives, ignitable liquids, firearms, cadavers, or school or correctional facility contraband.

28. "Physical injury" means impairment of physical condition or substantial pain.

29. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

§ 109. Licensing of dogs required; rabies vaccination required. 1. (a) The owner of any dog reaching the age of four months shall immediately make application for a dog license. No license shall be required for any dog which is under the age of four months and which is not at large, or that is residing in a pound or shelter maintained by or under contract or agreement with the state or any county, city, town or village, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog protective association. Except as otherwise provided in this subdivision, a license shall be issued or renewed for a period of at least one year, provided, that no license shall be issued for a period expiring after the last day of the eleventh month following the expiration date of the current rabies certificate for the dog being licensed. All licenses shall expire on the last day of the last month of the period for which they are issued. In the event an applicant for a license presents, in lieu of a rabies certificate, a statement certified by a licensed veterinarian, as provided in subdivision two of this section, a license shall be issued or renewed for a period of one year from the date of said statement. Any municipality may establish a common renewal date for all such licenses. A license issued by a municipality that has established a common renewal date shall expire no later than the common renewal date prior to the expiration date of the rabies certificate for the dog being licensed.

(b) Application for a dog license shall be made to the clerk of the town, city, or county or, in the counties of Nassau and Westchester, incorporated village in which the dog is harbored or to the village clerk of those villages in the county of Rockland with a population of fifteen thousand or more which have elected to accept applications pursuant to the provisions of this paragraph or to the village clerk of

the village of Newark in the county of Wayne upon the election of the village of Newark pursuant to the provisions of this paragraph. Provided, however, that in the counties of Nassau and Westchester, the board of trustees of any incorporated village may by resolution provide that applications for licenses shall no longer be made to the village clerk, but to the clerk of the town in which the village is situated. Provided further, however, that in the county of Rockland, the board of trustees of any incorporated village with a population of fifteen thousand or more may by resolution provide that application for licenses shall be made to the village clerk. Provided further, however, that in the county of Wayne, the board of trustees of the village of Newark may by resolution provide that application for licenses shall be made to the village clerk. Provided further, however, that in the county of Montgomery, the board of trustees of the village of St. Johnsville may by resolution provide that application for licenses shall be made to the village clerk. The governing body of any town or city or, in the counties of Nassau and Westchester, incorporated village or in the county of Rockland, those villages with a population of fifteen thousand or more which have so elected to accept applications, in the county of Wayne, the village of Newark if such village has so elected to accept applications or, in the county of Montgomery, the village of St. Johnsville if such village has so elected to accept applications may, on resolution of such body, authorize that such application be made to one or more named dog control officers of any such town, city or village. The issuance of any license by any such officer shall be under the control and supervision of the clerk. In the case of a seized dog being redeemed or a dog being otherwise obtained from a county animal shelter or pound, such application may be made to the county dog control officer in charge of such facility. In the case of a dog being redeemed or a dog being adopted from a shelter or pound established, maintained or contracted for, pursuant to section one hundred fourteen of this article, such application may be made to the manager of such facility, provided such manager has been authorized by the municipality in which the prospective owner resides to accept such application. Such authorization shall be requested by the governing body of the pound or shelter and the granting or denial of such authorization shall be in the discretion of the municipality in which the prospective owner resides.

(c) The application shall state the sex, actual or approximate age, breed, color, and municipal identification number of the dog, and other identification marks, if any, and the name, address, telephone number, county and town, city or village of residence of the owner. The application shall include space where an owner may elect to make a contribution in support of the pound or shelter managed by the municipality where the owner resides or any organization which is contracted by such municipality to provide animal shelter services. The space for contribution shall be clearly marked and distinct with bold lettering or on a separate page, to make clear it is a voluntary contribution and not a part of the license fee. The application shall list the organization in which the contribution will be sent and may list suggested reasonable contribution amounts with an option for any amount. Municipalities may also require additional information on such application as deemed appropriate.

(d) The application shall be accompanied by the license fee prescribed by section one hundred ten of this article, the contribution, if elected by the owner, and a certificate of rabies vaccination or statement in lieu thereof, as required by subdivision two of this section. In the case of a spayed or neutered dog, every application shall also be accompanied by a certificate signed by a licensed veterinarian or an affidavit signed by the owner, showing that the dog has been spayed or neutered, provided such certificate or affidavit shall not be required if the same is already on file with the clerk or authorized dog control officer. In lieu of the spay or neuter certificate an owner may present a statement certified by a licensed veterinarian stating that the veterinarian has examined the dog and found that because of old age or other reason, the life of the dog would be endangered by spaying or neutering. In such case, the license fee for the dog shall be the same as for a spayed or neutered dog as set forth in subdivision one of section one hundred ten of this article.

(e) Upon validation by the clerk, authorized dog control officer or authorized pound or shelter manager, the application shall become a license for the dog described therein.

(f) The clerk, authorized dog control officer or authorized pound or shelter manager shall: (i) provide a copy of the license to the owner; (ii) retain a record of the license that shall be made available upon

request to the commissioner for purposes of rabies and other animal disease control efforts and actions. In addition, the authorized pound or shelter manager shall send, within forty-eight hours of validation, a copy of the license to the licensing municipality within which the dog is to be harbored.

(g) No license shall be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately make application for a license for such dog.

(h) Notwithstanding the provisions of any general, special or local law, or any rule or regulation to the contrary, the clerk, authorized dog control officer or authorized pound or shelter manager in municipalities having a population of less than one hundred thousand shall within five business days after the license has been validated, send a copy of the validated license to the licensing municipality in which the dog is to be harbored.

2. The clerk, authorized dog control officer or authorized pound or shelter manager, at the time of issuing any license pursuant to this article, shall require the applicant to present a statement certified by a licensed veterinarian showing that the dog or dogs have been vaccinated to prevent rabies or, in lieu thereof, a statement certified by a licensed veterinarian stating that because of old age or another reason, the life of the dog or dogs would be endangered by the administration of vaccine. The clerk, authorized dog control officer or authorized pound or shelter manager shall make or cause to be made from such statement a record of such information and shall file such record with a copy of the license. Such records shall be made available to the commissioner upon request for rabies and other animal disease control efforts.

3. Municipalities may provide for the establishment and issuance of purebred licenses and, in the event they do so, shall provide for the assessment of a surcharge of at least three dollars for the purposes of carrying out animal population control efforts as provided in section one hundred seventeen-a of this article. Municipalities which issue purebred licenses shall remit such surcharge collected to the commissioner.

4. Municipalities shall deposit all monies collected from voluntary contributions pursuant to paragraph (c) of subdivision one of this section into a dedicated fund. The proceeds of such fund shall be properly accounted for and be given to the organization listed on the application annually. In no event shall the funds derived from voluntary contributions replace any existing funding commitments to such organizations.

§ 110. License fees. 1. The license fee for dog licenses issued pursuant to subdivision one of section one hundred nine of this article shall be determined by the municipality issuing the license, provided that the total fee for an unspayed or unneutered dog shall be at least five dollars more than the total fee for a spayed or neutered dog. All revenue derived from such fees shall be the sole property of the municipality setting the same and shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under section one hundred sixteen of this article used therefor, and subsidizing public humane education programs in responsible dog ownership.

2. Municipalities may exempt from their licensing fees any guide dog, hearing dog, service dog, war dog, working search dog, detection dog, police work dog or therapy dog. Each copy of any license for such dogs shall be conspicuously marked "Guide Dog", "Hearing Dog", "Service Dog", "Working Search Dog", "War Dog", "Detection Dog", "Police Work Dog", or "Therapy Dog", as may be appropriate, by the clerk or authorized dog control officer.

3. In addition to the fee charged pursuant to subdivision one of this section, all municipalities issuing dog licenses pursuant to this article are required to provide for the assessment of an additional surcharge of at least one dollar for altered dogs and at least three dollars for unaltered dogs for the purposes of carrying out animal population control efforts as provided in section one hundred

seventeen-a of this article. Such surcharges shall be submitted by municipalities to the commissioner.

4. In addition to the fee charged pursuant to subdivision one of this section, any municipality issuing dog licenses pursuant to this article is hereby authorized to provide for the assessment of additional surcharges for the purpose of:

(a) recovering costs associated with enumeration conducted pursuant to subdivision six of section one hundred thirteen of this article should a dog be identified as unlicensed during such enumeration. Such additional fee shall be the property of the licensing municipality and shall be used to pay the expenses incurred by the municipality in conducting the enumeration. In the event the additional fees collected exceed the expenses incurred by the municipality in conducting an enumeration in any year, such excess fees may be used by the municipality for enforcing this article and for spaying or neutering animals; and

(b) offsetting costs associated with the provision and replacement of identification tags pursuant to section one hundred eleven of this article.

§ 111. Identification of dogs. 1. Each dog licensed pursuant to subdivision one of section one hundred nine of this article shall be assigned, at the time the dog is first licensed, a municipal identification number. Such identification number shall be carried by the dog on an identification tag which shall be affixed to a collar on the dog at all times, provided that a municipality may exempt dogs participating in a dog show during such participation.

2. No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which that number has been assigned.

3. A municipality offering a purebred license may provide a licensee, at his or her expense, any number of tags imprinted with the same number as the purebred license. One such tag shall be affixed to the collar of each dog harbored pursuant to the purebred license at all times,

provided that municipalities may exempt dogs participating in a dog show during such participation. Such a tag shall be affixed only to the collar of a dog owned by the holder of the purebred license and harbored on his premises.

4. A municipality offering a license for any guide dog, service dog, hearing dog, therapy dog or detection dog may issue a special tag for identifying such dog, provided that such tag shall be in addition to the identification tag required by subdivision one of this section. The municipality may prescribe the shape, size, color, and form of imprint of the tag which shall be a different color and shape than the standard identification tag. Upon application, the commissioner shall furnish such tags without payment of a fee.

§ 111-a. Microchipping standards. 1. The commissioner may adopt and promulgate rules and regulations that may provide for: standardization of technology used in microchips implanted in companion animals that are dogs or cats; and/or microchip readers so that such readers used by veterinarians, animal shelters, dog control officers, and animal control officers are capable of reading any chip to identify the animals and/or the owner of record; and/or the need for such veterinarians, animal shelters, dog control officers, and animal control officers to possess or have access to a microchip reader capable of reading any commercially available microchip implanted in a cat or dog. Such rules and regulations may also provide for the collection, sharing, and dissemination of chip identification information by entities that possess and manage such information solely to promote timely notification of owners when pets are lost while maintaining privacy protection of personal information and providing for disclosure to such owners of the sharing of such information.

§ 112. Change of ownership; lost or stolen dog. 1. In the event of a change in the ownership of any dog which has been licensed pursuant to this article or in the address of the owner of record of any such dog, the owner of record shall, within ten days of such change, file with the

municipality in which the dog is licensed a written report of such change. Such owner of record shall be liable for any violation of this article until such filing is made or until the dog is licensed in the name of the new owner.

2. If any dog which has been licensed pursuant to this article is lost or stolen, the owner of record shall, within ten days of the discovery of such loss or theft file with the municipality in which the dog is licensed a written report of such loss or theft. In the case of a loss or theft, the owner of record of any such dog shall not be liable for any violation of this article committed after such report is filed.

3. In the case of a dog's death, the owner of record shall so notify the municipality in which the dog is licensed either prior to renewal of licensure or upon the time of such renewal as set forth by the municipality in which the the dog is licensed.

§ 113. Dog control officers. 1. Each town and city, and each village in which licenses are issued, shall appoint, and any other village and any county may appoint, one or more dog control officers for the purpose of assisting, within the appointing municipality, with the control of dogs and the enforcement of this article.

2. In lieu of or in addition to the appointment of a dog control officer or officers, any town or city, or any village in which licenses are issued shall, and any other village and any county may, contract for dog control officer services with any other municipality or with any incorporated humane society or similar incorporated dog protective association, or shall appoint, jointly with one or more other municipalities, one or more dog control officers having jurisdiction in each of the cooperating municipalities.

3. Every dog control officer shall have the power to issue an appearance ticket pursuant to section 150.20 of the criminal procedure law, to serve a summons and to serve and execute any other order or process in the execution of the provisions of this article. In addition,

any dog control officer or any peace officer, when acting pursuant to his special duties, or police officer, who is authorized by a municipality to assist in the enforcement of this article may serve any process, including an appearance ticket, a uniform appearance ticket and a uniform appearance ticket and simplified information, related to any proceeding, whether criminal or civil in nature undertaken in accord with the provisions of this article or any local law or ordinance promulgated pursuant thereto.

4. Every dog control officer, peace officer, when acting pursuant to his special duties or police officer shall promptly make and maintain a complete record of any seizure and subsequent disposition of any dog. Such record shall include, but not be limited to, a description of the dog, the date and hour of seizure, the official identification number of such dog, if any, the location where seized, the reason for seizure, and the owner's name and address, if known.

5. Every dog control officer shall file and maintain such records for not less than three years following the creation of such record, and shall make such reports available to the commissioner upon request.

6. The governing body of any municipality in which licenses are issued, may, either individually or in cooperation with other municipal entities, require its dog control officer or animal control officer or any other authorized agent to ascertain and list the names of all persons in the municipality owning or harboring dogs, or in lieu thereof, such municipality may contract to have the same done.

§ 114. Pounds and shelters. 1. Each town and city, and each village in which licenses are issued shall, and any other village and any county may, establish and maintain a pound or shelter for dogs.

2. In lieu of or in addition to establishing and maintaining such pound or shelter, any town or city, or any village in which licenses are issued shall, and any other village and any county may, contract for pound or shelter services with any other municipality or with any

incorporated humane society or similar incorporated dog protective association, or with a public authority providing shelter services, or shall establish and maintain, jointly or with one or more other municipalities, a pound or shelter.

§ 115. Funds expended by municipality for services. No municipality shall be required to expend in any calendar year for dog control officer and pound or shelter services undertaken pursuant to this article, an amount of money greater than it receives during such year pursuant to this article and any local law or ordinance enacted pursuant thereto.

§ 116. Spaying and neutering facilities authorized. 1. Any municipality may, by local law or ordinance, provide for the establishment and operation of a facility to provide services for the alteration of the reproductive capacity through spaying or neutering of dogs and cats owned by the residents thereof.

2. Any animal which is presented at such facility for alteration must be accompanied by a notarized authorization signed by the owner thereof consenting to such alteration and agreeing to hold the municipality, its agents, servants and employees harmless for any damages arising therefrom or incidental thereto.

3. Any municipality enacting a local law or ordinance as authorized by this section shall further provide for the regulation of such facility with respect to the terms and conditions, including compensation, under which any animal will be maintained while the animal remains in the custody of the facility.

4. In no event shall any of the moneys or fees derived from, or collected pursuant to, the provisions of this article except as provided in subdivision three of section one hundred ten of this article and section one hundred seventeen-a of this article be used to subsidize the spaying or neutering of cats.

§ 117. Seizure of dogs; redemption periods; impoundment fees; adoption. 1. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to a municipality shall seize:

(a) any dog which is not identified and which is not on the owner's premises;

(b) any dog which is not licensed, whether on or off the owner's premises;

(c) any licensed dog which is not in the control of its owner or custodian or not on the premises of the dog's owner or custodian, if there is probable cause to believe the dog is dangerous; and

(d) any dog which poses an immediate threat to the public safety.

Promptly upon seizure the dog control officer shall commence a proceeding as provided for in subdivision two of section one hundred twenty-three of this article.

1-a. Notwithstanding the seizure requirements provided in subdivision one of this section, dog control officer or peace officer, acting pursuant to his or her special duties, or police officer in the employ of or under contract to a municipality may, if there is no probable cause to believe the dog is dangerous, return any dog with a current license directly to the dog's owner or custodian of record at the address provided on such dog's license.

2. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to a municipality may seize any dog in violation of any local law or ordinance relating to the control of dogs, adopted by any municipality pursuant to the provisions of this article.

3. Each dog seized in accordance with the provisions of this article shall be properly sheltered, fed and watered for the redemption period as hereinafter provided.

4. Each dog which is not identified, whether or not licensed, shall be

held for a period of five days from the day seized during which period the dog may be redeemed by its owner, provided that such owner produces proof that the dog has been licensed and has been identified pursuant to the provisions of this article and further provided that the owner pays the following impoundment fees:

(a) not less than ten dollars for the first impoundment of any dog owned by that person;

(b) not less than twenty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the second impoundment, within one year of the first impoundment, of any dog owned by that person; or

(c) not less than thirty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the third and subsequent impoundments, within one year of the first impoundment, of any dog owned by that person.

The impoundment fees set forth in paragraphs (a), (b) and (c) of this subdivision notwithstanding, any municipality may set by local law or ordinance such fees in any amount.

5. All impoundment fees shall be the property of the municipality to which they are paid and shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under section one hundred sixteen of this article used therefor, and subsidizing public humane education programs in responsible dog ownership.

6. Promptly upon seizure of any identified dog, the owner of record of such dog shall be notified personally or by certified mail, return receipt requested, of the facts of seizure and the procedure for redemption. If notification is personally given, such dog shall be held for a period of seven days after day of notice, during which period the dog may be redeemed by the owner. If such notification is made by mail, such dog shall be held for a period of nine days from the date of mailing, during which period the dog may be redeemed by the owner. In either case, the owner may redeem such dog upon payment of the

impoundment fees prescribed by subdivision four of this section and by producing proof that the dog has been licensed.

7. An owner shall forfeit title to any dog unredeemed at the expiration of the appropriate redemption period, and the dog shall then be made available for adoption or euthanized subject to subdivisions six, eight and nine of this section and subject to the provisions of section three hundred seventy-four of this chapter. Any municipality may by local law or ordinance establish additional conditions for adoption including the requirement that adopted dogs shall be spayed or neutered before or after release from custody upon such terms and conditions as the municipality may establish.

7-a. Any animal in the custody of a pound or shelter shall be made available for adoption or euthanized subject to subdivisions six, eight and nine of this section and subject to the provisions of section three hundred seventy-four of this chapter after the time for redemption has expired; provided, however, that such release may be made to another such pound, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated animal protective association for the sole purpose of placing such animal in an adoptive home, when such action is reasonably believed to improve the opportunity for adoption.

8. The redemption periods set forth above in this section notwithstanding, any municipality may establish the duration of such periods by local law or ordinance, provided that no such period shall be less than three days, except that where notice to the owner is given by mail, no such period shall be less than seven days.

9. Any dog, owned by a resident of any city having a population of over two million or by a non-resident of this state, seized and impounded pursuant to the provisions of this article, and whose owner can be identified, shall be subject to subdivision six of this section. If the dog is licensed pursuant to the provisions of law of the area of the owner's residence, the licensing requirements of this article shall not apply provided such dog is not harbored within this state outside

any city having a population of over two million for a period exceeding thirty days.

10. The seizure of any dog shall not relieve any person from any violation provided for by section one hundred eighteen of this article.

11. No liability in damages or otherwise shall be incurred on account of the seizure, euthanization or adoption of any dog pursuant to the provisions of this article.

§ 117-a. Animal population control program. 1. The commissioner shall submit a request for proposals from not-for-profit entities as described herein for the purpose of administering a state animal population control program. The entity chosen to administer such program shall enter into a contract with the state for a term of five years, which may be renewed subject to the approval of the commissioner. The purpose of this program shall be to reduce the population of unwanted and stray dogs and cats thereby reducing incidence of euthanasia and potential threats to public health and safety posed by the large population of these animals. This program shall seek to accomplish its purpose by encouraging residents of New York state who are the owners of dogs and cats to have them spayed or neutered by providing low-cost spaying and neutering services to such owners meeting the criteria enumerated in subdivision three of this section. For purposes of this section, "low-cost" shall mean substantially less than the average cost in a particular region of the state for spaying or neutering services, including any and all ancillary changes for services, including but not limited to, presurgical examinations, tests and immunizations, and other services related to the spay or neuter procedure. All veterinary services provided pursuant to this section must be performed by a veterinarian licensed in this state.

2. Eligible not-for-profit entities shall consist of duly incorporated societies for the prevention of cruelty to animals, duly incorporated humane societies, duly incorporated animal protective associations, or duly incorporated non-profit corporations that have received designation

as 501(c)(3) entities by the Internal Revenue Service and which entities are operating as animal rescue organizations, animal adoption organizations, spay/neuter clinics, or other entities whose core mission predominantly includes statewide efforts to manage the companion animal population in New York state. In awarding the contract, the commissioner must consider the following criteria with respect to each applicant: its experience in providing low-cost spay-neuter services, the scope of services it provides, the length of time it has been operating, its financial history, its demonstrated ability to work with outside organizations and community groups, and the proposed cost of administering and promoting the program. In choosing such entity, the commissioner may establish other criteria for making his or her selection in consultation with veterinarians, representatives from animal advocacy and welfare organizations, and municipalities. The selection of the administrative entity overseeing the state animal population control fund must be completed no later than December thirty-first, two thousand ten.

(a) The administrative entity chosen by the commissioner shall review plans submitted for approval and funding of low-cost spay-neuter programs and award grants for the animal population control fund for implementation of such plans. In reviewing the plans, the entity shall consider the following criteria: the method of providing low-cost spay-neuter services, including an anticipated fee schedule for such services, the size and need of the population served, the plan for outreach and promotion of such services, experience in providing low-cost spay-neuter services and cost-effectiveness of the overall plan. In awarding grants, the entity shall use best efforts to provide statewide distribution of funding.

(b) (i) Upon approving a plan submitted pursuant to this section, the administrative entity shall award a grant for the creation and implementation of such plan.

(ii) Upon approving a plan submitted for approval and funding of all other spay-neuter programs, the administrative entity shall award grants for the ongoing administration of low-cost spay-neuter services. Payments against such grants shall be advanced quarterly. Any remaining funds at the end of the grant period shall be remitted to the animal population control fund.

(iii) Any grants made pursuant to this section may be discontinued if it is found by the administrative entity that funds previously disbursed were not used for their intended purpose or that services performed were not provided according to the terms and conditions as the administrative entity shall provide.

(c) An administrative entity selected pursuant to this section shall use proceeds from the animal population control fund to pay for reasonable expenses incurred in operating the low-cost spay-neuter program, but is hereby authorized to solicit funds from other public and private sources.

(d) Such administrative entity shall submit an annual report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, and the commissioner. Such report shall include but not be limited to the balance of the fund, annual expenditures, annual income, the number of entities receiving funding and the amount received by each entity, the total number and type of low-cost spay-neuter services provided by each entity, the method of providing such services by each entity, the expenditure made for promoting the fund and description of marketing efforts, and recommendations regarding the implementation and financial viability of the fund.

(e) The administrative entity shall perform such other tasks as may be reasonable and necessary for the administration of such fund.

(f) If the administrative entity cannot perform its obligations pursuant to its contract, or if it is determined by the commissioner that it is not performing its obligations in a satisfactory manner, the commissioner may cancel such contract and issue another request for proposals from other entities to administer the program.

3. In order to be eligible to participate in the animal population control program, and therefore, be entitled to the low-cost spay/neuter services provided for herein, an owner of a dog or cat shall be a resident of New York state and shall submit proof to the entity providing such services as follows:

(a) in the form of an adoption agreement that their dog or cat was adopted from a pound, shelter maintained by or under contract or agreement with the state or any county, city, town, or village, duly

incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog or cat protective association; or

(b) proof of participation in at least one of the following:

(i) the food stamp program authorized pursuant to 7 U.S.C. 2011, et seq.;

(ii) the supplemental security income for the aged, blind and disabled program authorized pursuant to 42 U.S.C. 1381 et seq.;

(iii) the low income housing assistance program authorized pursuant to 42 U.S.C. 1437(f);

(iv) the Family Assistance program authorized pursuant to title ten of article five of the social services law;

(v) the Safety Net Assistance program authorized pursuant to title three of article five of the social services law;

(vi) the program of Medical Assistance authorized pursuant to title eleven of article five of the social services law; or

(vii) other similar programs identified by the administrative entity and approved by the commissioner; and

(c) in any city, town, village, or county which has enacted a local law or ordinance requiring spay/neuter of all dogs and cats prior to adoption from shelters, pounds, duly incorporated societies for the prevention of cruelty to animals, humane societies and duly incorporated dog or cat protective associations within such city, town, village or county, eligibility for participation in the animal population control program shall be determined based solely on the provisions of paragraph (b) of this subdivision.

4. Notwithstanding the provisions of paragraph (a) of subdivision three of this section, no resident, otherwise qualified pursuant to such paragraph, shall be entitled to participate in the low cost spay/neuter program implemented by this section if the animal to be spayed or neutered:

(a) was imported or caused to be imported from outside the state;

(b) was adopted from an otherwise qualifying pound, shelter, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog or cat protective association which included the cost of a spaying or neutering procedure

in the cost of the adoption.

5. Any county is hereby authorized to establish and implement an animal population control program within its jurisdiction. Any county creating its own program may submit a plan to the administrative entity for such program for approval and to receive funding from the animal population control program. Such plan shall include but not be limited to the criteria described in paragraph (a) of subdivision two of this section.

6. Any county which has created its own program, which has been approved by the administrative entity pursuant to this section, may receive the funds collected by the municipalities within the county pursuant to subdivision three of section one hundred nine of this article and subdivision three of section one hundred ten of this article for the sole purpose of administering such animal population control program. Such county program shall be subject to this article and the terms and conditions of the animal population control program, as may be amended from time to time.

7. Any municipality within a county that does not have its own program approved by the administrative entity pursuant to subdivision two of this section must submit the funds collected pursuant to subdivision three of section one hundred ten of this article to the animal population control fund pursuant to section ninety-seven-xx of the state finance law.

8. In the absence of a county animal population control program, entities described below within such county may, pursuant to subdivision two of this section, apply for funds from the animal population control fund described in section ninety-seven-xx of the state finance law for the sole purpose of providing low-cost spay and neuter services in their service area. In the event that the service area of an entity encompasses two or more counties, such entity may apply and receive funding from the animal population control fund to serve such portion of their service area that is not covered by an existing county animal population control program. Such entities shall include pounds, duly

incorporated societies for the prevention of cruelty to animals, duly incorporated humane societies, duly incorporated animal protective associations and duly incorporated nonprofit corporations that have received designation as a 501(c)(3) organization by the Internal Revenue Service, which entities are operating as animal rescue or adoption organizations. Any such entity must also be in good standing with the charities bureau of the office of the attorney general and with the secretary of state.

9. The administrative entity shall establish reporting requirements for any entity awarded funding through the animal population control program, and any other protocols necessary to ensure appropriate and effective use of monies disbursed pursuant to this section.

§ 118. Violations. 1. It shall be a violation, punishable as provided in subdivision two of this section, for:

(a) any owner to fail to license any dog;

(b) any owner to fail to have any dog identified as required by this article;

(c) any person to knowingly affix to any dog any false or improper identification tag, special identification tag for identifying guide, service, therapy or hearing dogs or purebred license tag;

(d) any owner or custodian of any dog to fail to confine, restrain or present such dog for any lawful purpose pursuant to this article;

(e) any person to furnish any false or misleading information on any form required to be filed with any municipality pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto;

(f) the owner or custodian of any dog to fail to exercise due diligence in handling his or her dog if the handling results in harm to another dog that is a guide, hearing or service dog;

(g) any owner of a dog to fail to notify the municipality in which his or her dog is licensed of any change of ownership or address as required by section one hundred twelve of this article.

2. It shall be the duty of the dog control officer of any municipality

to bring an action against any person who has committed within such municipality any violation set forth in subdivision one of this section. Any municipality may elect either to prosecute such action as a violation under the penal law or to commence an action to recover a civil penalty.

A violation of this section shall be punishable, subject to such an election, either:

(a) where prosecuted pursuant to the penal law, by a fine of not less than twenty-five dollars, except that (i) where the person was found to have violated this section or former article seven of this chapter within the preceding five years, the fine may be not less than fifty dollars, and (ii) where the person was found to have committed two or more such violations within the preceding five years, it shall be punishable by a fine of not less than one hundred dollars or imprisonment for not more than fifteen days, or both; or

(b) where prosecuted as an action to recover a civil penalty, by a civil penalty of not less than twenty-five dollars, except that (i) when the person was found to have violated this section or this article within the preceding five years, the civil penalty may be not less than fifty dollars, and (ii) where the person was found to have committed two or more such violations within the preceding five years, the civil penalty may be not less than one hundred dollars.

3. A defendant charged with a violation of any provision of this article or any local law or ordinance promulgated pursuant thereto may plead guilty to the charge in open court. He or she may also submit to the magistrate having jurisdiction, in person, by duly authorized agent, or by registered mail, a statement (a) that he or she waives arraignment in open court and the aid of counsel, (b) that he or she pleads guilty to the offense charged, (c) that he or she elects and requests that the charge be disposed of and the fine or penalty fixed by the court, (d) of any explanation that he or she desires to make concerning the offense charged, and (e) that he or she makes all statements under penalty of perjury. Thereupon the magistrate may proceed as though the defendant had been convicted upon a plea of guilty in open court, provided however, that any imposition of fine or penalty hereunder shall be

deemed tentative until such fine or penalty shall have been paid and discharged in full. If upon receipt of the aforesaid statement the magistrate shall deny the same, he or she shall thereupon notify the defendant of this fact, and that he or she is required to appear before the said magistrate at a stated time and place to answer the charge which shall thereafter be disposed of pursuant to the applicable provisions of law.

4. Any person who intentionally refuses, withholds, or denies a person, because he or she is accompanied by an on-duty police work dog, working search, war, or detection dog as defined in section one hundred eight of this article, any accommodations, facilities, or privileges thereof shall be subject to a civil penalty of up to two hundred dollars for the first violation and up to four hundred dollars for each subsequent violation.

5. Any person who for the purpose of participating in the animal population control program shall falsify proof of adoption from a pound, shelter, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated dog or cat protective association or who shall furnish any licensed veterinarian of this state with inaccurate information concerning his or her residency or the ownership of an animal or such person's authority to submit an animal for a spaying or neutering procedure pursuant to section one hundred seventeen-a of this article, and any veterinarian who shall furnish false information concerning animal sterilization fees shall be guilty of a violation punishable by a fine of not less than two hundred fifty dollars where prosecuted pursuant to the penal law, or where prosecuted as an action to recover a civil penalty of not more than two hundred fifty dollars.

§ 119. Disposition of fines. Notwithstanding any other provision of law, all moneys collected as fines or penalties by any municipality as a result of any prosecution for violations of the provisions of this article or any local law or ordinance and all bail forfeitures by persons charged with such violations shall be the property of the

municipality and shall be paid to the financial officer of such municipality. Such moneys shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under section one hundred sixteen of this article used therefor, and subsidizing public humane education programs in responsible dog ownership.

§ 120. Protection of deer. 1. Whenever the governing body of any municipality shall determine that the deer population in the municipality or part thereof is suffering severe depredation due to dogs attacking, chasing or worrying deer, such governing body may by order require that all dogs in such municipality or part thereof shall be securely confined during the period of time designated in the order or, if no time is designated, until the order is revoked.

2. Notice of such order shall be given by publication in a newspaper or newspapers of general circulation in said municipality which shall be designated by such governing body and by filing a copy of the order in the office of each clerk in the area affected by such order. Such order shall be in full force and effect at the expiration of twenty-four hours following publication of such notice.

3. If any dog is not confined as required by such order, any dog control officer, peace officer, acting pursuant to his special duties, or police officer shall seize such dog. Any dog so seized shall be subject to the provisions of section one hundred eighteen of this article. A dog shall not be deemed to be in violation of such order if accompanied by and under the full control of the owner.

4. If any dog, which is not confined as required by such order, shall attack, chase or worry any deer, any dog control officer, peace officer, acting pursuant to his special duties, or police officer upon witnessing the same, shall destroy, or seize and destroy, such dog, and no liability in damages or otherwise shall be incurred on account of such destruction.

5. If any dog shall kill or cripple any deer, the owner shall be subject to a civil penalty in the amount of one hundred dollars for the first deer killed or crippled by the dog or by the pack of dogs, if any, of which the dog was a member, and in the amount of one hundred fifty dollars for each additional deer killed or crippled, to be recovered in an action brought by the commissioner of environmental conservation on behalf of the people of the state of New York.

6. This section and any order issued pursuant thereto shall not apply to dogs in special dog training areas or shooting preserves enclosed and licensed pursuant to the provisions of the environmental conservation law, while such dogs are under the control of the owner or trainer.

§ 121. Night quarantine. 1. The governing body of any municipality may at any time by order require that all dogs in such municipality shall be securely confined between sunset and one hour after sunrise during the period of time designated in the order, or, if no time is so designated, until the order is revoked.

2. Notice of such order shall be given by publication in a newspaper or newspapers of general circulation in said municipality which shall be designated by such governing body and by filing a copy of the order in the office of each clerk in the area affected by such order.

3. Any dog control officer, peace officer, acting pursuant to his special duties, or police officer shall destroy or seize any dog not confined as required by such order, and no liability in damages or otherwise shall be incurred on account of such destruction or seizure. Any dog so seized shall be subject to the provisions of section one hundred eighteen of this article. A dog shall not be deemed to be in violation of such order if accompanied by and under the full control of the owner.

§ 122. Local laws or ordinances. 1. Any municipality may enact a local

law or ordinance upon the keeping or running at large of dogs and the seizure thereof, provided no municipality shall vary, modify, enlarge or restrict the provisions of this article relating to rabies vaccination and euthanization.

2. Such local law or ordinance may:

(a) impose penalties for violation of such restrictions to be recovered in a civil action in the name of such municipality;

(b) provide for enforcement by fine or imprisonment for any such violation; or

(c) provide for the issuance pursuant to the criminal procedure law of an appearance ticket, or in lieu thereof, a uniform appearance ticket, or in lieu thereof, a uniform appearance ticket and simplified information, as provided in section one hundred thirteen of this article, by any dog control officer, peace officer, acting pursuant to his special duties, or police officer, who is authorized by any municipality to assist in the enforcement of this article for any such violation.

§ 123. Dangerous dogs. 1. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may make a complaint of an attack or threatened attack upon a person, companion animal as defined in section three hundred fifty of this chapter, farm animal as defined in such section three hundred fifty, or a domestic animal as defined in subdivision seven of section one hundred eight of this article to a dog control officer or police officer of the appropriate municipality. Such officer shall immediately inform the complainant of his or her right to commence a proceeding as provided in subdivision two of this section and, if there is reason to believe the dog is a dangerous dog, the officer shall forthwith commence such proceeding himself or herself.

2. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may, and any dog control officer or police officer as provided in subdivision one of this section shall, make a complaint under oath or affirmation to any

municipal judge or justice of such attack or threatened attack. Thereupon, the judge or justice shall immediately determine if there is probable cause to believe the dog is a dangerous dog and, if so, shall issue an order to any dog control officer, peace officer, acting pursuant to his or her special duties, or police officer directing such officer to immediately seize such dog and hold the same pending judicial determination as provided in this section. Whether or not the judge or justice finds there is probable cause for such seizure, he or she shall, within five days and upon written notice of not less than two days to the owner of the dog, hold a hearing on the complaint. The petitioner shall have the burden at such hearing to prove the dog is a "dangerous dog" by clear and convincing evidence. If satisfied that the dog is a dangerous dog, the judge or justice shall then order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

(a) evaluation of the dog by a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert in the field and completion of training or other treatment as deemed appropriate by such expert. The owner of the dog shall be responsible for all costs associated with evaluations and training ordered under this section;

(b) secure, humane confinement of the dog for a period of time and in a manner deemed appropriate by the court but in all instances in a manner designed to: (1) prevent escape of the dog, (2) protect the public from unauthorized contact with the dog, and (3) to protect the dog from the elements pursuant to section three hundred fifty-three-b of this chapter. Such confinement shall not include lengthy periods of tying or chaining;

(c) restraint of the dog on a leash by an adult of at least twenty-one years of age whenever the dog is on public premises;

(d) muzzling the dog whenever it is on public premises in a manner that will prevent it from biting any person or animal, but that shall not injure the dog or interfere with its vision or respiration; or

(e) maintenance of a liability insurance policy in an amount determined by the court, but in no event in excess of one hundred thousand dollars for personal injury or death resulting from an attack

by such dangerous dog.

3. Upon a finding that a dog is dangerous, the judge or justice may order humane euthanasia or permanent confinement of the dog if one of the following aggravating circumstances is established at the judicial hearing held pursuant to subdivision two of this section:

(a) the dog, without justification, attacked a person causing serious physical injury or death; or

(b) the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or

(c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a "dangerous dog" finding pursuant to the provisions of this section.

An order of humane euthanasia shall not be carried out until expiration of the thirty day period provided for in subdivision five of this section for filing a notice of appeal, unless the owner of the dog has indicated to the judge in writing, his or her intention to waive his or her right to appeal. Upon filing of a notice of appeal, the order shall be automatically stayed pending the outcome of the appeal.

4. A dog shall not be declared dangerous if the court determines the conduct of the dog (a) was justified because the threat, injury or damage was sustained by a person who at the time was committing a crime or offense upon the owner or custodian of the dog or upon the property of the owner or custodian of the dog; (b) was justified because the injured, threatened or killed person was tormenting, abusing, assaulting or physically threatening the dog or its offspring, or has in the past tormented, abused, assaulted or physically threatened the dog or its offspring; (c) was justified because the dog was responding to pain or injury, or was protecting itself, its owner, custodian, or a member of its household, its kennels or its offspring; or was justified because the injured, threatened or killed companion animal, farm animal or domestic animal was attacking or threatening to attack the dog or its offspring. Testimony of a certified applied behaviorist, a board

certified veterinary behaviorist, or another recognized expert shall be relevant to the court's determination as to whether the dog's behavior was justified pursuant to the provisions of this subdivision.

5. (a) The owner of a dog found to be a "dangerous dog" pursuant to this section may appeal such determination, and/or the court's order concerning disposition of the dog to the court having jurisdiction to hear civil appeals in the county where the "dangerous dog" finding was made. The owner shall commence such appeal by filing a notice of appeal with the appropriate court within thirty days of the final order pursuant to this section. Court rules governing civil appeals in the appropriate jurisdiction shall govern the appeal of a determination under this section.

(b) Upon filing a notice of appeal from an order of humane euthanasia pursuant to this section, such order shall be automatically stayed pending final determination of any appeal. In all other circumstances, the owner of the dog may make application to the court to issue a stay of disposition pending determination of the appeal.

6. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person, service dog, guide dog or hearing dog causing physical injury shall be subject to a civil penalty not to exceed four hundred dollars in addition to any other applicable penalties.

7. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person causing serious physical injury shall be subject to a civil penalty not to exceed one thousand five hundred dollars in addition to any other applicable penalties. Any such penalty may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

8. The owner of a dog who, through any act or omission, negligently permits his or her dog, which had previously been determined to be dangerous pursuant to this article, to bite a person causing serious

physical injury, shall be guilty of a misdemeanor punishable by a fine of not more than three thousand dollars, or by a period of imprisonment not to exceed ninety days, or by both such fine and imprisonment in addition to any other applicable penalties. Any such fine may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

9. If any dog, which had previously been determined by a judge or justice to be a dangerous dog, as defined in section one hundred eight of this article, shall without justification kill or cause the death of any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, regardless of whether such dog escapes without fault of the owner, the owner shall be guilty of a class A misdemeanor in addition to any other penalties.

10. The owner or lawful custodian of a dangerous dog shall, except in the circumstances enumerated in subdivisions four and eleven of this section, be strictly liable for medical costs resulting from injury caused by such dog to a person, companion animal, farm animal or domestic animal.

11. The owner shall not be liable pursuant to subdivision six, seven, eight, nine or ten of this section if the dog was coming to the aid or defense of a person during the commission or attempted commission of a murder, robbery, burglary, arson, rape in the first degree as defined in paragraph (a) or (b) of subdivision one, paragraph (a) or (b) of subdivision two or paragraph (a) or (b) of subdivision three of section 130.35 of the penal law, rape in the first degree as defined in the former subdivision one of section 130.35 of the penal law, a crime formerly defined in subdivision one or two of section 130.50 of the penal law or kidnapping within the dwelling or upon the real property of the owner of the dog and the dog injured or killed the person committing such criminal activity.

12. Nothing contained in this section shall limit or abrogate any

claim or cause of action any person who is injured by a dog with a vicious disposition or a vicious propensity may have under common law or by statute. The provisions of this section shall be in addition to such common law and statutory remedies.

13. Nothing contained in this section shall restrict the rights and powers derived from the provisions of title four of article twenty-one of the public health law relating to rabies and any rule and regulation adopted pursuant thereto.

14. Persons owning, possessing or harboring dangerous dogs shall report the presence of such dangerous dogs pursuant to section two hundred nine-cc of the general municipal law.

§ 123-a. Exemption from civil liability. 1. If any dog shall, without justification, attack a person, or behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury to a person, when such person is peaceably conducting himself in a place where he may lawfully be, such person or any other person witnessing the attack or threatened attack may destroy such dog while so attacking, and no liability in damages or otherwise shall be incurred on account of such destruction.

2. If any dog shall, without justification, attack a companion animal, farm animal or domestic animal, or shall behave in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to a companion animal, farm animal or domestic animal, where such animal is in any place where it may lawfully be, the owner or caretaker of such animal, or any other person witnessing the attack, may destroy such dog, and no liability in damages or otherwise shall be incurred on account of such destruction.

§ 123-b. Offenses against service animals and handlers. 1. Definitions. For purposes of this section:

(a) "Service animal" shall mean any animal that has been partnered

with a person who has a disability and has been trained or is being trained, by a qualified person, to aid or guide a person with a disability.

(b) "Disability" shall have the same meaning as provided in section two hundred ninety-two of the executive law.

(c) "Handler" shall mean a disabled person using a service animal.

(d) "Formal training program" or "certified trainer" shall mean an institution, group or individual who has documentation and community recognition as a provider of service animals.

2. Any person who owns an animal or possesses control of such animal and who, through any act or omission, recklessly permits his or her animal to interfere with the proper working of a service animal, exposing the handler and service animal to danger or resulting in injury or death of the service animal shall be subject to a civil penalty not to exceed one thousand dollars in addition to any other applicable penalties.

3. Any person who owns an animal or possesses control of such animal and who, through any act or omission, recklessly permits his or her animal to interfere with the proper working of a service animal, exposing the handler and service animal to danger or resulting in injury or death of the service animal, where the animal causing such injury has previously been determined to be dangerous pursuant to this article, shall be guilty of a violation punishable by a fine of not more than two thousand dollars, or by a period of imprisonment not to exceed fifteen days, or by both such fine and imprisonment in addition to any other applicable penalties.

4. The handler of the service animal incapacitated, injured or killed shall have the right to pursue any and all civil remedies available to recover damages for medical and veterinary expenses, rehabilitation or replacement of the service animal, and lost wages, transportation expenses or other expenses directly related to the temporary or permanent loss of the service animal.

§ 124. Powers of commissioner. The commissioner is hereby authorized to:

1. (a) promulgate, after public hearing, such rules and regulations as are necessary to supplement and give full effect to the provisions of sections one hundred thirteen, one hundred fourteen and one hundred seventeen of this article; and

(b) exercise all other powers and functions as are necessary to carry out the duties and purposes set forth in sections one hundred thirteen, one hundred fourteen and one hundred seventeen of this article.

2. in cooperation with other relevant state agencies and stakeholders identify, and develop as necessary, guidance for therapy dogs, their handlers and facilities using such dogs, including, but not limited to, assessment and training, risk management, animal welfare, and best practices for such dogs and their dog-handlers. Such guidance shall be made available on the department's website and provided to municipalities that issue special tags for therapy dogs pursuant to section one hundred eleven of this article.

ARTICLE 7-A
MINK AND RANCH FOX FARMING

Section 127-a. Agricultural pursuit.
127-b. Functions of department.

§ 127-a. Agricultural pursuit. Notwithstanding the provisions of any law to the contrary, the breeding, raising and producing in captivity, and the marketing, by the producer of mink and ranch fox, as live animals, pelts or carcasses, shall be deemed an agricultural pursuit and all persons engaged therein shall be deemed farmers for all purposes, except that employees engaged in the aforementioned activities shall be deemed employees for which coverage is required under the workmen's compensation law, including article nine thereof. All mink and ranch fox raised in captivity shall be deemed domestic animals subject to all laws relative to possession, ownership and taxation applicable to domestic

animals, except for the purposes of disease control and indemnification under articles five and seven of this chapter.

§ 127-b. Functions of department. All the functions of the conservation department which affect the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestically raised mink and ranch fox, or products thereof, are hereby transferred to and vested in the department of agriculture and markets.

ARTICLE 8

MANUFACTURE AND DISTRIBUTION OF COMMERCIAL FEED

Section 128. Definitions.
128-a. Licenses.
129. Registration.
129-a. Review.
130. Labeling.
131. Misbranding.
132. Adulteration.
133. Prohibited acts.
133-a. Tonnage fees and reports.
134. Records and reports.
135. Rules and regulations.
135-a. Inspection, sampling and analysis.
135-b. Detained commercial feeds.
135-c. Penalties.
135-d. Enforcement.
135-e. Cooperation with other entities.
135-f. Publication.
135-g. Severability.

§ 128. Definitions. As used in this article, unless otherwise expressly stated, or unless the content or subject matter otherwise requires:

1. "Commissioner" means the commissioner of agriculture and markets.

2. "Department" means the department of agriculture and markets.

3. "Person" means any person, firm, partnership, corporation or association.

4. "Distribute" means to offer for sale, sell, exchange, or barter commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

5. "Distributor" means any person who distributes.

6. "Feed" means all edible materials which are consumed by animals and contribute energy or nutrients to the animal's diet.

7. "Commercial feed" means all materials except unmixed whole seeds or physically altered entire unmixed seeds, when not adulterated within the meaning of subdivision one of section one hundred thirty-two of this article, which are distributed for use as feed or for mixing in feed, and includes pet food and specialty pet food. Provided, however, the commissioner by regulation may exempt from this definition, or from specific provisions of this article, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not inter-mixed or mixed with other materials, and are not adulterated within the meaning of subdivision one of section one hundred thirty-two of this article.

8. "Pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

9. "Pet food" means any commercial feed prepared and distributed for consumption by pets.

10. "Specialty pet" means any domesticated pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters,

canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

11. "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

12. "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

13. "Registrant" means any person who has registered a commercial feed manufacturing facility or brand of pet food or specialty pet food pursuant to the provisions of section one hundred twenty-nine of this article.

13-a. "Licensee" means any person who has licensed a commercial feed manufacturing facility pursuant to section one hundred twenty-eight-a of this article.

14. "Brand" means each commercial feed identified by and differing from others either in name, trademark, descriptive designation or other method or marking, composition or guaranteed analysis.

15. "Feed ingredient" means each of the constitutent materials making up a commercial feed.

16. "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

17. "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final

purchaser, including feed mixed from components supplied by the purchaser.

18. "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

19. "Brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

20. "Product name" means the name of the commmercial feed which identifies it as to kind, class, or specific use.

21. "Label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

22. "Labeling" means any and all labels and other written, printed or graphic matter (a) upon a commercial feed or any of its containers or wrappers or (b) accompanying such commercial feed.

23. "Official sample" means a sample of feed taken by the commissioner or his authorized agent in accordance with the provisions of section one hundred thirty-five-a of this article.

§ 128-a. Licenses. 1. No person shall manufacture any commercial feed in this state unless such person holds a license issued therefor by the commissioner. Each application for a license shall be made on a form supplied by the department and shall contain such information as may be required by the department. A license issued on or before the thirtieth of June will expire on the thirty-first of December of the year of its issuance, and if issued between July first and December thirty-first, will expire on the thirty-first day of December in the year following its issuance. Renewal applications shall be made annually on a form prescribed by the commissioner and submitted no later than thirty days

prior to the expiration of the existing license.

2. The commissioner may deny any application for a license or revoke any license when granted, after written notice to the applicant and an opportunity to be heard, when:

(a) any statement in the application or upon which it was issued is or was false or misleading;

(b) facilities of the applicant are not maintained in a manner as required by rules and regulations duly promulgated by the commissioner;

(c) the maintenance and operation of the establishment of the applicant is such that the commercial feed produced therein is or may be adulterated, misbranded, or not maintained in any manner as required by this article;

(d) the applicant or licensee, or an officer, director, partner or holder of ten per centum or more of the voting stock of the applicant or licensee, has failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto; or

(e) the applicant or licensee is a partnership or corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which an application for licensure may be denied or a license revoked pursuant to the provisions of this article.

3. Inspection in accordance with section one hundred thirty-five-a of this article, the results of which establish compliance with the provisions of this article, shall precede issuance of a license or renewal thereof under this section.

4. Upon validation by the commissioner, the application shall become the license of the person.

5. The commissioner shall provide a copy of the license to the licensee. The commissioner shall also retain a copy of the license.

6. No licensee shall publish or advertise the sale of any commercial feed unless the publication or advertisement is accompanied by such licensee's license number.

7. Commercial feed licenses shall be conspicuously displayed on the premises so that they may be readily seen by officers and employees of the department.

8. Notwithstanding the definition of commercial feed under subdivision seven of section one hundred twenty-eight of this article, the provisions of this section shall not apply to a person who conducts a business of selling pet food and specialty pet food.

§ 129. Registration. 1. No person shall distribute in this state any commercial feed unless he or she is registered pursuant to the provisions of this section. The biennial registration fee shall be one hundred dollars. Application, upon a form prescribed by the commissioner, shall be made on or before June first of every other year for the registration period beginning July first following. Notwithstanding the provisions of this subdivision, a person licensed in accordance with section one hundred twenty-eight-a of this article shall not be required to be registered pursuant to this section.

2. No person shall distribute in this state any pet food or specialty pet food unless the brand thereof has been registered pursuant to the provisions of this section. An application for such registration of a pet food or specialty pet food shall be accompanied by a registration fee of one hundred dollars for each brand to be distributed, said fee to be paid annually thereafter. If any brand of a pet food or specialty pet food changes in any way after such brand has been registered, a new application therefor shall be made pursuant to the provisions of this section.

3. Application for registration as set forth in subdivisions one and two of this section shall be made to the commissioner on forms prescribed by the commissioner. The applicant shall satisfy the commissioner of his character and responsibility and shall set forth such information as the commissioner shall require. Upon approval by the commissioner the registration shall be issued to the applicant.

4. The commissioner may deny any application for registration as set forth in subdivisions one and two of this section or revoke any registration already granted, after written notice to the applicant or registrant and an opportunity to be heard, when:

(a) Any statement in the application or upon which it was issued is or was false or misleading;

(b) If facilities of the applicant or registrant are not maintained in a manner as required by rules and regulations duly promulgated by the commissioner;

(c) The applicant or registrant, or an officer, director, partner or holder of ten per centum or more of the voting stock of the applicant or registrant, has failed to comply with any of the provisions of this chapter or rules and regulations promulgated pursuant thereto;

(d) The applicant or registrant, or an officer, director, partner or holder of ten per centum or more of the voting stock of the applicant or registrant, has been convicted of a felony by a court of the United States or any state or territory thereof, without subsequent pardon by the governor or other appropriate authority of the state or jurisdiction in which such conviction occurred, or receipt of a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law;

(e) The applicant or registrant is a partnership or corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which an application for registration may be denied or a registration cancelled pursuant to the provisions of this article; or

(f) The maintenance and operation of the establishment of the applicant or registrant is such that the commercial feed held therein is or may be adulterated.

§ 129-a. Review. The action of the commissioner in denying an application for registration, or licensure, or in revoking a registration or license already granted, 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 registrant, a proceeding is instituted to review such action.

§ 130. Labeling. 1. A commercial feed, except a customer-formula feed, shall be accompanied by a label bearing the following information:

(a) The net weight.

(b) The product name and the brand name, if any, under which the commercial feed is distributed.

(c) The guaranteed analysis stated in such terms as the commissioner by regulation determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists.

(d) The common or usual name of each ingredient used in the manufacture of a commercial feed, provided, that the commissioner by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or he may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if he finds that such statement is not required in the interest of consumers.

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(f) Adequate directions for use for all commercial feeds containing drugs and for the use of such other feeds as the commissioner may require by regulation as necessary for their safe and effective use.

(g) Such warning or caution statements as the commissioner by regulation determines are necessary for the safe and effective use of the commercial feed.

2. A customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(a) Name and address of the manufacturer.

(b) Name and address of the purchaser.

(c) Date of delivery.

(d) The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.

(e) Adequate directions for use for all customer-formula feeds containing drugs and for such other customer-formula feeds as the commissioner may require by regulation as necessary for their safe and effective use.

(f) Such warning or caution statements as the commissioner by regulation determines are necessary for the safe and effective use of the customer-formula feed.

§ 131. Misbranding. A commercial feed shall be deemed to be misbranded if:

1. Its labeling is false or misleading in any particular.

2. It is distributed under the name of another commercial feed.

3. It is not labeled as required in section one hundred thirty of this article.

4. It purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the commissioner.

5. 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.

§ 132. Adulteration. A commercial feed shall be deemed to be adulterated if:

1. (a) 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 commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(b) It bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive; or

(c) It is, or it bears or contains any food additive which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug, and Cosmetic Act; or

(d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug, and Cosmetic Act, provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under any relevant provisions of the Federal Food, Drug, and Cosmetic Act 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 feed 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 feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug, and Cosmetic Act.

(e) It is or it bears or contains any color additive which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug, and Cosmetic Act.

2. If any valuable constitutent has been in whole or in part omitted

or abstracted therefrom or any less valuable substance substituted therefor.

3. Its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

4. It contains a drug and the methods used in or the facilities or controls used for the manufacture, processing, or packaging of the feed do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug contained therein meets the requirement of this article as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulation, the commissioner shall adopt the current good manufacturing practice regulations for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless he determines that they are not appropriate to the conditions which exist in this state.

5. It contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule and regulation.

§ 133. Prohibited acts. No person in this state shall commit or cause any of the following acts:

1. The manufacture or distribution of any commercial feed that is adulterated or misbranded.

2. The adulteration or misbranding of any commercial feed.

3. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section one hundred thirty-two of this article.

4. The removal or disposal of a commercial feed in violation of a seizure or stop sale order under section one hundred thirty-five-b of

this article.

5. The failure or refusal to register in accordance with section one hundred twenty-nine of this article or to obtain a license in accordance with section one hundred twenty-eight-a of this article.

6. The failure to submit tonnage reports or fees as required by section one hundred thirty-three-a of this article.

7. The failure to maintain records or submit reports as required by section one hundred thirty-four of this article.

§ 133-a. Tonnage fees and reports. 1. Any person who distributes in this state any feed ingredient or commercial feed, except a pet food or specialty pet food, shall pay to the commissioner a tonnage fee at the rate of ten cents per ton for each ingredient or feed distributed, subject to the following:

(a) No fee shall be paid on a feed ingredient or commercial feed if payment has been made for the particular ingredient or feed by a previous distributor;

(b) No fee shall be paid on a customer-formula feed if the tonnage fee has been paid on the commercial feeds which are used as ingredients therein.

(c) No fee shall be paid by any person for any year in which such person distributed less than one hundred tons of feed ingredients and commercial feeds in this state.

2. Each person who is liable for the payment of a tonnage fee shall file with the commissioner, within thirty days of December thirty-first of each year, a statement setting forth the number of tons of feed ingredients and commercial feeds distributed by such person in the state during the preceding twelve month period. Upon filing such statement, such person shall pay the tonnage fee at the rate set forth in this section.

§ 134. Records and reports. Every distributor, manufacturer and transporter of a commercial feed in this state shall maintain such records and submit such reports to the commissioner as the commissioner may require pertaining to the origin, manufacture, movement, storage, distribution or other disposition of commercial feed. Such records shall be open to inspection by the commissioner or his authorized agent at any reasonable time.

§ 135. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary, provided, that the commissioner may adopt and promulgate, insofar as appropriate, without public hearing, any rules and regulations promulgated under any federal act or acts or change or amend the regulations promulgated hereunder so as to conform, insofar as appropriate, to those promulgated under such federal act or acts. The commissioner may, if he or she determines that the protection of the consumers of the state is not impaired by such action, provide by regulation for exemption from registration of small feed distributors when he or she finds that such an exemption would avoid unnecessary regulation and assist in the administration of the article without impairing such article's purpose.

§ 135-a. Inspection, sampling and analysis. 1. For the purpose of enforcing this article, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees of the department, upon presenting appropriate credentials and, if feasible, a written notice to the owner, operator, or other person in charge, are authorized (a) to enter, at all reasonable times, any factory, warehouse, or establishment within the state in which commercial feed or feed ingredients may be manufactured, processed, packed, or held for distribution, or to enter any vehicle which may be used to transport or hold such feed or ingredients; and (b) to inspect, at all reasonable times, such factory, warehouse, establishment or vehicle and all

pertinent equipment, finished and unfinished materials, containers, and labeling therein, and to obtain samples thereat.

2. If the officer or employee making such inspection of a factory, warehouse, establishment or vehicle has obtained a sample in the course of the inspection, if feasible, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator or other person in charge a receipt describing the sample obtained.

3. Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods as approved by the commissioner.

4. The results of all analyses of official samples shall be forwarded by the commissioner to the person in whose name the brand of such feed is registered under section one hundred twenty-nine of this article, or if there be no such registrant for the same, then to the person named on the label or invoice, delivery slip or other document for such feed, or if the commissioner deems it appropriate, to the person from whom the sample was obtained. When the analysis of an official sample indicates a commercial feed has been adulterated or misbranded, upon request by the person receiving such results within fifteen days following the receipt thereof, the commissioner or his authorized agent shall furnish such person a portion of the sample concerned.

§ 135-b. Detained commercial feeds. 1. Stop sale order: When the commissioner or his authorized agent has probable cause to believe any lot of commercial feed is being, or is about to be distributed in violation of any of the provisions of this article or any of the rules and regulations adopted pursuant thereto, the commissioner or his authorized agent may issue and enforce a written stop sale order, warning the distributor not to remove or dispose of the lot of commercial feed in any manner until written permission for removal or disposal is given by the commissioner or his authorized agent. The commissioner or his authorized agent shall release the lot of feed so

detained if and when said provisions and regulations have been complied with. If compliance is not obtained within fifteen days, the commissioner may begin, or upon request of the distributor or registrant shall begin, seizure proceedings in accordance with the provisions of section two hundred two-b of this chapter.

2. Seizure: Whenever the commissioner or his authorized agent shall find distributed, or about to be distributed, any lot of commercial feed which is unfit or unsafe for use as commercial feed, and its condemnation is required to protect the public health, the commissioner or his authorized agent may seize, destroy or denature such feed so that it cannot thereafter be used for commercial feed.

Whenever the commissioner or his authorized agent finds, or has probable cause to believe, that any lot of commercial feed is adulterated or misbranded within the meaning of this article, or if any person fails to comply with a stop sale order duly issued pursuant to the preceding subdivision, the commissioner or his authorized agent shall seize such feed in accordance with the provisions of section two hundred two-b of this chapter.

All proceedings subsequent to seizure, including if necessary destruction of the feed after ten days' notice in writing to the distributor and an opportunity to be heard, shall be had in accordance with the provisions of section two hundred two-b. Prior to destruction of any commercial feed pursuant to the provisions of this subdivision, except where a commercial feed is unfit or unsafe for use as commercial feed and its condemnation is required to protect the public health, the commissioner or his authorized agent, upon request by the distributor, may afford the distributor an opportunity to reprocess or relabel said feed to bring it into compliance.

§ 135-c. Penalties. Any person who shall violate any of the provisions of this article or the rules and regulations duly adopted pursuant thereto shall be subject to the penalty provisions of section thirty-nine of this chapter, in addition to the remedies provided in

this article.

§ 135-d. Enforcement. 1. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this article and the rules and regulations adopted and promulgated hereunder and, in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application may be made to the supreme court in any county pursuant to the civil practice law and rules or to the supreme court in any county of the third judicial district.

2. Whenever the commissioner or his agent is authorized or directed hereunder to render any feed unfit for use as commercial feed or seize and destroy any commercial feed, the destruction and disposition of such commercial feed, as well as any necessary storage, handling or other incidentals, shall be the responsibility, both financially and otherwise, of the owner of the same or other person having custody or possession of such feed; provided, however, that such destruction or disposition shall be carried out only under the direction and supervision of the commissioner or his authorized agent. Nothing in this subdivision shall be construed as preventing the commissioner or his authorized agent from destroying or disposing of commercial feed found to be unfit or unsafe for use as commercial feed where such action is necessary for the protection of public health.

§ 135-e. Cooperation with other entities. The commissioner may cooperate with and enter into agreements with governmental agencies of this state, or other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

§ 135-f. Publication. The commissioner shall publish at least

annually, in such forms as he may deem proper, a report of the results of the analyses of official samples of commercial feed distributed within the state and any violations established as a result thereof.

§ 135-g. Severability. If any provision of this article or the application thereof 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 provisions or application, and to this end the provisions of this article are declared to be severable.

ARTICLE 9
INSPECTION AND SALE OF SEEDS

Section 136. Definitions.
137. Label requirements of all seeds, including lawn-seeding mixtures.
137-a. Responsibility for labeling.
138. Prohibitions.
139. Exemptions.
139-a. Tolerances.
140. Samples; publication of results of tests.
140-a. Provision for seed tests.
141. Certification.
142. Implementation.
142-a. Stop sale orders.
142-b. The New York native plant seed supply, development and enhancement program.

§ 136. Definitions. As used in this article unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. The term "person" shall include any individual, partnership, corporation, company, society, or association.

2. The term "seed" means botanical structures used for planting purposes and commonly referred to as "seed" within this state. This includes potato tubers when such tubers are represented as being suitable for planting purposes.

3. The terms "agricultural seeds" and "crop seeds" include the seeds of grass, forage, cereal, field beans, and fiber crops, including "industrial hemp" as defined in section five hundred five of this chapter, or any other kinds of seeds commonly recognized within this state as agricultural seeds, lawn seeds, and mixtures of such seeds.

4. The term "vegetable seeds" includes seeds of those food crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

5. The term "flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known and sold under the name of flower seeds in this state.

6. The term "tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree or shrub seeds in this state.

7. The term "noxious weed seeds" are those noxious weed seeds which are objectionable in agriculture crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides. Noxious weeds and the number of such noxious weed seeds allowable per pound of seed shall be established in regulation by the commissioner in consultation with experts in seed certification including, but not limited to, programs at the college of agriculture and life sciences at Cornell university.

8. The term "labeling" refers to statements written or imprinted on the seed container itself or on a tag or label securely attached to it as specified in the label requirements of this law.

9. The term "advertising" means all representations, other than the required label statements made in any manner or by any means relating to

seed within the scope of this act.

10. The term "stop-sale" means an administrative order provided by law, restraining the sale, use, disposition, and movement of a definite amount of seed.

11. The term "seizure" means a legal process carried out by court order against a definite amount of seed.

12. The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

13. The term "variety" means a subdivision of a kind characterized by growth, yield, disease resistance, plant, flower, fruit, seed or other characteristics by which it may be differentiated under certain conditions from other plants of the same kind.

14. The term "lot" means a definite quantity of seed which is identified by a lot number or other mark, and which has been so handled that each portion or container is representative of the whole quantity.

15. The term "hybrid" means the first generation of a cross produced under controlled pollination. The parents must be sufficiently uniform to permit repeated production of the hybrid without change in performance. Hybrid designations shall be treated as variety names.

16. "Pure seed" means agricultural, vegetable, flower, tree, or shrub seeds exclusive of inert matter, weed seeds, and all other seeds distinguishable from the kinds, or kinds and varieties being considered.

17. The term "percentage of germination" means the percentage of seeds, other than hard seeds, which are capable of producing normal seedlings under favorable conditions.

18. The term "percentage of hard seed" means the percentage of seeds which are incapable of sprouting promptly because their outer structures

are impermeable to water.

19. The term "treated" means that the seed has received an effective application of an approved substance or method designed to control or repel plant disease organisms, insects, or other pests; or has received some other treatment to improve its planting value.

20. "Certified", "registered", "foundation", "phyto-inspected", or any other terms conveying similar meaning, when referring to seed, means seed which has been produced or collected, processed, and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized certification agency or agencies.

21. "Officially recognized" means recognized and designated by the laws or regulations of any state, the United States, any province of Canada, or the government of any foreign country wherein said seeds were produced, except that if said seeds are produced in New York state, section one hundred forty-one shall govern.

22. "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

23. "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

§ 137. Label requirements of all seeds, including lawn-seeding mixtures. Each container of seed which is sold, offered or exposed for sale, or transported in this state for planting purposes, shall bear thereon or have attached thereto in a conspicuous place, a plainly written or printed label or tag in the English language, giving the following information:

A. All seeds except seed potatoes:

1. The name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

2. If seed has been treated as defined in this article, the commonly accepted or trade name and/or the purpose of the treatment.

3. If seed has received an application of a substance harmful to humans or other vertebrates in the quantities used, a warning adequate to protect the public.

B. All seeds, except tree or shrub seeds and seed potatoes where percentage of germination, exclusive of hard seed and/or percentage of hard seed are required to be indicated, the terms "total" or "total germination and hard seed" may be used, but the term "total germination" alone may not be used.

C. Agricultural seeds, including lawn-seeding mixtures:

1. In order of their predominance, the name of the kind or kind and variety, of each agricultural seed component in excess of five per cent of the whole, and the percentage by weight of each, except that where more than ten per cent of the whole consists of an aggregate of agricultural seed components each present in an amount not exceeding five per cent of the whole, each component in excess of one per cent of the whole shall be named together with the percentage by weight of each.

2. Where more than one agricultural seed component is named, the word mixture, mix, or mixed shall be shown conspicuously on the label.

3. Lot number or other lot identification.

4. Percentage by weight of all weed seeds.

5. The name and number of seeds per pound of each kind of noxious weed seed present.

6. Percentage by weight of agricultural seeds or crop seeds other than those labeled as components and in addition the commissioner may by regulation designate certain crop seeds as undesirable lawn seeds and when present in lawn seed or lawn seeding mixtures, the manner in which they must be identified on the labeling.

7. The name and number of seeds per pound of rye and hairy vetch (vicia villosa) seeds when present in seeds of wheat, oats and barley.

8. Percentage by weight of inert matter.

9. For each agricultural seed component:

(a) Percentage of germination, exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) Calendar month and year test was completed to determine such percentages.

10. For cool season lawn and turf grasses including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass and mixtures thereof:

(a) Calendar month and year the test was completed to determine such percentages. Oldest test date shall be used.

(b) The statement "Sell by " which may be no more than fifteen months from the date of test exclusive of the month of test.

11. For agricultural seeds that are coated:

(a) Percentage by weight of pure seeds with coating material removed.

(b) Percentage by weight of coating material.

(c) Percentage by weight of inert material exclusive of coating material.

(d) Percentage by germination is to be determined on four hundred pellets with or without seeds.

D. Vegetable seeds:

1. For vegetable seeds in packets for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices and for peas, beans, and sweet corn in containers of one pound or less, and other kinds of vegetable seeds in containers of one-quarter pound or less

(a) Name of kind and variety of seed;

(b) Lot identification, such as by lot number or other means;

(c) The calendar month and year the germination test was completed and the statement "Sell by _____", which may be no more than 12 months from the date of test, exclusive of the month of test; or

the year for which the seed was packaged for sale as "Packed for _____" and the statement "Sell by _____", which shall be for a calendar year; or

the percentage germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months, exclusive of the month of test;

(d) For seeds which germinate less than the standard last established by the commissioner under this article;

(1) Percentage of germination, exclusive of hard seed;

(2) Percentage of hard seed, if present;

(3) The calendar month and year the test was completed and the statement "Sell by _____," which may be not more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within twelve months, exclusive of the month of test; and

(4) The words "below standard" in not less than eight-point type.

2. For peas, beans, and sweet corn in containers of more than one pound and other kinds of vegetable seeds in containers of more than one-quarter pounds.

(a) Name of kind and variety.

(b) Lot number or other lot identification.

(c) Percentage germination exclusive of hard seeds.

(d) Percentage of hard seed if present.

(e) The calendar month and year test was completed to determine such percentage; or the year for which the seed was packaged or tested.

E. Flower seeds:

1. For flower seeds in packets prepared for use in home flower gardens:

(a) For those kinds of flower seeds where there are annual and/or biennial and/or perennial sorts, a statement in a conspicuous location on the seed container to indicate whether the seed is of the annual, biennial, or perennial sort.

(b) Name of the kind and variety or a statement of type and performance characteristics as prescribed by the commissioner.

(c) The calendar month and year the germination test was completed and the statement "Sell by _____", which may be no more than 12 months from the date of test, exclusive of the month of test; or

the year for which the seed was packaged for sale as "Packed for _____" and the statement "Sell by _____", which shall be for a calendar year; or

the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within 12 months exclusive of the month of test.

(d) For those kinds of seeds for which standard testing procedures shall have been adopted, and for which the commissioner shall have promulgated minimum germination standards as hereinafter specified, and which germinate less than the standard last established by the commissioner:

(1) Percentage germination exclusive of hard seed.

(2) The calendar month and year the test was completed to determine such percentage, or the year for which the seed was packaged or tested.

(3) The words "below standard" in not less than eight-point type.

2. For flower seeds in containers other than packets prepared for use

in home flower gardens.

(a) Name of kind and variety or a statement of type and performance characteristics as prescribed by the commissioner.

(b) Lot number or other lot identification.

(c) For kinds of seeds for which standard testing procedures shall have been adopted:

(1) Percentage germination exclusive of hard seed.

(2) Percentage of hard seed if present.

(3) The calendar month and year that test was completed and the statement "Sell by ," which may be no more than twelve months from the date of test exclusive of the month of test or the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within twelve months exclusive of the month of test.

F. Tree and shrub seeds:

(1) The kind of seed and the variety.

(2) The percentage by weight of pure seed.

(3) The percentage of germination.

(4) The year of collection of such seed.

(5) The specific locality (state and county in the United States or nearest equivalent political unit in the case of foreign countries) in which the seed was collected.

G. Seed potatoes:

1. Name of variety.

2. U. S. grade or New York state grade of contents.

3. Name and address (or in case of certified seed, the code designation) of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

H. For combination mulch, seed and fertilizer products. The word "combination" followed by the words "mulch-seed-fertilizer (if appropriate)" must appear on the upper thirty percent of the principal

display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch-seed-fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination". These products shall contain a minimum of seventy percent mulch.

I. For combination seed and fertilizer products. 1. The word "combination" followed by the words "seed-fertilizer" must appear on the upper thirty percent of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "seed-fertilizer" shall be no smaller that one-half the size of the word "combination" and in close proximity to the word "combination".

2. On the analysis label, the percentage by weight of the fertilizer in the container shall be listed on a separate line as a component of the inert matter.

§ 137-a. Responsibility for labeling. The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to said lot of seed. The immediate vendor shall be responsible for all labels attached to broken lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor with or without endorsement, or bears his own label.

The immediate vendor of any unbroken lot of seed shall be responsible for all labels attached to said lot of seed, at the time he sells or offers for sale such lot of seed.

§ 138. Prohibitions. A. It shall be unlawful for any person to sell, offer for sale, expose for sale, or to transport for planting purposes any seed within this state:

1. Unless the test to determine the percentage of germination as required by section one hundred thirty-seven of this article, shall have been made for the calendar year in which the seed is sold, offered, or exposed for sale.

2. Not labeled in accordance with the provisions of this article or having false or misleading labeling.

3. Pertaining to which there has been false or misleading advertising.

4. Containing more than one per cent by weight of all weed seeds except as hereafter specified by the commissioner.

5. So weak or so low in germination as to be unfit for seeding purposes.

6. Represented to be "certified seed", "registered seed", "foundation seed", "phyto-inspected seed", or designated by any other term conveying similar meaning, unless such seed has been produced or collected, processed and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized certification agency or agencies and bears an official tag or label of such an agency.

7. Represented to be hybrid seed unless such seed conforms to the definition of hybrid presented in section one hundred thirty-six of this article; provided that this prohibition shall not apply to variety names in common trade usage at the time this law becomes effective.

8. If lawn seeds, containing more than twenty per cent inert matter which is neither a micro-organism, a nutrient, a pest control substance, a material to modify the size, shape and weight of the seed, nor other beneficial inert matter applied as a coating to such seeds for purposes of improving seed placement, or the yield or vigor of resulting seedlings.

B. It is unlawful for any person within this state:

(1) To detach, alter, deface, or destroy any label provided for in this article or the rules and regulations promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purpose of this article.

(2) To disseminate any false or misleading advertising concerning seed in any manner or by any means.

(3) To hinder or obstruct in any way, any authorized person in the performance of his duties under this article.

(4) To fail to comply with a "stop-sale" order.

(5) To use the word "type" in any labeling in connection with the name of any seed.

(6) To move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order or tags attached thereto, except with the written permission of the enforcing officer, and for the purpose specified therein.

(7) To sell, offer or expose for sale any color mixture of a single kind of flower seed representing four or more colors or shades, in which any one color or shade occurs in sixty per cent or more of the plants which the mixture is capable of producing, unless colors or shades and approximate percentage of each are indicated on the label.

(8) To sell, offer, or expose for sale a mixture of flower seed kinds in which any one kind is present in excess, of twenty-five per cent by seed count unless the kinds present and the approximate percentage of each are indicated on the label.

(9) To use relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date and the lot number that matches the existing, original lot number. A relabeling may not occur more than one time.

(10) To sell, offer, or expose for sale agricultural seed more than nine months from the date of the germination test, exclusive of the month of the test.

§ 139. Exemptions. The provisions of this article do not apply

1. To seed not intended for planting purposes.

2. To seed sold by the grower thereof on his own premises and delivered to the vendee or his agent or representative personally on such premises unless such seed has been advertised as being for sale.

3. To seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing: Provided, that any labeling or other representation which may be made with respect to the uncleaned and unprocessed seed shall be subject to this article.

4. To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier, provided, that such carrier is not engaged in producing, processing, or marketing seed subject to the provisions of this article.

§ 139-a. Tolerances. On account of the unavoidable variations which occur between two analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this article.

§ 140. Samples; publication of results of tests. 1. The commissioner or his or her duly authorized representatives shall take samples of seeds for examination, analysis, and testing by the department. The commissioner may contract with a qualified laboratory to perform such examination, analysis, and testing. When the analysis of an official sample indicates that seed is mislabeled, the results of such analysis shall be provided to the person responsible for the labeling of the seed and, upon that person's request, made within fifteen days of his or her receipt of said results, the commissioner or his or her authorized agent shall furnish such person with a portion of the sample taken.

2. From time to time the department of agriculture and markets, shall make public the results of examinations, analyses, trials, and tests of any sample or samples so procured, together with such additional information as circumstances advise. These published results shall be

the property of the state of New York and shall not be used for advertising or regulatory purposes by any person or agency, governmental or otherwise without requested and granted permission of the commissioner.

§ 140-a. Provision for seed tests. Any citizen of this state shall have the privilege of submitting to the department samples of seeds for testing and analysis subject to payment of a fee to the commissioner that shall, at a minimum, cover the full costs of the services provided. All monies received by the commissioner pursuant to this section shall be deposited in an account within the miscellaneous special receive fund and shall be used to defray the expenses incidental to carrying out the services authorized by this section.

§ 141. Certification. 1. Certification in this state shall be by the state college of agriculture, or by the department of agriculture and markets, or by such other agency as the commissioner of agriculture and markets may designate. This designated agency may cooperate with other officially recognized certification agencies in the certification of seeds.

2. The commissioner, after consultation with the dean of the state college of agriculture, or, in the case of tree seeds with the president of the state university of New York college of environmental science and forestry, shall adopt and promulgate appropriate standards for the certification of seed.

§ 142. Implementation. The commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary. The commissioner or his authorized agents may remove from further sale or prohibit from sale any unlabeled seed or any seeds which are found to be so unclean as to be unfit for seeding purposes until they have been properly recleaned and may prohibit further sale or may destroy seeds which are found to be

so weak or low in germination as to be unfit for seeding purposes.

The commissioner may, through promulgation of regulations, add to, or subtract noxious weed seeds from definition seven, section one hundred thirty-six of this article, whenever he finds, after public hearing, that such addition or subtraction is in the best interests of the agriculture of this state.

In promulgating the initial germination standard for each kind of flower, tree and shrub seed, the commissioner shall publish the proposed standard at least three years previous to its effective date and shall arrange a public hearing for consideration of the proposed standard prior to its final adoption. The commissioner may, at his discretion, temporarily suspend any flower seed germination standard thus promulgated.

§ 142-a. Stop sale orders. The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of seed when the commissioner finds that seed is being offered or exposed for sale in violation of any of the provisions of this article, and require the owner or custodian to hold the seeds at a designated place until either: (1) the law has been complied with and said seed is released by the commissioner in writing; or (2) said violation has been otherwise legally disposed of by written authority. The commissioner shall release the seed so withdrawn when the requirements of the provisions of this article have been complied with.

§ 142-b. The New York native plant seed supply, development and enhancement program. 1. The commissioners of the department, the department of environmental conservation, and the department of economic development shall establish a New York native plant seed supply, development and enhancement program.

2. The purpose of such program shall be to:

(a) increase the production of native plant seeds, as provided for in

subdivision three of this section, at plant nurseries in the state; and

(b) increase the use of native plant seeds, as provided for in subdivision three of this section, in public land management, roadside landscaping, reforestation, pollinator promotion, habitat restoration, regular groundskeeping and maintenance on state lands, and other projects as determined by the commissioners of the department, the department of environmental conservation, and economic development.

3. No later than one year after the effective date of this section, the commissioners shall develop a list of plant seeds eligible for consideration to participate in such program and/or for use in connection with the requirement of subdivision six of this section. The list shall be updated by the commissioners at least once every three years or if determined necessary by the commissioners.

4. Funds for the program shall be subject to appropriation and may be used to establish growing operations managed by the state or to support private entities that can increase the state's native plant seed supply.

5. As used in this section, "native plant seed" means:

(a) non-invasive herbaceous and woody plant species that are indigeneous to New York state and are likely to maintain their range or successfully adapt to anticipated climate changes in New York state and the northeastern United States, or native, non-invasive plants found elsewhere in the United States that are likely to shift or expand their range into New York state and the northeastern United States in response to the anticipated climate change; and

(b) germinating seeds, or other plant parts, used to propagate desirable native plants representing a wide variety of species and genotypes of plants.

6. Whenever possible and practicable, the state shall make use of native plant seeds when engaging in public land management, roadside landscaping, reforestation, pollinator promotion, habitat restoration, regular groundskeeping and maintenance on state lands, and other projects as determined by the commissioners of the department, the department of environmental conservation, and the department of economic

development.

ARTICLE 9-A

SALE OF AGRICULTURAL LIMING MATERIALS

Section 142-aa. Definitions and standards.
142-bb. Prohibition.
142-cc. Label or accompanying statement and weigh slip.
142-dd. Certificate to be filed.
142-ee. License.
142-ff. Reports and fees.
142-gg. Sampling and analyzing.
142-hh. Stop orders.

§ 142-aa. Definitions and standards. (a) "Agricultural liming material," means all materials and all calcium and magnesium products in the oxide, hydrate, carbonate or silicate form or combinations thereof and intended for use in the correction of soil acidity, including such forms of material designated as burned lime, hydrated lime, carbonate of lime, agricultural limestone, slag and marl.

(b) "Brand" means each agricultural liming material identified by and differing from others either in name, trademark, descriptive designation or other method of marking, composition, and total neutralizing value or fineness.

(c) "Total neutralizing value" means the neutralizing value of an agricultural liming material expressed as calcium carbonate equivalence as determined in accordance with methods adopted by the commissioner.

(d) "Fineness" means the percentage by weight of the material which will pass sieves of specified number or mesh as established by the commissioner. Fineness shall be measured in reference to a twenty mesh, sixty mesh, and a one hundred mesh sieve, in accordance with methods adopted by the commissioner.

§ 142-bb. Prohibition. 1. No person shall sell, offer or expose for sale, barter, give or otherwise supply in this state as an agricultural

liming material, except as provided in subdivision two of this section, any product which does not have a minimum total neutralizing value of sixty per centum calcium carbonate equivalence and, except hydrated lime and burned lime, a minimum fineness of eighty per centum passing a twenty mesh sieve and thirty per centum passing a hundred mesh sieve nor for which a certificate of registration has not been filed and a license has not been issued pursuant to this article; nor shall he or she permit any claim or guarantee to be indicated upon any label, tab, or package or accompanying statement to the effect that such material possesses a higher specification than such material does in fact contain; nor shall he or she sell, offer or expose for sale, barter, give or otherwise supply any such material adulterated with any substance injurious to the growth of plants (other than weeds) or animals or humans when applied in accordance with directions for use accompanying the product; nor shall he or she sell, offer or expose for sale any agriculture liming material in this state without a label or accompanying statement and weigh slip as required by section one hundred forty-two-cc.

2. Insofar as it shall be used as an agricultural liming material in this state, no person shall sell, offer or expose for sale, barter, give or otherwise supply in this state as wood ash, any product which does not have a minimum total neutralizing value of thirty per centum calcium carbonate equivalence and otherwise satisfy the requirements set forth in subdivision one of this section.

§ 142-cc. Label or accompanying statement and weigh slip. No agricultural liming material shall be sold, offered, or exposed for sale, bartered, given or otherwise supplied in this state unless there shall be affixed to each package in a conspicuous place on the outside thereof a plainly printed, stamped or otherwise marked label, tag or statement or in the case of bulk sales or transfers there shall be provided a certified weigh slip plainly printed, stamped or otherwise marked, which shall certify as follows:

1. The name, principal office address and plant location of the manufacturer, producer or distributor.

2. The identification of the product as to the type of liming material.

3. The brand under which it is sold or supplied.

4. A statement expressing the minimum total neutralizing value stated as calcium carbonate equivalence and the minimum fineness, at time of delivery.

5. The net weight of the material.

6. The kind and amount of adulterant or foreign material therein, if any, expressed by weight of the material.

7. In the case of any material which has been damaged, hydrated, adulterated or otherwise changed subsequent to the original packaging, labelling, or loading thereof and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or accompanying statement, such notice to identify the kind and degree of such damage, hydration, adulteration or other change therein.

8. A guarantee of the calcium and magnesium content expressed as a percentage by weight of each such element.

9. For agricultural liming material sold in bulk, a guarantee of the percentage of its effective neutralizing value, as determined in accordance with regulations adopted by the commissioner. Such value shall also be expressed separately as the weight of such bulk material necessary to equal one ton of agricultural liming material having an effective neutralizing value of one hundred percent.

At every site, from which agricultural liming products are delivered in bulk, and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statement required by this section for each brand of material.

§ 142-dd. Certificate to be filed. Before any person shall sell, offer or expose for sale, barter, give, or otherwise supply in this state any product labelled as agricultural liming material, he or she shall, for each brand thereof, file biennially with the commissioner, upon forms supplied by the commissioner, a certificate for the registration of each such brand, stating the name, principal office address and plant location of the manufacturer or shipper, the type of liming material, the brand name, the minimum specifications as to total neutralizing value, the calcium and magnesium content, effective neutralizing value and fineness. Such certificate shall constitute a warranty by the supplier to the receiver that the material will meet the minimum specifications stated therein at the time of delivery.

§ 142-ee. License. Each certificate filed pursuant to section one hundred forty-two-dd of this article shall be accompanied by an application, upon forms supplied by the commissioner, for a license to supply such material under the brand name specified therein, and there shall be transmitted therewith a copy of the label and of the statement proposed to accompany such material in compliance with section one hundred forty-two-cc of this article. Such application shall incorporate by reference the data contained in the accompanying certificate for the brand for which the license is sought. Upon compliance with the provisions of this article, the applicant shall be issued a license for the supplying of such qualifying brand of agricultural liming material, which license shall expire on the thirty-first day of December of the next even numbered year following the year in which it is issued, but no such license shall be issued for the supplying of any such material which does not meet the minimum standards herein provided for, nor for the supplying thereof under a brand descriptive designation or with a label or accompanying statement which is or tends to be misleading or deceptive as to quality, analysis or composition. Application for a renewal of the license for a period of two years shall be made biennially, upon a form prescribed by the commissioner and submitted no later than thirty days prior to the expiration of the existing license.

Any such license so issued may be revoked by the commissioner, after notice to the licensee by mail or otherwise and opportunity to be heard, when it appears that any statement or representation upon which it is issued is false or misleading. The action of the commissioner in refusing to grant a license, or in revoking a license, shall be subject to review by a proceeding under article seventy-eight of the civil practice law and rules, but the decision of the commissioner shall be final unless within thirty days from the date of the order embodying such action such proceeding to review has been instituted.

Whenever a manufacturer, producer or distributor shall have been licensed to supply a particular brand of material hereunder, no agent, seller or retailer of such brand shall be required to file a certificate or obtain a license for such brand during a period for which such license is in effect, nor upon such goods which were acquired during a period for which a license was in effect and remaining undistributed in subsequent years.

§ 142-ff. Reports and fees. 1. Every licensee shall, on or before the first day of February in each year report the net tonnage, including zero tonnage if applicable, of each brand of agricultural liming materials sold, bartered, given, or otherwise supplied by him or her in the state during the preceding calendar year. Such report shall be made in duplicate upon forms supplied by the commissioner. One such copy shall be transmitted to the commissioner and the other copy shall be retained by the licensee. Such reports shall be confidential and no information therein shall be disclosed in such a way as to divulge the operation of any person.

2. Failure to comply with the requirements of this section within the time limit shall subject the licensee to revocation of all current licenses held by him or her and the denial of all future license applications until compliance herewith, after hearing and subject to review as provided in section one hundred forty-two-ee.

§ 142-gg. Sampling and analyzing. 1. It shall be the duty of the commissioner or his or her duly authorized agent to sample and analyze each different brand of agricultural liming material distributed within the state, to such an extent as he or she may deem necessary to determine compliance with the provisions of this article.

The methods of sampling and analysis shall be those the commissioner may require by regulation and be based on methods adopted by an agricultural and food analytical standards association.

2. The results of the analysis of each official sample shall be promptly reported by the commissioner to the registrant. In the event an official sample shall analyze below the guarantee, the registrant may within twenty days submit evidence that the sample was non-representative or erroneous. If no satisfactory evidence is so submitted the report of analysis shall become official.

3. The commissioner shall maintain an annual record of, and make available upon request, the results of all analyses with respect to the information required to be shown on labels and statements pursuant to section one hundred forty-two-cc of this article and such other information as the commissioner shall deem advisable.

§ 142-hh. Stop orders. Whenever the commissioner or representatives of the commissioner shall find any agricultural liming material suspected of being supplied in violation of any of the provisions of this article the commissioner or his or her representatives may issue a written "stop order" to the owner or custodian of any such suspect lot and enforce the same against any such person. Any such order may direct that the agricultural liming material be removed from distribution and retained at the establishment having custody. Any person aggrieved by a "stop order" shall be entitled to a hearing thereon within ten days of a demand therefor. It will be a violation of this section for the owner or custodian of any agricultural liming material, affected by a "stop order", to sell, barter, give away, use or otherwise remove such material from the place of retention without prior written approval of

the commissioner or his or her authorized representative.

ARTICLE 10

SALE AND ANALYSIS OF COMMERCIAL FERTILIZER

Section 143. Definitions.
144. Guaranteed analysis.
145. Labelling.
146. Licensing.
146-a. Inspection, sampling, analysis.
146-b. Misbranded or adulterated fertilizer.
146-c. Reports and fees.
146-d. Rules and regulations.
146-e. Stop sale orders.
146-f. Ammonium nitrate security.
146-g. Retail sale.

§ 143. Definitions. When used in this article, unless otherwise expressly stated:

a. The term "commercial fertilizer" shall mean any substances containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the commissioner.

b. The term "specialty fertilizer" shall mean a commercial fertilizer distributed primarily for non-farm use, as the commissioner may define by regulation.

c. The term "bulk fertilizer" shall mean a commercial fertilizer distributed in a non-packaged form.

d. The term "brand" shall mean a term, name, design, or trademark used in connection with one or several grades of commercial fertilizer.

e. The term "guaranteed analysis" shall mean a statement of the minimum percentage of plant nutrients claimed expressed in the order and form provided in section one hundred forty-four hereof.

f. The term "custom mix" means a mixture of fertilizer ingredients blended or manufactured to a particular customer's specifications and for his personal use and not offered for resale.

g. The term "grade" shall mean the percentages of total nitrogen, available phosphoric acid and soluble potash stated in the order and form required in the guaranteed analysis.

h. The term "official sample" means any sample of commercial fertilizer taken by the commissioner or his agent in accordance with section one hundred forty-six-a hereof and designated as "official" by the commissioner.

i. The term "ton" means a net weight of two thousand pounds avoirdupois.

j. The term "per cent" or "percentage" means the percentage by weight.

k. The term "distribute" means to offer for sale, sell, barter, exchange or otherwise supply commercial fertilizers. The term "distributor" means any person who distributes and includes, but is not limited to, manufacturing plants, blending plants and bulk storage facilities.

l. The term "person" includes individual, partnership, association, firm or corporation.

m. The term "licensee" shall mean a person whose license, pursuant to section one hundred forty-six hereof, has been issued by the commissioner and is still in effect.

n. Words importing the singular number may extend and be applied to

several persons or things and words importing the plural number may include the singular.

o. The term "fertilizer material" is a commercial fertilizer which either:

1. Contains important quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

2. Has approximately eighty-five per cent of its plant nutrient content present in the form of a single chemical compound, or

3. Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

p. The term "mixed fertilizer" is a commercial fertilizer containing any combination or mixture of fertilizer materials.

q. The term "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer.

r. The term "labelling" means all written, printed or graphic matter, upon or accompanying any commercial fertilizer, or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers.

s. The term "commissioner" means the commissioner of agriculture and markets.

t. The term "agricultural and food analytical standards association" shall mean an independent, third-party, not-for-profit association that develops voluntary, globally accepted, consensus analytical standards and methods for ensuring quality measurements to address the purity and safety of agricultural materials and food and promotes global trade and

public health and shall be further defined in regulations by the commissioner.

§ 144. Guaranteed analysis. Guaranteed analysis shall contain a statement of chemical composition in the following form:

a. A statement of the minimum percentage of claimed plant nutrients shall be expressed in whole numbers or as decimal fractions for specialty fertilizers and in whole numbers for all other commercial fertilizers, as follows:

Total nitrogen (N).....percent
Available phosphoric acid (P2O5) or available
phosphate P2O5.....percent
Soluble potash (K2O).....percent

b. For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid and/or degree of fineness may also be guaranteed if expressed in whole numbers.

c. Guarantees for plant nutrients except phosphoric acid and potash shall be expressed in the form of the element in a manner prescribed by the commissioner. The sources of such other nutrients (oxides, salt, chelates, etc.) may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed if approved in regulations promulgated by the commissioner.

d. A statement of the potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, if required by regulation of the commissioner.

§ 145. Labelling. a. No commercial fertilizer shall be distributed in this state in containers unless there shall be placed on or affixed to the container a label setting forth in clearly legible form a statement

which shall certify as follows:

(1) Net weight of the contents of the package.

(2) The brand and grade under which it is to be sold.

(3) The name, street or post-office address of the principal office of the licensee, distributor or person responsible for placing the commodity on the market.

(4) The guaranteed analysis as provided in section one hundred forty-four above.

b. If distributed in bulk, a written or printed statement of the information required in subdivision a of this section above shall accompany delivery and be supplied to the purchaser at the time of delivery.

c. The labelling of specialty fertilizers shall contain all the information required by the foregoing paragraphs of this section and such other information as shall be required by rule or regulation issued by the commissioner.

§ 146. Licensing. (a) No person shall distribute in this state any type of fertilizer until a license to distribute the same has been obtained from the commissioner by the person whose labelling is applied to such fertilizer upon payment of a one hundred fifty dollar fee. The initial license issued hereunder shall expire on December thirty-first of the next even numbered year following the year in which it was issued and each renewal of that license shall be for a two year period, ending on December thirty-first. Application for a renewal of such license shall be made biennially, upon a form prescribed by the commissioner and be submitted no later than thirty days prior to the expiration of the existing license.

(b) The application shall include: (1) The name and address of licensee;

(2) Name and address of each manufacturing plant, blending plant and bulk storage facility within New York state which distributes commercial fertilizer, and

(3) A list of the brand and product name of all commercial fertilizer

distributed in this state.

(c) The licensee shall inform the commissioner in writing of additional distribution points established during the period of the license.

(d) The commissioner is authorized and empowered to revoke the license of any distributor of commercial fertilizer, or to refuse to grant or to renew the license of any distributor as herein provided, upon satisfactory evidence that the licensee or applicant has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this article, or of any rules or regulations promulgated hereunder or if the license application or the information furnished upon the sale of the commercial fertilizer is misleading or deceptive or tends to mislead or deceive as to its quality or the constituents or materials of which it is composed. No license shall be revoked or refused until the distributor shall have been given an opportunity to appear for a hearing before the commissioner.

§ 146-a. Inspection, sampling, analysis. a. It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, and analyze commercial fertilizers distributed within this state at such time and place and to the extent he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this article. The methods of sampling and analysis shall be those the commissioner may require by regulation and be based on methods adopted by an agricultural and food analytical standards association, as further defined in regulations by the commissioner.

b. The results of the analysis of such sample shall be reported to the licensee within ninety days of the date of sampling and the commissioner shall publish or cause to be published at least annually a summary of all analyses made, together with such additional information as circumstances advise.

§ 146-b. Misbranded or adulterated fertilizer. No commercial fertilizer shall be distributed in this state if it is deemed to be

misbranded or adulterated.

(a) A commercial fertilizer shall be deemed to be misbranded:

(1) if its labelling is false or misleading in any particular; or

(2) if it purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in the adopting of such regulations the commissioner shall give due regard to commonly accepted definitions and official fertilizer terms such as those employed by the association of American plant food control officials.

(b) A commercial fertilizer shall be deemed to be adulterated:

(1) if it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label;

(2) if its composition falls below or differs from that which it is purported to possess by its labelling;

(3) if it contains unwanted crop seed or weed seed; or

(4) if it contains metals in amounts greater than those levels the commissioner may establish by regulation, based upon the consensus research-based recommendations of an organization of state, territorial and international fertilizer control officials who administer fertilizer laws and regulations.

§ 146-c. Reports and fees. Each licensee who distributes commercial fertilizers in this state shall furnish the commissioner with a written statement of the tonnage of each grade of commercial fertilizer, including zero tonnage if applicable, sold by him or her in this state during the calendar year to persons not required to be licensed under this article. The tonnage of grades of which less than fifty tons were sold shall be reported, either individually or combined under the heading of miscellaneous sales. This report shall be submitted in the form and with such frequency as the commissioner shall require by

regulation. The licensee shall pay to the commissioner a sum equal to ten cents for each ton or portion thereof of commercial fertilizer distributed in this state to persons not required to be licensed under this article provided that such annual tonnage fee shall not be less than fifty dollars. This fee shall be remitted on or before February first and calculated based on the calendar year immediately preceding.

No information furnished under this section shall be disclosed in such a way as to divulge the method or scope of the operation of any person.

The commissioner shall publish at least annually a summary of the tonnage reports submitted pursuant to this section.

The licensee shall make such other reports as the commissioner may require.

Failure to make such reports or to pay such fee shall be grounds for revocation of the license hereunder.

§ 146-d. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt, promulgate and issue such rules and regulations as he may deem necessary to supplement, carry out and give full force and effect to the provisions of this article.

§ 146-e. Stop sale orders. The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this act until the law has been complied with and said commercial fertilizer is released in writing by the commissioner, or said violation has been otherwise legally disposed of by written authority. The commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this act have been complied with.

§ 146-f. Ammonium nitrate security. (a) Ammonium nitrate retailers shall be registered with the department, and such registration shall be based on criteria set forth by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security. Registration shall be required to sell or offer for sale ammonium nitrate or regulated ammonium nitrate materials. The commissioner shall charge an annual registration fee of no more than fifty dollars to ammonium nitrate retailers, provided, however, that retailers who pay fees under this article shall be exempt from such fee.

(b) Ammonium nitrate and regulated ammonium nitrate materials, while at all registered facilities, shall be secured to provide reasonable protection against vandalism, theft or other unauthorized access. Reasonable protection may include, but not be limited to ensuring that storage facilities are fenced and locked when unattended, and inspected daily for signs of attempted entry, vandalism and structural integrity. The commissioner in consultation with or upon the recommendation of the director of the office of homeland security, may suggest other security measures. The commissioner shall work in consultation with or upon the recommendation of the director of the state office of homeland security to provide information to ammonium nitrate retailers on appropriate security measures.

(c)(1) Ammonium nitrate retailers shall record the date of sale and quantity purchased along with a valid state or federal driver license number, or other picture identification card number approved for purchaser identification by the commissioner in consultation with or upon the recommendation of the director of state office of homeland security, as well as the name, current physical address, and telephone number for the purchaser of ammonium nitrate or regulated ammonium nitrate materials.

(2) Such information and any additional records as set forth by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security must be maintained by the ammonium nitrate retailer for a minimum of two years on a form or using a format developed by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security.

(3) Ammonium nitrate retailers shall, in compliance with any federal and state requirements regarding the dissemination of such information, provide the commissioner and the director of the office of homeland security access to such records.

(d) For the purposes of this section, the following terms shall mean:

(1) "Ammonium nitrate" means chiefly the ammonium salt of nitric acid. It shall not contain less than thirty-three percent nitrogen, one-half of which is the ammonium form and one-half of which is the nitrate form.

(2) "Regulated Ammonium nitrate materials" means regulated ammonium nitrate materials fertilizer products which have been determined by the commissioner in consultation with or upon the recommendation of the director of the office of homeland security to warrant regulation based on the potential explosive capacity of its ammonium nitrate content.

(3) "Ammonium nitrate retailer" means any person or entity in this state that sells, offers for sale, or otherwise makes available, ammonium nitrate or regulated ammonium nitrate materials.

§ 146-g. Retail sale. Any retailer who sells or offers for sale to consumers specialty fertilizer in which the available phosphate (P205) content is greater than 0.67 percent, shall:

(a) display such phosphorus-containing specialty fertilizer separately from non-phosphorus specialty fertilizer; and

(b) post in the location where phosphorus-containing specialty fertilizer is displayed a clearly visible sign which is at least eight and one-half inches by eleven inches in size and states that:

"Phosphorus runoff poses a threat to water quality. Therefore, under New York law, phosphorus-containing fertilizer may only be applied to lawn or non-agricultural turf when:

(1) A soil test indicates that additional phosphorus is needed for growth of that lawn or non-agricultural turf; or

(2) The fertilizer is used for newly established lawn or non-agricultural turf during the first growing season."

ARTICLE 10-A

PREVENTION OF FRAUD IN SALE OF SOIL AND PLANT INOCULANTS

Section 147-a. Definition.
147-b. License.
147-c. Label requirements.
147-d. Misrepresentations prohibited.
147-e. Inspection and examination.
147-f. Revocation of license.
147-g. Review.
147-h. Application.
147-i. Rules and regulations.

§ 147-a. Definition. Soil or plant inoculants shall include any carrier or culture of a specific micro-organism or mixture of micro-organisms represented to improve the soil or the growth, quality, or yield of plants, and shall also include any seed or fertilizer represented to be inoculated with such a culture.

§ 147-b. License. No person shall sell, offer or expose for sale in this state any soil or plant inoculant unless licensed as provided in this section. Application for a license shall be made upon a form prescribed by the commissioner and shall include a statement as to whether the inoculant is represented as effective for inoculating legumes or for some other purpose, and, if represented as effective for the inoculation of legumes, for which legume or legumes it is so represented. With the application, the applicant shall present a representative sample of the soil or plant inoculant described in the application. The commissioner, if satisfied that the inoculant may be depended upon to produce an effective inoculation for the purpose represented, shall issue to such applicant a license for the sale of such inoculant, expiring on December thirty-first of the next even numbered year following its issuance. Application for renewal of such license for a period of two years shall be made biennially upon a form prescribed by the commissioner and submitted no later than thirty days prior to the expiration of the existing license.

§ 147-c. Label requirements. Each soil or plant inoculant, when sold or offered or exposed for sale within this state, shall be clearly and plainly labeled to show whether the inoculant is represented as effective for inoculating legumes or for some other purpose, and if represented as effective for the inoculation of legumes, for which legume or legumes it is so represented; and the date to which the inoculant is represented to produce effective inoculation.

§ 147-d. Misrepresentations prohibited. No person shall sell or offer for sale or advertise for sale any soil or plant inoculant if the package containing it, or the label or tag attached thereto, or any advertising relative to it, shall bear any statement or device regarding such soil or plant inoculant which is false or misleading in any particular.

§ 147-e. Inspection and examination. The commissioner shall, as frequently as he deems necessary, transmit to the New York State Agricultural Experiment Station for analysis, examination and testing samples taken from the different brands of inoculants which are or may be sold or offered or exposed for sale in this state. The director of said experiment station shall cause such samples to be analyzed, examined or tested, and shall report the results thereof to the commissioner and in such report shall state whether the label or any advertising relating to the inoculant shall be found to be false or misleading. The commissioner shall, from time to time, publish in bulletins the findings and other pertinent matter in relation to such inoculants.

§ 147-f. Revocation of license. The commissioner may revoke a license when he is satisfied that the application for the license was false or misleading in any particular, or that any representation made by the licensee, either upon the label or in advertising or otherwise, is false or misleading.

§ 147-g. Review. The action of the commissioner in refusing to grant a license, or in revoking a license, shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules.

§ 147-h. Application. This article shall not apply to inoculants distributed by state or federal agencies.

§ 147-i. Rules and regulations. The commissioner shall adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary. Such rules and regulations shall be filed and open for public inspection at the principal office of the department, and shall have the force of law.

ARTICLE 11

INTEGRATED PEST MANAGEMENT PROGRAM

Section 148. Establishment of integrated pest management program.
148-a. Integrated pest management program; specific proposals.
148-b. Livestock/forage pest management.
148-c. Fruit pest management.
148-d. Vegetable and potato pest management.
148-e. Ornamentals pest management.
149. Enactment of compact.

§ 148. Establishment of integrated pest management program. 1. There is hereby established an integrated pest management program for the purposes of managing insects, diseases, nematodes, weeds and rodents. Such program shall include, but not be limited to programs of instruction, research and development, the purpose of which is to educate the agricultural community and integrate programs of:

a. crop management and cultural practices;

b. field scouting;

c. economic threshold; and

d. chemical and biological control.

2. Such programs shall be developed and conducted in such a manner to encourage:

a. expanded research on biological and cultural pest management technologies, crop and pest resistance technologies;

b. use of sampling methods, economic thresholds, monitoring technology, pest forecasting, and the effects of weather on pest and crop parameters;

c. development of computer programs and computerized information systems for farmers and extension agents;

d. delivery of current and new integrated pest management technology to the agricultural industry through cooperative extension;

e. minimized levels of pesticides in feed, food and the environment; and

f. minimized economic losses due to crop, animal and stored grain pests.

3. Such program shall identify and make application for all possible funding sources in addition to those offered by the state.

§ 148-a. Integrated pest management program; specific proposals. 1. Within the integrated pest management program there shall be established four separate but interrelated programs for pest management and the impact thereof on the following agricultural production areas:

a. livestock/forage production system;

b. fruit production;

c. vegetable and potato production; and

d. ornamentals production.

2. Such programs as provided for in subdivision one hereof shall contain at least the specific proposals as provided for in sections one hundred forty-eight-b, one hundred forty-eight-c, one hundred forty-eight-d and one hundred forty-eight-e of this article.

§ 148-b. Livestock/forage pest management. Within the integrated pest management program there shall be established a livestock/forage pest management program. Such program shall be conducted in such a manner to achieve the following objectives:

1. develop systematic insect, disease and weed pest management strategies for use on New York livestock and cash grain farms which integrate management tactics into environmentally compatible and economically sound systems to be used by producers, extension personnel and private enterprise;

2. obtain information regarding crop, animal and stored grain pest occurrence and severity, pesticide usage, other pest management strategies used, effective pest monitoring techniques and scouting intervals, and the effectiveness of the producer's current pest control practices;

3. determine the most effective, low-cost methods and organizational structures for delivering integrated pest management systems to individual farming operations; and

4. utilize the program that is designed to satisfy the objectives as

provided for in subdivisions one, two and three of this section as a training mechanism for individuals at all levels of operation.

§ 148-c. Fruit pest management. Within the integrated pest management program there shall be established a fruit pest management program. Such program shall be conducted in such a manner to achieve the following objectives:

1. establish current pesticide use patterns and the economics of pest management for the major fruit crops in New York;

2. investigate alternative pest management tactics (e.g., biological and cultural control, plant resistance) and determine how to integrate these tactics with chemical control and horticultural practices;

3. develop practical monitoring techniques, economic thresholds, and forecasting methods for pests of fruit crops;

4. develop research and grower demonstration sites where integrated pest management technologies can be evaluated as an integral part of the overall fruit production system; and

5. provide the fruit industry with training, information, and educational materials on the implementation of integrated pest management utilizing traditional as well as new communication channels (e.g. computer-based information delivery systems).

§ 148-d. Vegetable and potato pest management. Within the integrated pest management program, there shall be established a vegetable and potato pest management program. Such program shall be conducted in such a manner to achieve the following objectives:

1. determine the occurrence and severity of pest problems in commercial fields, and identify the specific environmental factors influencing these events. Document the current pesticide usage and

assess the effectiveness of current pest management practices;

2. determine accurate and time-efficient sampling procedures and forecasting methods which can be utilized by private consultants or through cooperative extension. Determine the economic relationship of pest incidence to yield or quality loss. Develop non-pesticide methods of pest management in the areas of cultural practices, biological control and crop resistance. In addition the proper timing, selection and use of pesticides will be integrated into the overall management programs;

3. aid growers in executing the most optimal crop protection program by providing them with timely reports on pest presence and population density levels, forecasted pest occurrences, crop growth, weather and other environmental information, and providing the most current interpretation of the data;

4. increase efforts to educate growers in the principles and tactics of integrated pest management and demonstrate the economic advantages of such a program;

5. develop concepts, techniques, and cultivars for integration of pest resistance with other management tactics in potato production (e.g. crop rotation, biological control, optimum use of pesticides);

6. develop pest sampling procedures, sound action thresholds, forecasting procedures, and economic data necessary for effective decisions in use of pest resistant cultivars and other tactics for management of pests;

7. demonstrate the benefits and reliability of improved pest management tactics to the New York potato industry; and

8. monitor performance of the proposed integrated pest management program during its initial phase of implementation by the potato industry.

§ 148-e. Ornamentals pest management. Within the integrated pest management program there shall be established an ornamentals pest management program to include ornamental, turf, floriculture and greenhouse crops. Such program shall be conducted in such a manner to achieve the following objectives:

1. establish current pesticide use patterns and the economics of pest management for the major ornamentals, turf, floriculture and greenhouse crops;

2. develop practical monitoring techniques, biological control methods, economic thresholds and forecasting methods for pests of such crops; and

3. provide the industry with training, information and educational materials on the implementation of integrated pest management programs utilizing traditional as well as new communication channels.

§ 149. Enactment of compact. 1. The pest control compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT

ARTICLE I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary

for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

ARTICLE II

Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (a) of article VI of this compact.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

(e) "Insurance fund" means the pest control insurance fund established pursuant to this compact.

(f) "Governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

(g) "Executive committee" means the committee established pursuant to subdivision (e) of article V of this compact.

ARTICLE III

The Insurance Fund

There is hereby established the pest control insurance fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV

The Insurance Fund, Internal Operations and Management

(a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this compact shall be deemed the actions of the insurance fund.

(b) The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes on the governing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.

(c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.

(d) The governing board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system

laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the insurance fund.

(f) The insurance fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the governing board pursuant to this subdivision or services borrowed pursuant to subdivision (f) of this article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V

Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his or her state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his or her state; and

2. Represent his or her state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or on the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive

committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

ARTICLE VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a

requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in paragraph three of this subdivision do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in paragraph three of this subdivision constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and

agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by subdivision (c) of this article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or the executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance

fund, cooperating federal agencies, states and any other entities concerned.

ARTICLE VII

Advisory and Technical Committees

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same; provided that any participant in a meeting of the governing board or executive committee held pursuant to subdivision (d) of article VI of this compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

ARTICLE VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state, except as provided in this article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to subdivision (d) of article VI of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in such state and the value of

such expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

ARTICLE IX

Finance

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: One-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its

budget requests on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this subdivision only to the extent that such moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under subdivision (g) of article IV of this compact, provided that the governing board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under subdivision (g) of article IV of this compact, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

ARTICLE X

Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XI

Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

(b) The compact administrator for this state shall be the commissioner who shall be authorized within the meaning of subdivision (b) of article VI or subdivision (a) of article VIII of this compact, to request assistance from the insurance fund whenever in his or her judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

(c) Within available appropriations, the departments, agencies and officers of the state may assist the commissioner in administration of the pest control compact.

(d) Pursuant to subdivision (h) of article IV of this compact, copies of bylaws and amendments thereto shall be filed with the secretary of state.

ARTICLE 11-A

AGRICULTURAL ENVIRONMENTAL MANAGEMENT

Section 150. Definitions.

151. Agricultural environmental management program.

151-a. Planner certification.

151-b. Education and training.

151-c. Program participation.

151-d. Local regulation.

151-e. Coordination with the state pollutant discharge elimination system (SPDES) permit program.

151-f. Program funds.
151-g. Confidentiality.
151-h. Report.
151-i. Rules and regulations.
151-j. Agrivoltaics research program.

§ 150. Definitions. As used in this article: 1. "Agricultural environmental management (AEM) program" means the program established in this article to assist farmers in managing their farm operations in a way that protects the environment and helps maintain the economic viability of the farm.

2. "AEM" means agricultural environmental management.

3. "AEM plan" means a document prepared or approved by a certified AEM planner and accepted by a participating farmer which documents a course of action for the environmental management of a farm operation, including, but not limited to, measures to abate and control agricultural nonpoint source water pollution, air pollution and other adverse environmental impacts from farm operations through the implementation of best management practices, in a way which maintains the viability of the farm operation. An AEM plan may also include measures to address greenhouse gas emissions, global warming and renewable energy related to farm operations.

4. "Best management practice" means a practice or combination of practices determined to be the most effective, economically feasible and practicable means of preventing or reducing water pollution generated by nonpoint sources, air pollution and other adverse environmental impacts from farm operations.

§ 151. Agricultural environmental management program. There is hereby established within the department an agricultural environmental management program to assist farmers in maintaining the economic viability of their farm operations while addressing environmental

impacts from those operations, including, but not limited to, soil, air and water pollution and greenhouse gas emissions. The program may also include assistance to farmers for the development of agriculturally-derived renewable energy sources. The program may consist of planner certification to qualify persons to prepare AEM plans; technical assistance to farmers participating in the program; financial assistance, within funds available, to soil and water conservation districts and farmers to prepare and implement plans; other incentives for program participation; and evaluation of program procedures and projects to assess effectiveness.

§ 151-a. Planner certification. There is hereby established a planner certification program for the purpose of certifying individuals in both the public and private sectors who are qualified by education, experience, or examination to develop an AEM plan as defined in section one hundred fifty of this article. Subject to the availability of funding, the department, in cooperation with the state soil and water conservation committee, may develop or contract to have developed such testing procedures, educational requirements, and examinations as it deems appropriate to assure the competence of persons seeking certification. To the extent practical, and consistent with the purposes of this article, the department may waive or accept substitutions for educational or testing requirements to facilitate planner certification. Such substitutions may include, but not be limited to, United States department of agriculture natural resources conservation services third party certification and job approval authority. The department may establish application and testing fees and terms and conditions of certification, such as procedures for certification suspension and revocation, and planner continuing education.

§ 151-b. Education and training. The commissioner is authorized, within funds available, to provide education and training to prospective and certified planners in agriculturally related water quality and environmental issues; and training to participants in the program. The department may contract with Cornell cooperative extension, the United

States department of agriculture natural resources conservation service or other parties to provide such education and training. Educational and training materials may include a review of environmental, legal and technical standards affecting agricultural operations; environmental concerns associated with agricultural activities; and agricultural management principles affecting the environment.

§ 151-c. Program participation. Farm owners or operators shall be deemed to be participating in the AEM program if they have documented in a manner prescribed by the state soil and water conservation committee that they are complying with program principles, standards, and procedures as developed by the state soil and water conservation committee, in partnership with the department of environmental conservation.

§ 151-d. Local regulation. Nothing in this article shall preclude a local government from exercising any of its powers to enact, administer or enforce local laws or ordinances, provided that no local government shall exercise such powers in a manner which is inconsistent with this article or which unreasonably restricts planning, practices, structures, projects or other measures conducted or implemented in relation to the participation of a farm owner or operator in the AEM program as set forth in this article.

§ 151-e. Coordination with the state pollutant discharge elimination system (SPDES) permit program. Nothing in this article shall limit the application of title seven or eight of article seventeen of the environmental conservation law relating to point source discharges of pollution to farm owners or operators participating in the AEM program. The department shall work with the department of environmental conservation to coordinate the administration of the AEM program with the SPDES permit program to minimize the regulatory burden on the farm community while protecting the quality of the waters of the state.

§ 151-f. Program funds. The commissioner is authorized to accept for deposit in an account within the miscellaneous special revenue fund contributions from any source to support the purposes of this article.

§ 151-g. Confidentiality. AEM plans and on-farm surveys and assessments filed with the department or filed with or prepared by county soil and water conservation districts shall be considered confidential and not subject to public disclosure, except such documents shall not be considered confidential as deemed necessary by the commissioner or the district to implement the purposes of this article.

§ 151-h. Report. The department, in conjunction with the state soil and water conservation committee, shall report annually to the governor, the legislature and participating agencies on the progress of the AEM program, including an assessment of program effectiveness in achieving state water quality objectives, public and private program participation, and such other information as the department and the committee deem appropriate.

§ 151-i. Rules and regulations. The state soil and water conservation committee and the commissioner are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem necessary to effectuate the purposes of sections one hundred fifty-one-a, one hundred fifty-one-b and one hundred fifty-one-c of this article.

*** § 151-j. Agrivoltaics research program.** 1. There is hereby established the agrivoltaics research program. The purpose of the program is to develop innovative science-based solutions to facilitate the co-location of crops and photovoltaics while promoting the biodiversity of endemic flora and fauna. In developing the program, the New York state college of agriculture and life sciences, as named

pursuant to section fifty-seven hundred twelve of the education law, shall conduct, support, and develop technologies and management strategies, along with verifications systems to facilitate the sustainable and resilient co-location of crops and photovoltaics.

2. Subject to available appropriations, the program shall consider, but not be limited to, the following: crop varietals and/or livestock suitable for agrivoltaics; siting design considerations and array installation techniques compatible with agricultural co-location and/or biodiversity conservation; and integration of digital and robotic technologies. The program shall also concomitantly consider socio-economics in the formation of research trials and published recommendations. The program shall conduct and demonstrate successful cropping and/or livestock systems and technologies in pilot locations throughout the state of New York and is hereby authorized to conduct such research on the state's agricultural experiment stations, and other locations deemed suitable for private and public sector partnerships to evaluate, determine, and recommend strategies to enable agrivoltaics. The Cornell Cooperative Extension system shall be utilized for knowledge transfer, and annual reports shall be made and publicly disseminated.

3. The program shall include, but not be limited to, research on the following topics, consistent with New York state's climate goals:

(a) methods to maximize the economic efficiency and scientific efficacy of the co-location of agricultural crops and photovoltaics;

(b) improvements or enhancements in biodiversity when combined with low-lying or elevated photovoltaic installments;

(c) development, testing and deployment of technologies, including digital agriculture systems, small-scale robotics for planting, harvesting, and crop management;

(d) research that facilitates productive agrivoltaics across several different varieties of crops including research that enables understanding of agrivoltaics effects on soil health, soil carbon sequestration, erosion, water management, and specialty crop canopy management for enhanced climate resiliency; and

(e) research that quantifies total kilowatts produced, rates of crop production, and greenhouse gas emissions avoided in lieu of fossil fuel

generation.

4. Such program shall be funded by appropriations made available in chapter fifty-three of the laws of two thousand twenty-three to the New York state college of agriculture and life sciences at Cornell university for the purpose of studying the ecological impacts of agrivoltaics, and any future appropriation made thereafter for the same purpose.

* NB Repealed December 31, 2030

ARTICLE 11-B

SOIL HEALTH AND CLIMATE RESILIENCY

Section 151-l. Definitions.
151-m. Soil health initiative.
151-n. Climate resilient farming initiative.
151-o. Soil health research.

§ 151-l. Definitions. As used in this article: 1. "Soil health" means soils that have the continuing capacity to function as a vital, living ecosystem that sustains plants, animals, and humans. The benefits of healthy soil include: supporting the production of food, feed, fiber, and fuel; facilitating infiltration, storage and filtration of water and protecting water quality; enhanced nutrient-holding capacity and nutrient cycling; providing habitat for diverse soil organisms; enhanced resilience to drought, extreme precipitation events, temperature extremes, pests, diseases and other stresses; breaking down harmful chemicals; reducing agricultural impacts on, and mitigating the impact on agriculture of, global climate change; and sequestering carbon and net long-term greenhouse gas benefits.

2. "Soil health practices" means agricultural and land management practices that improve the function of soils through actions that follow the principles of: minimizing soil disturbance from soil preparation; maximizing soil vegetation cover; maximizing the diversity of beneficial soil organisms; maximizing presence of living roots; and integrating

animals into land management; and in support of such principles, include such practices as conservation tillage or no-till, cover-cropping, precision nitrogen and phosphorous application, planned rotational grazing, integrated crop-livestock systems, agroforestry, perennial crops, integrated pest management, nutrient best management practices, and those practices recommended by the United States Department of Agriculture Natural Resources Conservation Service and that are supported by the state soil and water conservation committee.

§ 151-m. Soil health initiative. 1. The department, in cooperation with the state soil and water conservation committee, and other partners working on soil health shall encourage agricultural producers in urban, suburban and rural communities to improve and maintain the health of farm soils by: managing and optimizing soil health to mitigate and adapt to climate change, and improve water quality while improving long term soil productivity, efficiency, resiliency and profitability of farming; ensuring that soil is conserved as a living ecosystem managed to provide nutrients for the growth of agricultural plants and animals and a healthy, affordable food supply; and addressing such environmental impacts from farm operations, including, but not limited to absorbing and holding rainwater for use during dry periods, filtering and buffering potential pollutants from leaving fields, improving climate resiliency, and providing habitat for beneficial soil microbes to flourish and diversify. Such improvement and maintenance shall account for the differences in soils in different regions of the state. The department shall coordinate the soil health initiative with the agricultural environmental management program established in article eleven-A of this chapter and section eleven of the soil and water conservation districts law.

2. The department shall encourage soil health practices that include, but shall not be limited to:

(a) improving, enhancing, or otherwise maximizing soil health and quality, and minimizing soil erosion and sedimentation;

(b) improving, enhancing, or otherwise maximizing water infiltration rates and water holding capacities of soils for improved storm water

management and flood control, drought resilience, and groundwater supply; and

(c) managing and enhancing the healthy cycling of nutrients within fields, to minimize nutrient runoff and reduce downstream nutrient loading, improve watershed health and reliable water availability, restore and enhance wildlife habitat, and manage water runoff and drainage water for improved local and downstream water quality.

3. The department, in the development of efforts to promote and encourage soil health, shall conduct public virtually accessible stakeholder meetings and provide opportunity for written public comment and consult with stakeholders, as appropriate, including, but not limited to: the state soil and water conservation committee, the department of environmental conservation, agricultural producers including historically marginalized producers, not-for-profit conservation organizations, environmental protection organizations including environmental justice, the United States Department of Agriculture's National Resources Conservation Services, the New York state college of agriculture and life sciences established in section fifty-seven hundred twelve of the education law including Cornell Cooperative Extension, other institutions of higher education in New York state working on soil health, and any other organization designated by the commissioner.

4. The department, in cooperation with the state soil and water conservation committee, the New York state college of agriculture and life sciences established in section fifty-seven hundred twelve of the education law, and with input from other organizations with expertise in soil health and regional stakeholders, shall establish appropriate voluntary standards and objectives for soil health and quality, reflective of the different geographic regions, soil types, and farming operations. Such standards should include soil quality indicators for biological, physical, and chemical properties of soil and reflect the latest scientific advancements.

§ 151-n. Climate resilient farming initiative. 1. The department, in

cooperation with the state soil and water conservation committee, and other partners working on climate resilient farming shall encourage agricultural producers in urban, suburban and rural communities to reduce the effects of farming on climate change, such as greenhouse gas emissions, and adapt to and mitigate the impact of climate change by improving and maintaining water management systems and soil health and resiliency.

2. The department shall promote best management practices for climate mitigation and soil resiliency, as informed by state policy, by the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide and by research conducted by New York state institutions of higher education with expertise in soil health, and approved by the New York state soil and water conservation committee.

3. The department shall coordinate the climate resilient farming initiative with the agricultural environmental management program established in article eleven-A of this chapter and section eleven of the soil and water conservation districts law.

4. The commissioner and the state soil and water conservation committee are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem necessary to effectuate the purpose of this section.

§ 151-o. Soil health research. The commissioner shall make available practical information from soil health research to agricultural producers in urban, suburban and rural communities with goals to: continue accelerating the percentage of farmers who actively utilize best management practices to foster soil health and resiliency; and, promote scientific understanding of soil health and carbon sequestration with various farming practices, including but not limited to no-till, cover cropping, managed grazing, perennial pasture, and precise application of added nutrients to achieve nitrous oxide emissions reduction.

ARTICLE 12

Adulteration and Sale of Turpentine and Linseed Oil

Section 152. Adulteration and sale of turpentine; notification of purchaser.
153. Adulteration and sale of raw linseed oil.
154. Adulteration and sale of boiled linseed oil.
155. Notice to be posted.
156. Application of article.

§ 152. Adulteration and sale of turpentine; notification of purchaser. No person shall manufacture, mix for sale, sell or offer for sale under the name of turpentine, spirits of turpentine, or wood turpentine or any compounding of the word turpentine, or under any name or device illustrating or suggesting turpentine or spirits of turpentine, any article which is not wholly distilled or derived from resin, crude turpentine gum, or scrapings from pine trees, and unmixed and unadulterated with oil, benzine or any other substance of any kind whatever, unless the package containing the same shall be stenciled or marked, with legible black letters in the English language not less than two inches high and one inch in width, "adulterated spirits of turpentine." Nor shall any person, firm or corporation sell or deliver such adulterated spirits of turpentine without informing the purchaser at the time of sale that the article is not pure spirits of turpentine, and the invoice shall accordingly read, "adulterated spirits of turpentine." Every container in which such mixed or adulterated spirits of turpentine is contained shall, in addition to the labeling before memtioned, be marked or stenciled in legible black letters in the English language, with the percentage of adulterant or adulterants which are contained in such mixture.

§ 153. Adulteration and sale of raw linseed oil. No person shall manufacture or mix for sale, offer or expose for sale, or sell under the name of raw linseed oil, or any compounding of the name raw linseed oil,

or under any name or device illustrating or suggesting raw linseed oil, any article which is not wholly the product of commercially pure linseed or flaxseed.

No person shall sell such adulterated raw linseed oil unless the package containing the same shall be plainly marked in legible black letters two inches high and one inch in width "adulterated linseed oil" or without informing the purchaser at the time of sale that the same is not pure linseed oil; and the invoice shall accordingly read "adulterated linseed oil."

§ 154. Adulteration and sale of boiled linseed oil. No person shall manufacture or mix for sale, offer or expose for sale, or sell under the name of boiled linseed oil any article unless the oil from which said article is made be wholly the product of commercially pure linseed or flaxseed and unless the same has been heated to at least two hundred and twenty-five degrees Fahrenheit. No person shall sell such adulterated boiled linseed oil unless the package containing the same shall be plainly marked in legible black letters two inches high and one inch in width "Adulterated Boiled Linseed Oil," or without informing the purchaser at the time of sale that the same is not pure boiled linseed oil, and the invoice shall accordingly read "Adulterated Linseed Oil."

§ 155. Notice to be posted. No person shall engage in the sale of adulterated turpentine, adulterated linseed oil or adulterated boiled linseed oil, in original packages or other than original packages, unless there are posted conspicuously in the room where such goods are sold, signs bearing the words "Adulterated Turpentine sold here," or "Adulterated Linseed Oil sold here," as the case may be, in legible letters in the English language at least two inches in length and one inch in width, said letters to be in black on a white background.

§ 156. Application of article. The provisions of this article shall not be construed as prohibiting the manufacture or sale of any compounds

or imitations mentioned in this article providing the requirements of this article are otherwise observed.

ARTICLE 12-A

GRADING OF FARM PRODUCTS

Section 156-c. Farm products; official standards.
156-d. Culls.
156-dd. Controlled atmosphere.
156-e. Sales prohibitions.
156-f. Rules and regulations.
156-g. Seizure of misbranded, mislabeled or misrepresented farm products.
156-gg. Branding closed packages of potatoes.
156-h. Food and farm products promotion.
156-i. Publicity fund.

§ 156-c. Farm products; official standards. The commissioner is hereby authorized and empowered, after investigation and public hearing, to establish and promulgate official definitions and standards for grading or classifying, packing and labeling farm products, or any of them, packed or repacked within the state; and to change such official standards from time to time. The commissioner, in establishing such official standards, shall, among other things, take into account so far as applicable the factors of maturity, condition, soundness, color, shape, size and freedom from defects. Such official standards shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades or classifications, as promulgated from time to time by the secretary of agriculture of the United States, commonly known as U. S. grades. The use of such official standards when established shall be optional, but if and when used in relation to any farm products they must be in conformance with such standards.

§ 156-d. Culls. The commissioner is hereby authorized and empowered,

after investigation and public hearing, to establish and promulgate definitions of "culls" as applied to farm products, or any of them; and to change such definitions from time to time.

§ 156-dd. Controlled atmosphere. No person shall sell or exchange or offer or expose for sale or exchange or transport for sale any fruits or vegetables represented as having been exposed to "controlled atmosphere," "modified atmosphere," alone or with other words, or shall so use any such term or form of words or symbols of similar import on any container or lot of fruits or vegetables advertised, sold, offered for sale or transported for sale within this state unless such fruits or vegetables have been kept in a room or storage building with not more than five percent oxygen for a minimum of ninety days; provided, however, that a person may represent as having been exposed to controlled atmosphere or modified atmosphere any variety of apple stored in conformance with regulations promulgated by the commissioner prescribing shorter storage periods and particular atmospheric conditions for such variety of apple, and which take into account relevant scientific research and technology. A record on a form approved by the commissioner shall be kept at a convenient location adjacent to said room or storage building from the day of sealing to the day of opening of said room or storage building, and shall be subject to review by the commissioner or his authorized agents at any time for a period of at least one year.

§ 156-e. Sales prohibitions. (1) No person shall sell, expose for sale or transport for sale farm products in open or closed packages, if the package containing them or the label on them shall bear any statement, design or device regarding such farm products which shall be false or misleading in any particular. (2) No person shall sell or offer for sale or transport for sale in either open or closed packages farm products packed in such manner that the face or shown surface shall not be an average of the contents of the package. (3) It shall be unlawful for any person or persons to designate, display any sign designating, or advertise any place of business as a farmers' market, unless farm

products as defined in section two hundred twenty-three of the agriculture and markets law principally are displayed and offered for sale or sold therein or thereon.

§ 156-f. Rules and regulations. The commissioner shall adopt and promulgate such rules and regulations generally to supplement and give full effect to the provisions of this article, and specifically to regulate the marketing, packing, labeling and shipping of "culls," as he shall deem necessary. Such rules and regulations shall be filed and open for public inspection at the principal office of the department and shall have the force of law.

§ 156-g. Seizure of misbranded, mislabeled or misrepresented farm products. Whenever the commissioner or his duly authorized representative shall find that any farm product is misbranded, mislabeled or misrepresented within the meaning of this article, he may seize such product, so that it cannot be sold, offered, exposed or transported for sale, and he may affix to such farm product a tag or other appropriate marking, giving notice that such product is misbranded, mislabeled or misrepresented, and warning all persons not to remove or dispose of such product by sale or otherwise until such product is branded or labeled properly and permission to dispose of the product has been granted 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 product so seized by sale or otherwise without such permission.

§ 156-gg. Branding closed packages of potatoes. 1. No person shall sell, expose for sale, or transport for sale, potatoes in closed packages which are not branded or marked with the grade of the potatoes contained therein in conformity with official standards and grades for potatoes established and promulgated by the commissioner under the provisions of this article, or, with the official standards of the United States commonly known as U.S. grades, except that potatoes packed

in consumer packages in retail stores containing fifteen pounds or less and exposed for sale therein need not be so marked provided they are exposed for sale immediately adjacent and conform in variety, grade, size and condition to a bulk display of such potatoes which includes as a part thereof a display sign conspicuously marked as to the grade of the potatoes in conformity with the foregoing requirements of this section. Potatoes in closed packages containing more than sixty pounds net not graded and classified as to quality in accordance with such standards and grades, nor branded or marked in conformity therewith, shall be branded or marked "unclassified".

2. For the purpose of this section, a closed package shall mean any container the entire contents of which cannot be adequately inspected without opening it.

§ 156-h. Food and farm products promotion. 1. The commissioner may design, determine and adopt official brands to be used on labels and on packages and containers to identify New York state food products and New York state produced or landed aquatic products. The design of such brand or brands may contain the whole or a part of the seal of the state of New York. Each of such brands, when adopted by the commissioner, may be registered as a trade mark in the office of the secretary of state under the provisions of article twenty-four of the general business law, or any other provision of law which may hereinafter be enacted relating to the registration of trade marks. Any such trade mark shall be registered by the secretary of state without the exaction of any fee therefor. The commissioner may in his or her discretion register any such mark with the United States government and any other state or foreign country.

2. Such brand or mark may be imprinted upon packages or used on labels upon or attached to packages containing: (a) New York state grown farm products packed within this state in accordance with official standards established as provided by this article, article thirteen, article thirteen-a, article thirteen-b, article thirteen-c and article thirteen-d of this chapter or New York state produced or landed aquatic

products, subject to and in accordance with rules and regulations to be promulgated by the commissioner; or

(b) New York state processed food products, manufactured within this state in accordance with official standards established by the commissioner pursuant to regulation, which are essentially composed of New York state grown farm products, provided, however, that whenever the commissioner determines, after public hearing, that the use of ingredients not grown or produced in this state is necessary or beneficial in manufacturing a particular product because such ingredients are either not grown in New York or unavailable in sufficient quantity or at a reasonable price to allow the product to be composed of only New York state grown farm products, the standard for such product may authorize the inclusion of ingredients not produced in this state, except that in no event shall an official brand or mark be approved for use on a food product unless at least fifty-one percent of its content is derived from New York state grown farm products.

3. Notwithstanding the provisions of subdivision two of this section, such brand or mark may be imprinted upon packages or labels attached to packages containing cheddar or American type cheese packed outside this state provided that such product is manufactured within the state and meets all other requirements for the inclusion or attachment of such brand or mark.

4. No such label shall be imprinted on or attached to any package of fresh or processed products unless said products have been produced and packed in accordance with an official quality control program established by the commissioner. The rules and regulations shall provide for a charge to be made for any inspections, except the commissioner, at his or her discretion, need not make a charge for inspections carried out for the purposes of research and development of grades, standards, inspection and quality control techniques. The commissioner shall cause to be printed labels bearing a state brand in sufficient quantities to meet the demand therefor and/or authorize container manufacturers to imprint the state brand on packages at the time of manufacture or printing, and may sell such labels or charge a fee for such imprinting in an amount to be fixed by the commissioner. As an alternative method,

the commissioner may in accordance with rules and regulations rent dies or cuts of the state brand to persons desiring to manufacture their own labels for use on fresh or processed products owned and packed by them, at a price to be fixed by the commissioner. Labels shall be affixed to or imprinted on packages in the manner prescribed by the rules and regulations. The label denoting the state brand may be used in conjunction with and in addition to any regional mark or name for growers, packers or processors in a county or group of counties and/or private mark or name under which the grower, packer or processor has been accustomed to pack and market fresh or processed products. Moneys derived from the sale or use of labels denoting the state brand shall be accounted for as to product source and shall be expended as the commissioner may direct for general publicity purposes and to advertise products identified with the state brand.

5. The rules and regulations may provide for an advisory committee of five packers or sellers of the state brand products, who shall advise the commissioner as to the general plan of any publicity campaign and in such other matter as the commissioner may request. The members of any such advisory committee shall serve without compensation. The commissioner shall have the power, by injunction or otherwise, to restrain any person who uses or attempts to use any state brand except in accordance with the provisions of this section.

§ 156-i. Publicity fund. All moneys received by the commissioner from sources other than the general fund or federal funds in the exercise of the powers and duties set forth in subdivisions two, two-a, two-b, two-c, five-a, eight, nine, ten, sixteen, eighteen and twenty-one of section sixteen of this chapter and all moneys received pursuant to section one hundred fifty-six-h of this article, including moneys received from any source for or arising from publicity and promotional activities, shall be transmitted to the state comptroller for deposit in an account or accounts within the miscellaneous special revenue fund. The commissioner may accept contributions of money to an account within the miscellaneous special revenue fund for services to aid in publicity work undertaken by him or her. All such moneys shall be paid out of such

fund on vouchers approved by the commissioner, after audit by and upon the warrant of the comptroller. If a product ceases to be packed under the state brand for a period of two consecutive years, the commissioner, at his or her discretion, may distribute moneys remaining in the fund and to the account of such products to the accounts of any or all products continuing to be packed under the state brand and expend such moneys as this section provides.

ARTICLE XIII

Section 157. Apples; closed packages; definition.
158. Apples; adoption of grades; branding.
159. Sale of apples; presumption; rules and regulations.
160. Standard evaporated apples; definition; sale of regulated.

§ 157. Apples; closed packages; definition. The term "closed package," wherever used in this article, shall mean a barrel, box or other container, the contents of which cannot be adequately inspected without opening it.

§ 158. Apples; adoption of grades; branding. The commissioner is hereby authorized and empowered, after investigation and public hearing, to fix and promulgate official standards for grading and classifying apples packed or repacked within the state, and to change any of them from time to time. In establishing such standards he shall take into account the factors of maturity, soundness, color and shape. The official standards so fixed and promulgated shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades of apples as promulgated from time to time by the secretary of agriculture of the United States, which standards are commonly known as the "United States grades."

Each closed package of apples, when sold, exposed for sale or transported for sale, shall be plainly and conspicuously branded to show:

(1) Variety.
(2) Grade.
(3) Minimum diameter or numerical count.
(4) Quantity of contents.
(5) Name and address of packer or repacker.

If the true name of the variety is not known to the packer or repacker, the statement shall include the words "variety unknown" in place of the name of the variety.

In case the branding upon any closed package of apples is changed, the person making the change shall cancel the name and address of the original packer and substitute therefor his own name and address.

§ 159. Sale of apples; presumption; rules and regulations. 1. No person shall sell, expose for sale, or transport for sale, within this state, apples in closed packages which are not branded as required by section one hundred and fifty-eight and marked with the grade of the apples in conformity with the official standards and grades for apples established and promulgated by the commissioner under provisions of this article, or with the official standards of the United States commonly known as "U.S. grades," except apples in consumer containers of ten pounds or less packed in the store, the contents of which shall conform in variety, grade, and size to a bulk display in connection therewith. Such bulk display shall be plainly and conspicuously marked as to the grade, variety, minimum diameter or numerical count of the apples.

2. No person shall sell, expose for sale, or transport for sale, apples, either in open or closed packages, if the package containing them or the label on them shall bear any statement, design or device regarding the apples which shall be false or misleading in any particular.

3. No person shall sell or offer for sale, or transport for sale, in either open or closed packages, apples packed in such a manner that the face or shown surface shall not be an average of the contents of the

package.

4. When apples in closed packages are delivered to a common carrier for shipment, or delivered to a storage house for storage, such delivery shall be presumptive evidence that the apples are intended for sale.

The commissioner shall adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary.

§ 160. Standard evaporated apples; definition; sale of regulated. 1. Evaporated apples containing not more than twenty-four per centum of water or fluids shall be considered standard evaporated apples.

2. No person shall buy for resale, sell, expose or offer for sale as and for evaporated apples any evaporated apples intended to be used for food, or for consumption by any person, other than standard evaporated apples.

ARTICLE 13-A

Section 160-a. Eggs; sale for food by grades or standards; consumer; definition.
160-b. Establishment of grades or standards.
160-c. Retail sale by grade or quality; fresh eggs; definition.
160-d. Sales; misrepresentation.
160-e. Making and filing of invoice.

§ 160-a. Eggs; sale for food by grades or standards; consumer; definition. No person, and the term "person" in this statute shall include an individual, partnership, corporation or association, shall either as producer, wholesaler, commission merchant, jobber or retailer, sell, or offer to sell, or expose for sale for human consumption any eggs in the shell or otherwise which are unfit for human food. From and after the establishment of specific grades or standards of quality and

size or weight of eggs by the commissioner of agriculture and markets as provided in the next section, eggs for human consumption shall not be sold or exposed for sale except by the grades or standards so established.

The term "consumer" whenever used in this statute shall mean any person purchasing eggs for his or her own family use or consumption, or a restaurant, hotel, boarding house, bakery or other institution purchasing eggs for serving to guests or patrons, or for its or their use in cooking or baking.

§ 160-b. Establishment of grades or standards. It shall be the duty of the state department of agriculture and markets to enforce the provisions of this article and the commissioner of agriculture and markets is hereby vested with full power to establish forthwith and from time to time specific grades or standards of quality and size or weight to govern the sale of eggs to the consumer, and to establish different grades or prescribe different terms indicative of size or weight, quality and manner of preparation of eggs for human consumption for use in sales between the producer and wholesaler, between the wholesaler and jobber, and between the wholesaler or jobber and the retailer. The commissioner of agriculture and markets shall have full authority to make rules and regulations for carrying out and enforcing the provisions of this act, provided however, that the grades or standards of quality established by him shall not permit the sale of any eggs for human consumption of poorer quality than permitted by the lowest grade or standard for edible eggs established from time to time by the United States secretary of agriculture. All rules, regulations and standards of quality and size or weight established under the authority of this statute shall have the force of law and shall be filed and open for public inspection in the office of the state department of agriculture and markets.

§ 160-c. Retail sale by grade or quality; fresh eggs; definition. It shall be unlawful for any person to sell, or offer to sell or expose for

sale to a consumer any eggs intended for human consumption other than those of his own production without notifying by suitable sign or label the person or persons purchasing or intending to purchase the same of the exact grade or quality of such eggs, according to the standards prescribed by the commissioner of agriculture and markets.

No person shall sell, offer for sale, or advertise for sale as fresh eggs, strictly fresh eggs, hennery eggs, or new-laid eggs, or under words or descriptions of similar import, any eggs which are not fresh. No egg shall be deemed to be fresh which does not meet the standards of quality of fresh eggs established by the commissioner of agriculture and markets.

§ 160-d. Sales; misrepresentation. No person shall sell or offer for sale, or advertise for sale, eggs for human consumption if the package containing them or the label on them, or any advertising accompanying them, shall bear any statement or device regarding the eggs which may be false or misleading in any particular.

§ 160-e. Making and filing of invoice. Every person, other than the producer, in selling eggs to a retailer, shall furnish to such retailer an invoice showing the exact grade or quality of such eggs according to the standards prescribed by the commissioner of agriculture and markets. If any of the eggs covered by the invoice have been in cold storage, as defined in article nineteen of this chapter, for more than thirty days, either within or without the state, the invoice, in addition to showing the grade or quality of such eggs, shall indicate the fact of such storage by the use of the words "cold storage" or "refrigerator." A copy of such invoice shall be kept on file by the person selling and the retailer at their respective places of business for a period of sixty days, and shall be available and open for inspection at all reasonable times by the state department of agriculture and markets.

ARTICLE 13-b

Section 160-h. Grapes; definitions.
160-i. Grades or standards; establishment; sale.
160-j. Marking requirements.
160-k. Prohibitions; presumption; rules and regulations.

§ 160-h. Grapes; definitions. The term "package," wherever used in this article, shall mean a basket, box or other container the contents of which can be adequately inspected. The terms "shipment," or "ship for sale," wherever used in this article, shall mean movement to market in a railroad car, motor truck or other medium of transportation, but shall not be construed to include the process of delivery to a local warehouse, shipping station or processor.

§ 160-i. Grades or standards; establishment; sale. The commissioner is hereby authorized and empowered, after investigation, to establish and promulgate official standards of quality for grading, classifying and packing grapes packed or repacked within the state, and to change any of them from time to time. In establishing such standards he shall take into account, among other things, the factors of maturity, color, firmness of attachment to capstems, compactness of bunches, and damage caused by freezing or by disease or insects. The official standards so established and promulgated shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades of grapes as promulgated from time to time by the secretary of agriculture of the United States, which standards are commonly known as "United States grades."

From and after the establishment of specific grades or standards of quality as hereinbefore provided, grapes in packages shall not be shipped for sale or thereafter sold or exposed for sale except by the grades or standards so established; provided, however, that grapes not graded and classified as to quality may be shipped for sale or sold or exposed for sale as unclassified if so marked in a conspicuous manner on an irremovable-part of the container in accordance with rules to be adopted by the commissioner as hereinafter provided.

§ 160-j. Marking requirements. Grapes in packages, if not definitely marked as unclassified as hereinbefore provided, shall, prior to shipment, be marked in a plain and conspicuous manner with the name and address of the person or association under whose authority the grapes are packed and on an irremovable part of the container with a statement of (1) the grade, and (2) the net quantity or weight of contents.

§ 160-k. Prohibitions; presumption; rules and regulations. 1. No person shall sell, expose for sale, or transport for sale grapes in open or closed packages if the package containing them, the label on them, or any advertising accompanying them shall bear any statement, design or device regarding the grapes which shall be false or misleading in any particular.

2. No person shall sell, expose for sale, or transport for sale, in either open or closed packages, grapes packed in such a manner that the face or shown surface shall not be an average of the contents of the package.

3. When grapes in packages are delivered to a common carrier for shipment, such delivery shall be presumptive evidence that the grapes are intended for sale.

The commissioner shall adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary.

ARTICLE 13-C
LETTUCE

Section 160-p. Definitions.
160-q. Grades and branding.
160-r. Sale of lettuce.
160-s. Rules and regulations.

160-t. Application of article.

§ 160-p. Definitions. As used in this article:

1. The words "closed package" mean a crate, box, carton or other container, the contents of which cannot be adequately inspected without opening.

2. The word "lettuce" means iceberg type lettuce.

§ 160-q. Grades and branding. 1. The commissioner is hereby authorized and empowered, after investigation and public hearing, to fix and promulgate official standards including good delivery standards enroute or at destination for grading and classifying lettuce packed or repacked within the state, and to change any of them from time to time. In establishing such standards he shall, among other things, take into account so far as applicable the factors of maturity, condition, solidity, color, size, temperature control and freedom from defects and injury. The official standards so fixed and promulgated shall not be lower in their requirements than the minimum requirements of the official standards for corresponding grades of lettuce as promulgated from time to time by the secretary of agriculture of the United States, which standards are commonly known as the "United States grades".

2. Each closed package of lettuce, when sold, exposed for sale or transported for sale, shall be plainly and conspicuously branded to show:

a. That such lettuce is "cull lettuce", if such is the fact.

b. Number of heads.

c. That the package was vacuum cooled if such be the fact.

d. Name and address of packer or repacker.

The cull identification requirement of paragraph a of this subdivision shall not apply to closed packages of lettuce which are being held for sale at retail in the retailer's own storage facilities or which are being transported from such storage facilities to stores operated by such retailer.

3. In case the branding upon any closed package of lettuce is changed, the person making the change shall cancel the name and address of the original packer and substitute therefor his own name and address.

§ 160-r. Sale of lettuce. 1. No person shall sell, expose for sale or transport for sale within this state, regardless of place of origin, lettuce in closed packages which are not branded as required by section 160-q, except that lettuce packaged by a retailer and sold or offered for sale by such retailer, need only be branded to show that it is cull lettuce, if such is the case.

2. Cull lettuce offered or exposed for sale at retail shall be plainly and conspicuously marked as "culls".

3. No person shall sell, offer for sale, or transport for sale lettuce in open or closed packages, or unwrapped lettuce, if the branding, representation as to grade, or any statement, design or device appearing on the label, package or bulk display shall be false or misleading in any particular.

4. When lettuce in closed packages is delivered to a common carrier for shipment, such delivery shall be presumptive evidence that the lettuce is intended for sale.

5. No lettuce shall be sold in closed cardboard containers unless it is vacuum cooled.

§ 160-s. Rules and regulations. The commissioner is hereby

authorized, after public hearing, to adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary.

§ 160-t. Application of article. This article shall not apply to lettuce which lettuce is ultimately grown outside of the state of New York and only transported through or within this state for sale outside New York.

ARTICLE 13-D

MANUFACTURE, DISTRIBUTION AND SALE OF MAPLE SYRUP AND SUGAR

Section 160-u. Manufacture, distribution and sale of maple syrup and sugar.

§ 160-u. Manufacture, distribution and sale of maple syrup and sugar. a. Definitions:

(1) "Maple sap" means the sap or sweet water obtained by tapping the maple tree.

(2) "Maple syrup" means syrup made exclusively by the evaporation of pure maple sap.

(3) "Maple sugar" means sugar made exclusively by the evaporation of pure maple syrup.

(4) "Grade" shall mean the standards for maple syrup or maple sugar promulgated by the commissioner of agriculture and markets, as the official grades of maple syrup or maple sugar for the state of New York.

b. Every consumer package of maple syrup offered or exposed for sale shall be plainly marked as to the grade.

c. Advertising. Any person who uses roadside signs within the state or who uses publications printed or distributed within the state to advertise maple syrup and who quotes a price therein, shall specify the grade of the syrup in a plain and conspicuous manner.

d. The commissioner of agriculture and markets shall promulgate after public hearing, rules and regulations to carry out the provisions of this statute.

ARTICLE 13-E

PROHIBITION OF DUMPING CERTAIN AGRICULTURAL PRODUCTS

Section 160-v. Dumping of certain agricultural products; prohibited.

§ 160-v. Dumping of certain agricultural products; prohibited. 1. No person, firm, partnership, corporation or association that sells, offers for sale or distributes any food product shall dump, or otherwise discard in a manner reasonably and causally connected to the contamination of food, any cull or waste pile consisting of any agricultural product not produced in this state, including, but not limited to, vegetables, fruits and other like produce falling below the official standard or grade of quality for such product. After consultation with the New York state college of agriculture and life sciences at Cornell university, the commissioner shall identify establishments and practices most susceptible to threats from out of state products, and promulgate rules and regulations for the proper disposal of any such cull or waste pile in such cases, provided that such regulations include options for landfill disposal, composting and deep burial.

2. Any person, firm, partnership, corporation or association who knowingly violates the provisions of this section shall be guilty of a violation, punishable by a fine of five hundred dollars for the first offense and one thousand dollars for a second and each subsequent offense. If site clean-up or decontamination is deemed necessary by the commissioner as a result of a violation of this section, the offender shall also be subject to a fine equal to the sum of any and all expenses incurred in the clean-up or decontamination of such dumping site and the costs reasonably related to recalling any contaminated food distributed in the marketplace.

ARTICLE 14

Prevention and Control of Disease in Trees and Plants; Insect Pests; Sale of Fruit-bearing Trees

Section 161. Definitions.
162. Nursery stock; common carriers.
163. Prevention of introduction of injurious insects, noxious weeds, and plant diseases.
163-a. Application.
163-b. Registration to sell.
163-c. Revocation of certificates.
164. Control and eradication of injurious insects, noxious weeds, and plant diseases.
164-a. Shipment of live pests.
165. Damages for property destroyed.
166. Examination and certification of nurseries and nursery stock.
167. Access to premises; quarantines; rules and regulations.
168. Sale of fruit-bearing trees and grapevines; labels; damages.
169. Delegation of powers and immunities in regard to dutch elm disease in municipalities.
169-a. Spraying fruit trees or crops with poison.
169-b. Fees.

§ 161. Definitions. As used in this article:

1. The words "nursery stock" shall apply to and include all trees, shrubs, plants and vines and parts thereof.

2. The words "insect pests" mean insects injurious to plant and plant products.

3. The words "plant and plant products" mean trees, shrubs, vines, annuals, biennials, perennials, vegetables, fruit, forage and cereal plants and all other plant cuttings, grafts, scions, buds and all other

parts of plants, and fruit, vegetables, roots, bulbs, seeds, wood and lumber.

4. The words "plant diseases" mean fungi, bacteria, nematodes, viruses and plant parasites injurious to plants and plant products, and the pathological condition in plants and plant products caused by fungi, bacteria, nematodes, viruses and plant parasites.

5. The word "nursery" means the grounds and premises, private or public, on or in which nursery stock is propagated, grown or cultivated for the purpose of distribution or selling the same as a business and shall include grounds or premises owned, leased or managed by the state or any agency of the state government, and the owner or operator of such business shall be a "nursery grower"; provided, however, that the term "nursery grower" shall not include persons engaged in the part-time production of plant products not sold in the regular channels of business.

6. The words "nursery dealer" mean any person, firm, partnership, association or corporation not a grower or an original producer of nursery stock in this state which or who buys, or acquires, or receives on consignment nursery stock for the purpose of reselling, transporting, or otherwise disposing of the same.

7. The word "soil" means the commonly accepted medium or other medium in which plants are grown and which is or may be capable of harboring or transmitting insect pests and plant diseases.

8. The words "indoor plants" mean plants which are used for decorative purposes because of their flowering, fruiting or foliar characteristics and which cannot be grown and maintained throughout all seasons in the outdoor environment of this state.

9. The words "noxious weeds" means any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in this state, and can directly or

indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation.

§ 162. Nursery stock; common carriers. No nursery stock shall be received by a common carrier for shipment into or within the state unless accompanied by a copy of an unexpired certificate of inspection issued as provided in the subsequent sections of this article.

§ 163. Prevention of introduction of injurious insects, noxious weeds, and plant diseases. 1. The commissioner shall take such action as he may deem necessary to prevent the introduction into this state of injurious insects, noxious weeds, and plant diseases, provided that he shall consult with the commissioner of environmental conservation prior to the commencement of any action to eradicate noxious weeds.

2. All nursery stock shipped into this state shall bear or carry on the container thereof an unexpired certificate, or copy thereof, to the effect that (a) the contents of such container have been inspected by a duly authorized official and that the contents appear to be free from all injurious insects or plant diseases, or (b) that the nursery stock of the grower of such contents had been examined by a duly authorized official and had been found to be apparently free from all injurious insects or plant diseases. Such certificate shall be the certificate of the chief horticultural inspector, by whatever name known, of the country, province or state in which such shipment originated. There shall be shown in the certificate or by a separate tag attached thereto the name and address of the consignor or shipper, the name and address of the consignee or person to whom the nursery stock is shipped, and the general nature of the contents together with labels upon each variety of nursery stock declaring the name thereof and a statement by the consignor or shipper that such nursery stock is in a live and vigorous condition.

3. Any person within the state receiving nursery stock from without the state not accompanied by the certificate described in subdivision

two of this section, shall immediately notify the commissioner of the receipt of such nursery stock and shall not unpack the same unless permitted by the commissioner so to do, and shall not allow such nursery stock to leave his possession until it has been inspected and released by the commissioner.

4. It shall be unlawful for any person to offer for sale or to sell dead nursery stock.

§ 163-a. Application. Any nursery grower or nursery dealer, except those nursery dealers selling, transporting, or handling for sale or otherwise disposing of nursery stock, exclusively consisting of indoor plants, at a retail level, desiring to sell, or selling, or handling for sale, or otherwise disposing of nursery stock in this state shall make application in writing to the commissioner upon a form prescribed by the commissioner. The application shall be accompanied by a fee of one hundred dollars for a registration effective for two years from the date of issuance. The commissioner may exempt from the payment of such fees agencies or authorities of the state; county, city, town, or village governments; or other entities providing benefit to the general public, including but not limited to, botanical gardens.

§ 163-b. Registration to sell. 1. The commissioner after a nursery has been found to be apparently free from injurious insects and plant diseases shall register each nursery grower desiring to sell, or selling, or handling for sale, or otherwise disposing of nursery stock in this state in accordance with the intent disclosed in the application and shall issue a certificate, upon a form to be prescribed by the commissioner, declaring that such nursery grower is duly registered and authorized to do business in this state. If such nursery grower is maintaining or operating premises in connection with his or her business in more than one place within the state then he or she shall obtain an additional registration for each place of business, provided there shall be no additional fee for such additional registrations.

2. The commissioner shall register each nursery dealer desiring to sell or selling, or handling for sale, or otherwise disposing of nursery stock in this state in accordance with the intent disclosed in his or her application and shall issue a certificate, upon a form prescribed by the commissioner, declaring that such nursery dealer is duly registered and authorized to do business in this state. If such nursery dealer is maintaining or operating premises in connection with his or her business in more than one place within the state, he or she shall obtain a separate registration, upon proper application, for each location.

3. Such certificates shall be conspicuously posted at each place of business, maintained by such nursery grower or nursery dealer.

4. Each person doing a mail order business in nursery stock from an address in this state is required to register as a nursery grower or nursery dealer whether or not the nursery stock sold or offered for sale is within the state.

5. It shall be unlawful to affix a reproduction or facsimile of a nursery dealer's registration on plant materials which have not been inspected by the commissioner.

§ 163-c. Revocation of certificates. 1. The commissioner shall at any time have the power to withhold, suspend or revoke any license or certificate for sufficient cause, including the dissemination of false or misleading advertising, or the engaging in fraudulent or deceptive business practices, all of which are hereby declared to be unlawful, or any violation of this chapter or non-conformity with any rules or regulation promulgated thereunder. Before withholding, suspending or revoking any license or certificate, the commissioner shall give written notice to the applicant for or holder of such license or certificate, stating that he contemplates the withholding, suspending or revocation, of same and giving his reasons therefor. Said notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail or certified mail to the party holding the license or certificate. On the day of hearing, the respondent may present such

evidence to the commissioner as he deems fit, and after hearing all the testimony, the commissioner shall decide the question in such manner as to him appears just and proper. The respondent, if he feels aggrieved at the decision of the commissioner, may appeal to the commissioner for a review of said decision within ten days, and in case of his failure to request such review the decision shall become final unless within thirty days after its issuance the respondent shall institute a special proceeding for the review thereof, as provided in article seventy-eight of the civil practice law and rules.

2. The word "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false premise, false promise or unconscionable contractual provision.

§ 164. Control and eradication of injurious insects, noxious weeds, and plant diseases. 1. The commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the state.

2. All trees, shrubs, plants and vines or other material, including soil infected or infested with injurious insects or plant diseases, or which have been exposed to injurious insects or plant diseases, or which are hosts of such insects or plant diseases or other material including soil, and noxious weeds are hereby declared public nuisances and may be destroyed or ordered destroyed by the commissioner.

3. The commissioner may order the owner or person in charge of any infected or infested trees, shrubs, plants and vines or other material including soil or host plants, and noxious weeds or the owner or person in charge of the farm or premises upon which they have been grown or on which they exist or in which they have been stored, or of the vehicles or cars in which they have been conveyed, to take such measures to eradicate or control the said infestation, infection, or noxious weeds as the commissioner may deem necessary or proper. Such orders may be communicated by personal service, service through the mails, or by

newspaper publication, as the commissioner deems expedient. Such owner or person in charge shall promptly carry out the order of the commissioner within the period of time designated in the order. If such owner or person in charge shall refuse or neglect to carry out any such order, the commissioner may apply such eradication or control measures at the expense of the owner. Upon the completion of such eradication or control measures the owner shall, upon demand of the commissioner, forthwith pay the cost thereof into the state treasury, and upon his neglect or refusal so to do, the amount thereof shall be recovered in a civil action to be brought and prosecuted by the attorney-general in the name of the people of the state.

§ 164-a. Shipment of live pests. No person, shall sell, barter, offer for sale, or move, transport, deliver, ship, or offer for shipment, into or within this state any living insects in any state of their development, or noxious weeds, living fungi, bacteria, nematodes, viruses or other living plant parasitic organisms without first obtaining a permit from the commissioner. Such permit shall be issued only after the commissioner has determined that the insects, noxious weeds or living bacteria, fungi, nematodes, viruses or other plant parasitic organisms in question are not injurious to plants or plant products, if not already present in the state, or have not been found to be seriously injurious to warrant their being refused entrance or movement, if known to be already established within the borders of the state; provided, that the commissioner may at his discretion exempt the sale and transportation of specific insects, noxious weeds, fungi, bacteria, and other plant parasitic organisms from the provisions of this section if such sale and transportation is not considered harmful to the health and welfare of the people of the state, or for scientific purposes under specified safeguards determined by the commissioner.

§ 165. Damages for property destroyed. No damages shall be awarded for the destruction of infested or infected trees, shrubs, plants and vines, host plants or other material under the provisions of this article except as follows: any person deeming himself aggrieved may,

within six months after the destruction occurs, present to the commissioner a verified claim setting forth the grounds of his grievance and the amount of his damages, which claim shall be determined by the commissioner after giving due consideration to any benefits which have accrued or may accrue to the claimant by reason of such destruction, as an offset to the amount of the claim. The determination of the commissioner may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

§ 166. Examination and certification of nurseries and nursery stock. 1. The commissioner shall, as often as he or she deems necessary and no less than once every two years, inspect all nurseries or places where nursery stock is grown for sale. If upon examination it is found that such nursery stock is apparently free from injurious insects and plant diseases, the commissioner shall issue to the owner of the nursery stock a certificate to the effect that the stock so examined is apparently free from all injurious insects and plant diseases. Such certificate shall be valid for the period of time designated by the commissioner at the time of issuance, unless sooner revoked by the commissioner for cause. If injurious insects or plant diseases are found therein, the owner or person in charge thereof shall promptly take such measures to eradicate the same as the commissioner shall prescribe, and no certificate of freedom from disease shall be given until the commissioner has satisfied himself or herself, by subsequent inspection, that all such injurious insects or diseases have been eradicated.

2. Owners of nurseries or places where nursery stock is grown for sale who do not hold unexpired and unrevoked certificates of inspection and freedom from disease, as defined in subdivision one of this section, shall not sell or otherwise dispose of such nursery stock.

3. Dealers in nursery stock who buy nursery stock from nursery growers to whom certificates of inspection and freedom from disease have been issued as provided by subdivision one of this section, may be granted by the commissioner certificates of inspection and freedom from injurious insects and plant diseases in respect to the stock so purchased, upon

complying with the regulations adopted by the commissioner in relation thereto.

4. All nursery stock consigned for shipment from any point within this state or shipped by common carrier or other means from any point within this state, shall bear or carry on the container thereof a printed copy of the certificate issued as provided in subdivision one of this section. No nursery stock shall be sold or shipped under such a certificate which has not been produced in the nursery in respect to which such certificate was issued, unless and until such nursery stock shall have been found by the commissioner, by examination or otherwise, to be apparently free from injurious insects and plant diseases.

* 5. In cooperation with the department of environmental conservation, the department shall:

a. establish standards for designation of native plants in New York in consultation with recognized certification organizations, academics, nursery growers, and nursery dealers;

b. develop a list of native plants that shall indicate and differentiate native plants that are: (i) non-invasive herbaceous and woody plant species that are indigenous to New York state and are likely to maintain their range or successfully adapt to anticipated climate changes in New York state and the northeastern United States; and (ii) native, non-invasive plants found elsewhere in the United States that are likely to shift or expand their range into New York state and the northeastern United States in response to anticipated climate change;

c. offer seals or logos identifying native plants as grown in New York state and marketed by nursery growers and nursery dealers registered pursuant to this article; and

d. provide educational materials promoting awareness and understanding of the benefits of native plants under the New York native plant designation to horticultural producers, garden centers, consumers, educational institutions, Cornell cooperative extension, and relevant agricultural organizations.

* NB Effective December 19, 2026

* 6. For the purposes of this section, "native plants" shall mean:

a. non-invasive herbaceous and woody plant species that are indigenous to New York state and are likely to maintain their range or successfully adapt to anticipated climate changes in New York state and the northeastern United States;

b. germinating seeds, or other plant parts, used to propagate desirable native plants representing a wide variety of species and genotypes of plants; and

c. native, non-invasive plants found elsewhere in the United States that are likely to shift or expand their range into New York state and the northeastern United States in response to anticipated climate change.

* NB Effective December 19, 2026

§ 167. Access to premises; quarantines; rules and regulations. 1. The commissioner or his representatives shall have full access to all premises, places, farms, buildings, vehicles, airplanes, vessels and cars for the purpose of enforcing the provisions of this article. The commissioner or his representatives may examine trees, shrubs, plants and vines, soil, or host plants or any other material which are infested or infected or susceptible to infestation or infection by injurious insects or plant diseases, or contaminated by noxious weed. He or they may open any package or other container, the contents of which may have been so infested or infected or contaminated with noxious weed or which have been exposed to such infestation, infection or contamination. It shall be unlawful to hinder or defeat such access or examination by misrepresentation, concealment of facts or conditions, or otherwise.

2. The commissioner is hereby authorized to make, issue, promulgate and enforce such orders, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of this article.

3. The commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary including, but not limited to, the designation of any plant as a noxious weed.

3-a. The department, in cooperation with the department of environmental conservation shall restrict the sale, purchase, possession, propagation, introduction, importation, transport and disposal of invasive species pursuant to section 9-1709 of the environmental conservation law.

4. Non-resident nursery growers or dealers, or other persons, firms, partnerships, associations or corporations desiring to solicit orders for nursery stock in this state shall upon filing a certified copy of their valid state certificate or registration with the commissioner, pay to the commissioner an annual fee of twenty-five dollars. Notwithstanding such filing and fee requirements, the commissioner may enter into reciprocal agreements with the responsible officers of other states, under which agreements the commissioner may accept such other states' certified directories of persons, firms, associations and corporations registered to sell nursery stock, in lieu of requiring the filing of certified copies of individual registrations by the nursery growers of such states and under which nursery stock owned or handled by nursery growers of such states may be sold or delivered in this state without the payment of a New York non-resident fee, provided like privileges are accorded to New York nursery growers in such other states. Upon satisfying the commissioner of such registration in another state and upon payment of the non-resident fee or the waiver of such fee as provided in this section, such person, firm, partnership, association or corporation shall be authorized to solicit orders for nursery stock in this state.

§ 168. Sale of fruit-bearing trees and grapevines; labels; damages. The vendor shall attach to every bundle of fruit-bearing trees and grapevines sold or shipped within this state a tag or label specifying the name of the variety of trees or vines contained therein. If the

bundle shall contain trees or vines of different varieties, such label or tag shall be attached to each tree or vine or group thereof of the same variety. The purchaser of any fruit-bearing tree or grapevine not true to name as specified on such tag or label, shall have a remedy at law in a civil action to recover the damages sustained. Such action may be brought at any time prior to the third bearing year.

§ 169. Delegation of powers and immunities in regard to dutch elm disease in municipalities. The powers and immunities prescribed and granted in sections one hundred sixty-four, one hundred sixty-five and one hundred sixty-seven of this article may, within the limits of any municipality, be exercised and enjoyed by the appropriate officers and employees of such municipality with respect and in regard to the dutch elm disease, if with the approval of the commissioner and under the direction of the commissioner or his representative and if the local legislative body of any such municipality by local law or ordinance elects to exercise and enjoy such powers and immunities.

§ 169-a. Spraying fruit trees or crops with poison. Any person who sprays with or applies in any way poison or any poisonous substance to fruit trees or any alfalfa and clovers grown as field crops while in blossom, is guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than fifty dollars for each offense except as hereinafter provided.

The commissioner of agriculture and markets may, after public hearing, permit the use of specific materials for fruit blossom thinning sprays during the current year. The provisions of this section shall not prevent the New York State College of Agriculture and the Agricultural Experiment Station at Geneva from conducting experiments in the application of poisons and spraying mixtures to fruit trees while in blossom.

§ 169-b. Fees. Notwithstanding any other provision of law to the

contrary, the commissioner is hereby authorized and directed to deposit all money received from fees collected pursuant to this article in designated accounts within the miscellaneous special revenue fund.

ARTICLE 14-A

SALE AND DISTRIBUTION OF LYE AND OTHER CAUSTIC SUBSTANCES

Section 170. Short title.
171. Definitions.
172. Provisions governing sale and distribution.
172-a. Injunction proceedings; when authorized.
172-b. Enforcement of article.
172-c. Penalties for violations.
172-d. Prosecutions for penalties.
172-e. Construction of article.

§ 170. Short title. This article shall be known as the caustic poison law.

§ 171. Definitions. 1. The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCI) in a concentration of ten per centum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H2SO4) in a concentration of ten per centum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO3) in a concentration of five per centum or more; (d) carbolic acid (C6H5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five per centum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H2C2O4) in a concentration of ten per centum or more; (f) any sale of oxalic acid other than cerium oxolate and any preparation containing any such salt in a concentration of ten per centum or more; (g) acetic acid or any preparation containing free or chemically

unneutralized acetic acid (HC2H302) in a concentration of twenty per centum or more; (h) hypochlorus acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten per centum or more by weight of available chlorine, excluding calx chlorinate, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten per centum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per centum or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO3) in a concentration of five per centum or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH3), including ammonium hydroxide and "hartshorn," in a concentration of five per centum or more.

2. The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON," running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance: Provided, that such directions need not appear on labels or stickers on parcels, packages, or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use.

§ 172. Provisions governing sale and distribution. No person shall hereafter sell, barter, or exchange, or receive, hold, pack, display, or

offer for sale, barter, or exchange, any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; provided, that household products for cleaning and washing purposes, subject to this act and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed by any dealer, wholesale or retail; provided, further, that no person shall be liable to prosecution and conviction under this article when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this article. No person shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this article.

§ 172-a. Injunction proceedings; when authorized. Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against by action for injunction in the supreme court in the judicial district within which the same is found and seized pursuant to judgment rendered therein and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state board of pharmacy to be by it turned over to the comptroller at the end of each fiscal year; but such substance shall not be sold contrary to the laws of the state; provided, however, that upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof.

§ 172-b. Enforcement of article. The state department of agriculture and markets shall enforce the provisions of this article, and it is

hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this article as may be submitted to it for that purpose and as may in its judgment conform to the requirements of this article; provided, however, that in any prosecution under this article the fact that any brand or label involved in said prosecution has not been submitted to such board for approval, or if submitted, has not been approved by it, shall be immaterial.

§ 172-c. Penalties for violations. Any person violating the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

§ 172-d. Prosecutions for penalties. The state department of agriculture and markets and each district attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this article shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided.

§ 172-e. Construction of article. This article is not to be construed as applying to any substance, subject to this article, sold at wholesale or retail for use by a retail druggist in filling, or in dispensing in pursuance of, a prescription by a physician, dentist or veterinarian; or for use by or under the direction of a physician, dentist or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use or for use in any of the arts and sciences.

ARTICLE XV
BEE DISEASES

Section 173. Apiary industry advisory committee.
173-a. Definitions.
173-b. Eradication of bee diseases and certain insects affecting bees.
173-c. Cooperative honey bee health improvement program.
174. Keeping of diseased and banned bees prohibited; existence of disease to be reported.
175. Rules and regulations.
175-a. Review by court.
175-b. Violations; remedies.

§ 173. Apiary industry advisory committee. 1. There is hereby established within the department an apiary industry advisory committee which shall consist of no more than fifteen members to be appointed by the commissioner based on their experience and expertise in the apiary industry. Of the members so appointed, at least two members shall represent each of the three sectors of the apiary industry, commercial beekeepers, part-time beekeepers and hobbyist beekeepers; at least one member shall represent the horticulture or vegetable industry and one member shall be an officer or employee of the Cornell cooperative extension service or the New York state college of agriculture and life sciences at Cornell university. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, five shall serve for a term of one year, five shall serve for a term of two years, and five shall serve for a term of three years. Members shall serve without salary. The commissioner or his or her designee shall be the chairperson of the committee.

2. The duties and responsibilities of the apiary industry advisory committee shall include providing advice, comments and recommendations to the commissioner regarding state government plans, policies and programs affecting the apiary industry and such other matters as the commissioner may request in relation to this article.

3. The advisory committee shall meet at least once annually, at times

and places set by the commissioner.

4. The commissioner may ask other individuals to attend the committee's meetings or work with it as needed.

§ 173-a. Definitions. When used in this article:

1. "Apiary" shall mean any location used for raising honey bees or producing honey or other bee related products.

2. "Colony" shall mean any production unit of bees.

3. "Nucleus colony or nucs" shall mean a starter colony, consisting of a laying queen and up to five frames of brood and bees.

4. "Beekeeper" shall mean any individual or entity that maintains managed honey bees for profit, research, recreational, or educational purposes.

5. "Queen" shall mean the single reproductive female in a colony of honey bees.

6. "Brood comb" shall mean the beeswax structure of cells where the queen bee lays eggs in which immature bees are reared.

§ 173-b. Eradication of bee diseases and certain insects affecting bees. The commissioner may cause inspections to be made of apiaries in the state for the discovery of infectious, contagious or communicable diseases and for the discovery of insects and parasitic organisms adversely affecting bees, and for the discovery of species or subspecies of bees which have been determined by him to cause injury, directly or indirectly, to this state's managed bee population, crops, or other plants. The commissioner shall provide a beekeeper or such beekeeper's designated agent with reasonable advance notice of any inspection of an apiary. The commissioner may also cause investigations to be made as to

the best method for the eradication of diseases of bees, insects or parasitic organisms adversely affecting bees, or for the eradication of species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's managed bee population, crops, or other plants and the commissioner may plan and execute appropriate methods for such eradication.

The commissioner shall have access to all apiaries, structures, appliances, buildings, vehicles, airplanes, vessels or premises where bees or honey or comb used in apiaries may be and may open any hive, colony, package or receptacle of any kind containing or which the commissioner has reason to believe contains any bees, comb, bee products, used beekeeping appliances, or anything else which is capable of transmitting contagious or infectious diseases of bees or which is capable of harboring insects or parasitic organisms adversely affecting bees, or species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's managed bee population, crops, or other plants.

§ 173-c. Cooperative honey bee health improvement program. 1. In support of the duties outlined in this article, as well as the goals and objectives for pollinator protection; the commissioner shall create a cooperative honey bee health improvement program which will require that:

(a) All beekeepers shall provide to the commissioner the number of managed colonies; the county in which each of these colonies is located; and current contact information of the individual or individuals responsible for the care of these bees. All beekeepers shall also indicate whether they intend to sell nucleus colonies. This information shall be updated and provided to the commissioner on an annual basis.

(b) The department shall use this information to communicate the incidence of infectious diseases and parasites at the county level to beekeepers and bee clubs and to notify beekeepers of the potential need for the department to prohibit the movement or selling of diseased or infested bees or require the destruction of such bees. The department shall also use this information to establish the boundaries of disease

and parasite infestations in the area surrounding a confirmed disease or parasite infestation.

(c) Any individual or business that intends to sell nucs or queens produced within and offered for sale to other persons in New York must first have an inspection of its apiaries, as authorized by section one hundred seventy-three-b of this article, by the department which inspections shall continue on an annual basis, so long as nucs or queens are offered for sale. These inspections shall ascertain whether such beekeeper's apiaries are free from American Foulbrood and whether levels of other infectious diseases and parasites in the operation render the nucs or queens unfit for sale. Any individual or business whose nucs or queen rearing colonies are found to be infested with American Foulbrood, after laboratory confirmation, shall be prohibited from selling nucs and queens until the affected apiaries are reinspected and found to be free from American Foulbrood. If upon re-inspection, symptoms of American Foulbrood are found to persist, the prohibition from selling nucs and queens shall continue, and the department shall take samples for laboratory testing for the continued presence of American Foulbrood. Should the laboratory test results show the samples free from American Foulbrood, the department shall promptly notify the individual or business of the test results and the termination of the prohibition of the sale of nucs and queens.

(d) No person shall knowingly transport, move, buy, sell, possess, barter, offer for sale or barter, deliver, or offer for transportation any species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to the public health or welfare or to this state's managed bee population, crops, or other plants; provided, however, that the commissioner may, at his or her discretion, exempt the transportation, sale, possession, movement, or delivery of such bees used for scientific or educational purposes under such safeguards as deemed necessary by the commissioner.

(e) Every shipment of live bees in cages or packages without comb into this state from another state or foreign country, shall be accompanied by a permit issued by the commissioner, or by a certificate of freedom from disease executed by an official of such state or foreign country recognized by the commissioner.

(f) Every shipment of a colony of bees, used brood comb, used

beekeeping equipment, or live bees on comb into this state from another state or foreign country, shall be accompanied by a permit issued by the commissioner or by a certificate of freedom from diseases and parasitic organisms adversely affecting bees and from species or subspecies of bees which have been determined by the commissioner to cause injury directly or indirectly, to the public safety or to the state's managed bee population, crops, or other plants; and certifying that a proper inspection was made not earlier than sixty days preceding the date of shipment. Such certificate shall be executed by the certifying official of such state or foreign country. A duplicate of such certificate must be received by the department before any such shipment enters the state. Every transportation company that knowingly receives such shipment shall immediately notify the commissioner thereof, giving the name and address of the consignor or consignee.

2. The goals of the cooperative honey bee health improvement program shall be to:

(a) document the health of the state's managed pollinator population, including the presence of parasites, diseases, and environmental threats to the state's population of managed pollinators;

(b) provide information on honey bee health to beekeepers, stakeholders and academia to inform research and best management practices related to pollinator health;

(c) document the annual population of managed pollinators in each county within New York state; and

(d) collect contact information for each beekeeper to allow for better communication among the department and beekeepers relating to the incidence of parasites, disease and other health threats that could be transmitted within the flight range of managed pollinators.

3. There shall be no fee or other registration cost for participation in the cooperative honey bee health improvement program.

4. A beekeeper required to submit information to the commissioner pursuant to this section may request that such information be exempted from disclosure pursuant to subdivision five of section eighty-nine of the public officers law.

§ 174. Keeping of diseased and banned bees prohibited; existence of disease to be reported. 1. No person shall keep in such person's possession or under such person's care any colony of bees affected with a contagious or infectious disease or infested by disease or parasitic organisms adversely affecting bees, or by species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to the public safety or to this state's managed bee population, crops, or other plants. Any person who knows that any bees owned or controlled by such person exceed disease or parasite tolerances or are a species or subspecies of bees that have been determined by the commissioner to cause injury, directly or indirectly, to the public health or welfare or to this state's managed bee population, crops, or other plants, such tolerances and determinations to be established in regulation by the commissioner, shall at once report such fact to the commissioner, stating all facts known to such person with reference to said contagion, infection, or exposure. Information regarding allowable disease and parasite tolerances and species and subspecies of bees shall be made available on the department's website.

2. No person shall hide or conceal any bees or used beekeeping equipment from department apiary inspectors or give false information in any manner pertaining to this article. No person shall resist, impede or hinder the commissioner or the commissioner's duly authorized representatives in the discharge of his or her or their duties.

3. Whenever the commissioner or the commissioner's duly authorized representatives shall determine that any colony of bees, bee material, structures or appliances is infected with, or has been exposed to, contagious or infectious diseases of bees, or is infested with or has been exposed to insects or parasitic organisms adversely affecting bees, or to species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's managed bee population, crops, or other plants, said colonies of bees and material, structures or appliances shall be immediately placed under quarantine and a written notice thereof shall be served on the owner or

caretaker. No person shall move, tamper with, handle, or otherwise disturb or molest or cause to be moved, tampered with, handled, or otherwise disturbed or molested any colonies, materials, or appliances so quarantined without a written permit from the commissioner or the commissioner's duly authorized representatives.

4. (a) All species and subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to the public health or welfare shall be destroyed per commissioner order.

(b) A beekeeper who received notification that he or she is prohibited from selling nucs or queens as they have been deemed unfit for sale by laboratory confirmation of American Foulbrood, may be ordered by the commissioner to destroy such colonies.

(c) During the time specified in either such order authorized by this subdivision, the quarantined colonies and equipment shall not be removed, molested or tampered with except by written permission of the commissioner or the commissioner's duly authorized representative. No damage shall be awarded to the owner for the loss of any apiary, bees, hives, apiary appliance or bee product destroyed under the provisions of this section or a regulation or order made in pursuance thereof.

4-a. All species and subspecies of bees determined by the commissioner to cause injury to this state's managed bee population, crops, or other plants and all bees, beehives, bee fixtures or appurtenances infected with, or exposed to, contagious or infectious diseases of bees, or infested with, or exposed to, insects or parasitic organisms adversely affecting bees, or with or to species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's managed bee population, crops, or other plants, are hereby declared to be nuisances to be abated as hereinafter described.

5. If any inspection made by the commissioner or the commissioner's duly authorized representative discloses that any apiary, appliances, structures, colonies or comb constitute a nuisance within the meaning of this section, the commissioner or the commissioner's duly authorized representatives may with the co-operation and consent of the owner or

person in charge immediately proceed to abate the nuisance by destroying or treating such colonies and equipment, or he or she may order the owner or person in charge to destroy or treat such colonies or equipment as may be deemed advisable. In case the owner or person in charge will not consent to the abatement of the nuisance by immediate destruction or treatment, the commissioner or the commissioner's duly authorized representative shall notify the owner, occupant or person in charge of the premises in writing that such nuisance exists and order that the same be abated within five days after a date which shall be specified in said order. Such order shall also contain directions setting forth the method or methods which shall be taken to abate the nuisance and shall be served upon the owner, occupant or person in charge of the premises either personally or by registered or certified mail.

6. Any person believed to have violated any provision of this article shall receive written notice of such alleged violation and an opportunity to be heard to dispute such alleged violation. A beekeeper who receives an order that directs the destruction or treatment of any bees, hives, fixtures or appurtenances deemed a nuisance or notification that such beekeeper is prohibited from selling nucs and queens pursuant to paragraph (c) of subdivision one of section one hundred seventy-three-c of this article may, within five days from the receipt of the order or notification, request a hearing thereon. The order or notification shall advise the beekeeper of the right to such hearing, the procedure to be followed and the manner in which the request may be made to the commissioner. Upon receipt of such request, the commissioner shall give the beekeeper ten days' notice in writing of a hearing for the beekeeper to show cause why the destruction, treatment or prohibition on selling by the order or notification is not appropriate. The hearing shall be held on the record. The request for a hearing shall act to stay all proceedings until a final determination rendered by the commissioner. During the time specified in the order and during any extended time, pending such final determination, the quarantined colonies and equipment shall not be removed, molested or tampered with except by written permission of the commissioner or the commissioner's duly authorized representative. No damage shall be awarded to the owner for the loss of any apiary, bees, hives, apiary appliance, or bee

product destroyed under the provisions of this section or any regulation or order made in pursuance thereof.

7. Persons keeping bees shall keep them in hives of such construction that the frames and combs may be easily removed without damaging them for examination of the brood for the purpose of determining whether disease exists in the brood.

8. No person shall knowingly expose in any place to which bees have access any bee product, hive or other apiary appliance in such manner that contagious or infectious diseases of bees may be disseminated therefrom.

9. The commissioner may promulgate rules and regulations to establish appropriate tolerance levels for diseases or parasitic organisms adversely affecting bees within hives, fixtures, structures or appurtenances. Beehives conforming with such established tolerance levels shall not be considered nuisances under this section. If upon inspection a hive is found to exceed such tolerance levels, the commissioner may consider such apiary to be a nuisance and may order the destruction or treatment of the apiary as set forth in subdivisions four, four-a, five and six of this section.

§ 175. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt, promulgate and issue such rules and regulations as the commissioner may deem necessary to carry out and give full force and effect to the provisions of this article, including, but not limited to, the designation of species or subspecies of bees determined by him or her to cause injury, directly or indirectly, to the public safety or to this state's managed bee population, crops, or other plants. Such rules and regulations shall be filed and open for public inspection at the principal office of the department and shall have the force and effect of law.

§ 175-a. Review by court. The final determination of the commissioner

on a hearing as authorized by subdivision six of section one hundred seventy-four of this article may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, provided, however, that a stay shall not be granted by the court or a justice thereof pending final determination of the matter except on notice to the commissioner. The determination of the commissioner after the opportunity for a hearing and any hearing shall be final unless within thirty days from the receipt of written notice thereof a proceeding is instituted to review the same.

§ 175-b. Violations; 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 promulgated thereunder and in addition to any other remedy prescribed in article three of this chapter or otherwise may apply for relief by injunction if necessary to protect the public interest or abate a nuisance as defined in this article 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 civil practice law and rules and the rules of practice of the court, or to the supreme court in the third judicial district.

ARTICLE 15-A
SALES OF BABY CHICKS

Section 175-m. Offering baby chicks for sale.
175-n. Application for permit; fee.
175-o. Containers; labels.
175-p. Reports of sale.
175-q. Rules and regulations of department.
175-r. Violations.

§ 175-m. Offering baby chicks for sale. Before any baby chicks are offered for sale at public auction or community sale, except baby chicks that have been duly entered and exhibited at public exhibitions, a

permit shall be granted to offer such baby chicks for sale by the department of agriculture and markets as provided in this article. The term "baby chicks," as used in this article, means any domestic fowl under the age of six weeks.

§ 175-n. Application for permit; fee. Any person who desires to offer baby chicks for sale at public auction or community sale shall apply for a permit to do so prior to the date of the proposed sale to the department of agriculture and markets on a form which shall be prescribed and furnished by such department. The application shall be signed by the person who proposes to conduct such sale. The application shall designate the date of the proposed sale, the number and the breed of the baby chicks which are to be offered for sale, and the person by whom they were produced, and shall be accompanied by a fee in the sum of ten dollars for each and every day or fraction thereof during or on which it is proposed to sell baby chicks. The department of agriculture and markets is hereby authorized in its discretion to grant or deny the permit requested in such application. If the department deems advisable, it may require the applicant, as a condition precedent to the granting of such permit, to submit a certificate in such form as the department may prescribe, certifying that the baby chicks which are to be offered for sale are in a healthy condition and free from any such disease as the department may designate.

§ 175-o. Containers; labels. Before any such baby chicks are offered for sale or sold, each box, crate, coop or other container shall be plainly labeled with appropriate statements designating the kind and number of chicks in each such container, the date on which such chicks were hatched and by whom hatched, whether such chicks are sexed or unsexed, and, if sexed, such container shall designate whether the contents are cockerel chicks or pullet chicks, and any other representations made at or prior to the time of sale relative to the purity of the breed and such tests as shall have been made on the parent stock for pullorum disease (bacillary white diarrhea).

§ 175-p. Reports of sale. Within three days after the sale under permit, as provided in this article, shall have been held, the person who conducted the sale shall send a statement to the department giving a complete list of the number and kind of baby chicks sold at such sale, together with the representations and guarantees made in relation thereto, if any were made by the person who conducted such sale, and the person conducting such sale shall be held to have had full knowledge of the representations and guarantees made at the time of such sale and shall be as fully responsible and liable for any such representations and guarantees as is the person who set forth such representations and guarantees on the containers as provided in section one hundred seventy-five-o of this chapter.

§ 175-q. Rules and regulations of department. The department of agriculture and markets is hereby authorized to make such rules and regulations as may be necessary to administer the provisions of this article.

§ 175-r. Violations. Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars.

ARTICLE 16

WEIGHTS AND MEASURES

Section 176. Declaration of policy and purpose.
177. Authorized systems of weights and measures; basic units.
178. Physical standards of weights and measures.
179. Powers and duties of the commissioner.
180. Municipal directors of weights and measures.
181. Powers and duties of municipal directors; prosecution for violations; local fees.
182. Notification and use of weighing and measuring devices.
183. Sealing of approved devices.

184. Condemnation, seizure or repair of false devices.
185. Stop-use, stop-removal and removal orders.
186. Possession and use of false devices; responsibility.
187. Oscillation of weighing devices.
188. Service charge based on quantity.
189. Method of sale of commodities generally.
190. Method of sale of food and food products.
190-a. Home food service plan sales.
190-b. Sale of meat in bulk or on a gross or hanging weight basis.
191. Standardized packaging.
192. Sale and delivery of petroleum products.
192-a. Fuel octane labelling requirements.
192-b. Fuel lead content labelling and requirements.
192-c. Motor fuel standards and labelling; cetane rating of diesel fuel; alcohol content.
192-e. Sale and delivery of liquefied petroleum gas.
192-f. Bulk sales or transportation; coal and coke.
192-g. Methyl tertiary butyl ether; prohibited.
192-h. Alternate generated power source at retail gasoline outlets.
193. Fair packaging and labeling of containers.
194. False labels.
195. Licensing of weighmasters; duties.
195-a. Weight tickets issued in other states.
196. Statewide uniformity.
197. Construction of contracts.
197-a. Weights and measures fees.
197-b. Retail pricing accuracy.

§ 176. Declaration of policy and purpose. The legislature hereby finds and declares that voluntary and orderly conversion to the metric system of weights and measures is of vital importance to the economy of the state. It is hereby declared to be the public policy of this state to encourage the gradual implementation of the metric system throughout the state's government, industry, commerce, business, education and

agriculture. This article is enacted in the exercise of the public power in order to encourage such implementation and to provide a revised code of weights and measures which will be responsive to the present and future needs of commerce, industry and consumers. The legislature finds and declares that the coordination and administration of this unitary regulatory system governing weights and measures throughout the state should be, and is hereby, vested in the commissioner of agriculture and markets and that enforcement of this article by the counties and cities of the state shall be under his supervision.

§ 177. Authorized systems of weights and measures; basic units. 1. The metric system of weights and measures and the system of weights and measures in customary use in the United States are jointly recognized, and either system shall be used for all commercial purposes within the state. However, the International Metric System ("SI"), as defined in the Metric Conversion Act of nineteen hundred seventy-five (Public Law 94-168) and as such definition may hereafter be amended, is hereby adopted as the preferred system within the state.

2. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards or its successor organization, the national institute of standards and technology, of the United States department of commerce are recognized and shall govern weighing and measuring equipment and transactions in the state.

§ 178. Physical standards of weights and measures. The primary standards within this state shall be the weights and measures furnished by the government of the United States, based upon the federal prototype standards, and such other standards as may be received from the federal government in addition thereto or in renewal thereof, as well as other standards which may be added by the state department of agriculture and markets and certified by the national bureau of standards or its successor organization, the national institute of standards and technology.

§ 179. Powers and duties of the commissioner. The commissioner is hereby authorized to:

1. Administer, supervise and enforce the provisions of this article.

2. Promulgate such rules and regulations as he may deem necessary to supplement and give full effect to this article.

3. a. Adopt and incorporate by reference in such rules and regulations any official handbook, or part thereof, published by the national bureau of standards or its successor organization, the national institute of standards and technology, and file any handbook, or part thereof, so adopted with the secretary of state.

b. Adopt rules and regulations in consultation with the commissioner of environmental conservation, setting forth standards relating to petroleum product and alternative fuel quality, specifications, and sampling and testing methods. Rules and regulations relating to octane ratings and lead content of gasoline shall be consistent with applicable federal statutes and regulations. Insofar as practicable, such rules and regulations shall be consistent with standards established by the National Institute of Standards and Technology and the American Society for Testing and Materials. For the purpose of this section, the term "alternative fuel" means alcohols such as ethanol, methanol, butanol and non-petroleum liquid or gaseous fuels, other than alcohol, derived from biological materials, suitable for use and consumption in the engine of a motor vehicle.

4. Take charge of the standards adopted by this article as the primary standards of the state; cause them to be kept in the principal office of the department in the city of Albany, from which they shall not be removed except for repairs or for certification; and take all other precautions for their safekeeping.

5. Submit such primary standards to the national bureau of standards

or its successor organization, the national institute of standards and technology, for certification as often as he may deem necessary or upon the request of such bureau.

6. Maintain a complete set of copies of such primary standards, which shall be used for adjusting municipal standards, and the primary standards shall not be used except for the adjustment of this set of copies.

7. Procure such apparatus, equipment and standards, if the same have not already been procured, as are necessary in the comparison and adjustment of municipal standards.

8. Keep a complete record of the standards, balances and other related apparatus which are in his possession.

9. Inspect, either personally or through his authorized agents, as often as he deems necessary but no less than once every two years, the standards of weights and measures of each county and of each city which maintains a weights and measures program; and at least every five years, compare the same with those in his possession and make such corrections in the municipal standards as are necessary; and keep a record of the same.

10. Supervise the weights and measures, weighing and measuring devices and systems, and accessories related thereto, which are sold, offered or exposed for sale, or used in the state.

11. Test, calibrate and certify, upon the request of any person, firm or corporation, standards of weights and measures, weighing and measuring devices and systems, and accessories related thereto; and charge such fees therefor as he deems appropriate.

12. (a) Establish specifications, amounts of tolerances and reasonable variations allowable for weights and measures, weighing and measuring devices and systems, and accessories relating thereto, for packaged commodities sold, or offered or exposed for sale in the state, for the

composition and quality of petroleum products, and the testing methods therefor, giving due recognition to federal and state requirements, and enter into such written agreements as the commissioner may deem appropriate, with federal agencies and other state agencies for the purpose of establishing and enforcing uniform specifications and tolerances and (b) establish, by regulation, and collect an appropriate fee commensurate with costs, for the examination of all new types of weighing and measuring devices and systems, and accessories relating thereto prior to their introduction into commerce.

13. Inspect and test, either personally or through his authorized agents, weights and measures, weighing and measuring devices and systems, and accessories relating thereto which are used commercially within the state by any person, firm or corporation in determining the weight, measure or count of commodities or things sold, or offered or exposed for sale on the basis of weight, measure or count, or in computing the basic charge or payment for services rendered on the basis of weight, measure or count, or in the case of coin counting machines which are used commercially within the state by any coin processor required to be licensed pursuant to article twenty-seven-A of the general business law ("coin processor licensing act"), in determining an accurate count of coins, in order to ascertain if such weights and measures, weighing and measuring devices and systems, or accessories related thereto are correct and are being used correctly; and charge fees commensurate with the cost of each such inspection or test for inspections and tests which are not otherwise conducted by municipalities. The commissioner is also authorized to charge fees commensurate with the cost of each such inspection or test for inspections and tests conducted for the purpose of certifying municipal weighing and measuring devices and systems. Fees authorized by this subdivision shall be established by the commissioner by regulation.

14. Weigh, measure and inspect, either personally or through his authorized agents, packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether such packages contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this article or the rules

and regulations promulgated pursuant thereto.

15. Cause to be tested, as often as he deems necessary by a weights and measures official all weights and measures, weighing and measuring devices and systems, and accessories related thereto, used in checking the receipt or disbursement of supplies in every state agency or institution, and report in writing to the head of the agency or institution concerned; and, at the request of the head of any state agency or institution, appoint in writing one or more employees, then in actual service of such agency or institution, who shall act as special deputies for the purpose of checking the receipt or disbursement of supplies.

16. Supervise municipal weights and measures programs and, in conjunction therewith, examine and evaluate, either personally or through his authorized agents, such programs as often as he deems necessary and report the results thereof.

17. Establish, jointly with the state civil service commission, standards governing the qualifications and appointments of municipal directors of weights and measures, their deputies and employees.

18. Provide technical assistance and training, and issue such instructions to municipal weights and measures officials as he deems appropriate to effectuate the provisions of this article. Such instructions shall be binding upon and govern such officials in the discharge of their duties.

19. a. Inspect, test, and take samples, of any and all petroleum products and alternative fuel kept, offered or exposed for sale or in the process of delivery or transport and inspect any and all documents and records required to be maintained by this article. The commissioner of taxation and finance may request from the commissioner cooperation and technical assistance, including, among other things, the inspection, testing and sampling of petroleum products, in connection with the administration and enforcement of the fee and taxes imposed with respect to such products by or pursuant to article twelve-A, thirteen-A,

twenty-eight or twenty-nine of the tax law.

b. Provide test kits, sample containers and shipping and custody documents for municipal weights and measures programs and reimburse such municipalities for the cost of petroleum product and alternative fuel samples and sample shipping to a testing facility designated by the commissioner.

c. Provide financial reimbursement to municipalities for activities undertaken by municipal weights and measures programs, for one annual inspection, screening test, and sample of fuel being held, kept, stored, or transported in a terminal storage tank or in a storage tank located at a retail fuel outlet and for all additional inspections of petroleum products and alternative fuel prescribed by the commissioner. The commissioner, by regulation, shall establish the amount of such reimbursement and the means by which municipalities can qualify for such reimbursement.

20. Pursuant to delegation from the commissioner of environmental conservation under paragraph f of subdivision one of section 19-0301 of the environmental conservation law, and notwithstanding any other provision of this chapter, exercise the authority of the department of environmental conservation to test fuels for conformance with applicable standards and to enforce against violations of such standards.

§ 180. Municipal directors of weights and measures. 1. There shall be a county director of weights and measures in each county, except where (a) a county is wholly embraced within a city there shall be a city director of weights and measures, or (b) where two or more counties have entered into an intermunicipal agreement, pursuant to article five-G of the general municipal law, to share the functions, powers, and duties of one director of weights and measures. Any county or city having a population of one million or more may elect to designate its commissioner of consumer affairs as its director of weights and measures. The county of Westchester may elect to designate its commissioner or director of consumer affairs as its director of weights

and measures. Subdivision four of this section shall not apply to a commissioner or director of consumer affairs so designated.

2. No city may institute a weights and measures program. Provided, that any city which maintained a weights and measures program on January first, nineteen hundred seventy-six may continue such program under a city director of weights and measures.

a. Any such city may contract with the legislature of the county in which it is located for the county director of weights and measures to perform the duties of and have the same powers within such city as the city director. Such contract shall fix the amount to be paid annually by the city to the county for such services. During the period such contract is in force and effect, the office of city director of weights and measures shall be abolished.

b. The county director shall not have jurisdiction in any city which has a city director of weights and measures, except in the county of Westchester the county director shall have concurrent jurisdiction with city directors of weights and measures in such county.

3. Nothing contained herein shall prohibit the governing body of any county or city from assigning to its municipal director powers and duties in addition to the powers and duties prescribed by this article provided such additional powers and duties deal primarily with services designed to aid and protect the consumer and are not inconsistent with the provisions of this article.

4. The municipal director shall be appointed by the appropriate authority of the municipality in which he resides having the general power of appointment of officers and employees. Where two or more counties have entered into an intermunicipal agreement, pursuant to article five-G of the general municipal law, to share the functions, powers, and duties of one director of weights and measures, such municipal director may reside in any county that is a party to the intermunicipal agreement. He shall be paid a salary determined by the appropriate authority and shall be provided by such authority with the

working standards of weights, measures and other equipment as required by rules and regulations promulgated in accordance with this article. The position of municipal director shall be in the competitive class of the civil service with respect to all persons appointed on or after the effective date of this act.

§ 181. Powers and duties of municipal directors; prosecution for violations; local fees. Each municipal director appointed pursuant to the provisions of section one hundred eighty of this article, personally or through his authorized agents, shall:

1. Administer, supervise and enforce within his municipality the provisions of this article and the rules and regulations adopted pursuant thereto.

2. Take charge of and safely keep the municipal standards and, at least once every five years, submit such standards to the commissioner, at the place where the standards of the state are kept, for calibration and certification.

3. Keep a complete record of the work done by him and make reports of such work to the commissioner at the times and in the form required by the commissioner.

4. In the general performance of his official duties, in the execution of the provisions of this article; have access to all places of business, buildings or premises; and stop any vendor or dealer whatsoever for the purpose of making proper inspections and tests.

5. Inspect, test and ascertain, as frequently as prescribed by the commissioner, if weights and measures, weighing and measuring devices and systems and pricing devices and systems, and accessories related thereto, which are used commercially by any person, firm or corporation, including but not limited to coin counting machines used by any coin processor required to be licensed pursuant to article twenty-seven-A of the general business law ("coin processor licensing act"), are correct

and being used correctly.

6. Weigh, measure and inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether such packages contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this article or the rules and regulations promulgated pursuant thereto.

7. a. Upon finding a violation of the provisions of this article or the rules and regulations promulgated pursuant thereto, expeditiously cause the same to be corrected or where there is evidence of intent to defraud refer evidence of such violation to the district attorney of the county for prosecution under section forty-one of this chapter or in the absence of intent to defraud refer to the attorney for the municipality for commencement of a civil action, in the name of the municipality, to recover a civil penalty in the amounts prescribed in sections thirty-nine and forty of this chapter. A cause of action for recovery of such penalty may be released, settled or compromised by the municipal director before the matter is referred to the municipal attorney or thereafter by such attorney. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder shall be retained by the municipality.

b. The municipal director in a city having a population of one million or more may hold a hearing to determine whether a violation of the provisions of this article has occurred. At least two weeks written notice of a hearing shall be served either personally on the individual in charge of the place of business where the alleged violation occurred or by certified or registered mail addressed to such place of business. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time and place that the hearing will be held. At a hearing conducted by him or his designee, the municipal director shall be authorized to recover any penalty imposed as the result of a finding of a violation of the provisions of this article.

8. Have authority to establish and collect fees for the inspection and

testing of all weights and measures, weighing and measuring devices and systems and pricing devices and systems, and accessories related thereto within his jurisdiction. Provided, however, that the commissioner shall, after public hearing, promulgate rules and regulations fixing maximum levels for such fees and governing any other aspect thereof, including the frequency of such inspections, as he deems necessary. All fees collected by the municipal director shall be paid into the appropriate municipal treasury. No additional inspection fees shall be assessed for pricing accuracy inspections where the retail store being inspected has previously passed two consecutive inspections during the calendar year.

9. Inspect and test fuels for conformance with applicable standards and enforce against violations of such standards.

§ 182. Notification and use of weighing and measuring devices. No person shall use, for the purpose of determining the weight, quantity or price of any commodity sold, or offered or exposed for sale, any new, used or repaired weighing or measuring device or system, or accessory related thereto, unless he or she has first notified the appropriate municipal director of weights and measures in writing, or by such other means as the director may deem acceptable, of such intended use or unless such device, system or accessory has been inspected, tested and sealed. Each installation or repair shall be made in conformance with specifications, tolerances and variations allowable as established by the commissioner.

§ 183. Sealing of approved devices. 1. Whenever any weights and measures official inspects any weighing or measuring device or system and finds that it corresponds with, or causes it to correspond with, the standards in his possession, and further finds that it meets the specifications, tolerances and variations allowable as established by the commissioner, he or she shall attach an appropriate official seal to such device or system, or a security seal, as appropriate for purposes of this subdivision. The term "official seal" shall mean an approval notice, decal or label affixed to a device or system indicating that the

device or system has been inspected by a weights and measures official and found to be in compliance as described in this section. The term "security seal" shall mean a wire or paper seal or similar nonreusable closure or an electronic audit trail, used to indicate that modifications or adjustments have been made to a device or system.

2. No person, except a weights and measures official, shall remove any official seal or security seal from any such weighing or measuring device or system, or obliterate or deface any such seal or cause any of the foregoing, except that the device owner, or his or her agent, may remove a seal to perform repairs and maintenance provided that he or she: (a) has first notified the appropriate municipal director of weights and measures as set forth in section one hundred eighty-two of this article; (b) otherwise complies with section one hundred eighty-two of this article; and (c) in the case of a security seal, replaces it with an equivalent security seal.

3. All users of commercial weighing or measuring devices or systems shall permit the inspection and testing of the same by any weights and measures official for the purpose of emplacing or examining such seals.

§ 184. Condemnation, seizure or repair of false devices. 1. Whenever any weights and measures official inspects any weighing or measuring device or system and finds that it does not correspond with the standards in his possession or does not meet the specifications, tolerances and variations allowable as established by the commissioner, he shall condemn the same and either seize it or order it repaired or removed. In the case of seizure, such device or system may be disposed of only as directed by the commissioner or his authorized agent.

2. No person shall use or attempt to use, for the purpose of determining the weight, quantity or price of any commodity sold, or offered or exposed for sale, any weighing or measuring device or system to which there has been affixed or upon which there has been placed any condemnation tag unless such condemnation tag has been removed therefrom by a weights and measures official.

3. No person, except a weights and measures official, shall remove from any weighing or measuring device or system any condemnation tag which has been affixed thereto or placed thereon or obliterate, cover, obstruct or deface the same or cause any of the foregoing.

§ 185. Stop-use, stop-removal and removal orders. 1. Any weights and measures official shall have the power to issue stop-use orders, stop-removal orders and removal orders with respect to weights, measures, and weighing and measuring devices and systems, being or susceptible of being commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered or exposed for sale, sold or in process of delivery whenever in the course of his enforcement of the provisions of this article he deems it necessary or expedient to issue such orders.

2. It shall be unlawful for any person to use, or remove or fail to remove from the premises specified, as appropriate, any weight, measure, weighing or measuring device or system, package, commodity or other thing, contrary to the terms of any order issued under the authority of this section.

3. A "stop-use order", when used in this section, shall mean any order or written notice declaring that the device, system or other thing being used is in contravention of this article and such use shall be stopped or discontinued.

4. A "stop-removal order", when used in this section, shall mean any order or written notice declaring that the device, system, commodity or other thing being used or handled is in contravention of this article and shall be removed from use or sale for a reasonable period of time pending correction.

5. A "removal order", when used in this section, shall mean any order or written notice declaring that the device, system, commodity or any other thing being used or handled is in contravention of this article

and shall be permanently removed from use or sale.

§ 186. Possession and use of false devices; responsibility. 1. No person shall retain in his possession any weight, measure or weighing and measuring device or system, knowing it to be false, with intent to use it or permit to be used for determining the quantity of any commodity. Possession of the same shall be prima facie evidence of a violation of this section.

2. For the purpose of purchase, sale or service, no person shall use a false weight, measure, device or system for determining the quantity of any commodity. If the seller furnishes the weight or measure of the commodity sold, he shall not sell or deliver less of any such commodity than the quantity represented to be sold; if the buyer furnishes the weight or measure of the commodity purchased, he shall not receive or accept more of any such commodity than the quantity represented to be purchased.

§ 187. Oscillation of weighing devices. No person selling, or offering for sale a commodity by net weight shall quote or state the net weight or the total selling price of such commodity unless the weight indicator of the weighing device on which it is being weighed is at rest.

§ 188. Service charge based on quantity. No person shall impose a service charge which is based upon quantity in excess of the actual quantity of any commodity or article serviced. Nothing in this provision, however, shall prohibit the person or persons rendering the service from establishing a minimum charge therefor; such minimum charge to apply to all quantities up to and including a fixed limit regardless of the actual weight or measure of the commodity involved. In the event of the establishment of a minimum charge, the dispenser of the service shall inform the person receiving the service, by advertisement or otherwise, of the terms of such minimum charge.

§ 189. Method of sale of commodities generally. All commodities, the method of sale of which is not prescribed by this chapter, shall be sold, or offered or exposed for sale by net weight, standard measure or numerical count pursuant to regulations promulgated by the commissioner. Such regulations may prescribe the method of sale for specific commodities or categories of commodities and may authorize a method of sale other than those prescribed in this section whenever the commissioner finds that such other method is appropriate and consistent with the interests of consumers.

§ 190. Method of sale of food and food products. 1. Definition of "food" and "food product." The terms "food" and "food product," as used in this section, shall include 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 shall also include all substances or ingredients to be added thereto for any purpose.

2. All food and food products which are sold, offered or exposed for sale by wholesalers, packers, distributors or jobbers shall be sold, or offered or exposed for sale by net weight, standard measure or numerical count and shall be plainly marked, in such form or manner as may be prescribed by the commissioner, by such person offering the food or food products for sale except that, unless required pursuant to the provisions of section two hundred fourteen-o of this chapter, it shall not be necessary to so mark meat, meat products or fish, other than shellfish in natural form, provided the net weight be stated on a written invoice and on the shipping container of the meat, meat product or fish.

3. All food and food products which are sold, offered or exposed for sale at retail and which are not in containers, shall be sold, offered or exposed for sale by net weight, standard measure or numerical count under such regulations as may be prescribed by the commissioner.

4. All food and food products which are packaged or wrapped by the retailer, and all food and food products which are packaged or wrapped in random weight, measure or count in advance of being offered or exposed for sale at retail shall be accurately marked, in such form or manner as may be prescribed by the commissioner, with (a) the net weight, standard measure or numerical count; (b) the selling price per pound or unit of standard measure and (c) the total selling price. Provided that in the case of food or food products packed at one place for subsequent shipment to and sale at another, the price and weight sections of the label may be left blank, to be filled in prior to being offered or exposed for sale at retail.

5. Wherever food or food products are packaged or wrapped for sale by a retailer in advance of being sold, or offered or exposed for sale, an accurate computing scale of sufficient capacity shall be maintained. Such scale shall be placed as to be easily accessible to customers and a prominent and conspicuous sign reading "for customer use" shall be displayed on or near such scale.

6. The provisions of this section shall not apply to commodities dispensed for consumption on the premises, or to packaging or receptacles used merely for the purposes of carrying or delivering commodities or containers which comply with the provisions of this section, or to a commodity in a container if the container contains (a) in the case of a commodity not a drug or cosmetic, less than one-half ounce avoirdupois, less than one-half fluid ounce or less than seven units, (b) in the case of a drug, less than seven units, or (c) in the case of a cosmetic, less than one-fourth ounce avoirdupois, less than one-eighth fluid ounce or less than seven units. The commissioner shall by regulation prescribe comparable metric quantities for the exceptions provided by this subdivision. The exceptions involving declarations in terms of count shall be permitted only if the units of commodity can easily be counted without opening the container.

§ 190-a. Home food service plan sales. 1. Definitions. As used in this section, unless the context otherwise requires, the following words and

phrases shall have the following meanings:

a. "Home food service plan" means any offering for sale to a household consumer of meat or poultry or seafood or the offering of such products in combination with each other or with any other food or non-food product or service sold as a unit for a total price in the aggregate in excess of two hundred dollars.

b. "Seller" means any person, partnership, corporation or association, however organized, engaged in the sale of food through home food service plans.

c. "Food spoilage protection" means any agreement, guarantee, warranty or contract offered by the seller whereby the buyer is insured or protected against loss of frozen food due to spoilage.

d. "Primal source" means the following cuts: (i) for beef, the primal sources are the round, flank, loin, rib, plate, brisket, chuck and shank; (ii) for veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib) and shoulder; and (iii) for pork, the primal sources are the belly, loin, ham, spareribs, shoulder and jowl.

e. "Item" means each constituent part or kind of meat cut from a primal souce, each kind of whole poultry, each kind of poultry part, every package of like seafood, and every package of like grocery and non-food products.

f. "Service charge" means the total price of the home food service plan (including, without limitation, the price of food and non-food items, membership fees and charges for delivery, cutting, wrapping, and freezing) less the total price of all food and non-food items included in the price of the plan.

2. Written contract required for home food service plans. All of the terms and conditions of a home food service plan sale shall be contained in a single written contract furnished to the buyer at the time of the execution of the contract.

3. Right of cancellation. The buyer shall have the right to cancel the home food service plan contract until midnight of the third business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later.

4. Disclosures required in a written contract. A seller of a home food service plan must disclose to buyers in a contract in writing, in a form approved by the commissioner of agriculture and markets, the following:

a. the name and address of the seller;

b. whether substitutions of food items may be or are made, under which circumstances such substitutions will be made, the substitution values in terms of price, and whether the prospective buyer has the right to refuse such substitutions;

c. the terms and conditions of food spoilage protection, if any;

d. that the buyer is not obligated to (1) enter into an additional home food service plan contract; (2) purchase any appliance, including, but not limited to, a freezer, refrigerator-freezer, or microwave oven; (3) purchase food spoilage protection; or (4) purchase any other product from the seller in order to enter into a home food service plan;

e. the U.S.D.A. quality grade of the meat supplied, if so graded, and the primal source, if applicable;

f. an itemized list of the components of the home food service plan;

g. the estimated weight of each meat, poultry and seafood item offered for sale under the home food service plan, provided, however, that such estimates shall not differ from the actual weight at time of delivery by more than five percent;

h. the price per pound of each meat, poultry and seafood item to be

supplied;

i. the total price of the home food service plan, the service charge and the estimated price of each meat, poultry and seafood item to be supplied;

j. the weight, measure or count and unit price of all other food and non-food items supplied for sale;

k. that at the time of delivery the buyer will be furnished with an itemized list stating the identity, primal source, if applicable, weight, measure or count, total number of packages supplied, price per pound, which shall be the price specified in the home food service plan contract, and total price of each food and non-food item included in the sale;

l. that the buyer may cancel the contract until midnight of the third business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later, by giving written notice of cancellation to the seller; and that within ten days after cancellation, the seller shall return to the buyer any note or other evidence of indebtedness and shall refund to the buyer all monies received from the buyer minus the price of the actual amount of food and non-food products delivered to and not returned or tendered by the buyer following cancellation. Notice of cancellation if given by mail shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

5. Invoice at delivery required. At the time of delivery, the seller shall provide to the buyer a written invoice disclosing the name and address of the seller and the identity, primal source, if applicable, weight, measure or count, total number of packages supplied, price per pound, which shall be the price specified in the home food service plan contract, and total price of each food and non-food item included in the sale.

6. Restriction on assignment of obligation. a. A seller shall not negotiate, transfer, sell or assign any note or other evidence of indebtedness, issued in connection with a home food service plan sale, to a finance company or other third party prior to midnight of the fifth business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later.

b. The assignee of any such note or other evidence of indebtedness shall be subject to all claims and defenses of the buyer against the seller arising from the sale notwithstanding any agreement to the contrary. The assignee's liability under this subdivision shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer under this section can be asserted affirmatively against or as a matter of defense to or set-off against a claim by the assignee.

7. Violations:

A violation of this section shall be subject to the applicable penalties of this chapter. A violation of this section shall not constitute a misdemeanor pursuant to the provisions of section forty-one of this chapter unless such violation is committed with intent to defraud.

In addition to the foregoing, an application may be made to a court or justice having jurisdiction to issue an injunction, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation.

§ 190-b. Sale of meat in bulk or on a gross or hanging weight basis. 1. Definitions. As used in this section, unless the context otherwise requires, the following words and phrases shall have the following meanings:

a. "Primal source" means the following cuts: (i) for beef, the primal sources are the round, flank, loin, rib, plate, brisket, chuck and shank; (ii) for veal and lamb or mutton, the primal sources are the leg, flank, loin, rack (rib) and shoulder; and (iii) for pork, the primal sources are the belly, loin, ham, spareribs, shoulder and jowl.

b. "Seller" means any person, partnership, corporation, or association, however organized, engaged in the sale at retail of meat provided however that this section shall not apply to any seller whose total annual retail sales are less than ten thousand dollars.

c. "Cutting loss" means the weight of meat, fat and bone removed from the carcass, side, quarter or primal source during standard or custom cutting procedures.

d. "Gross or hanging weight" means the weight of any single carcass, side, quarter or primal source of meat prior to cutting or trimming such meat into any constituent part.

2. Sale of a single carcass, side, quarter or primal source of meat. Sellers of a single carcass, side, quarter or primal source of meat may sell such meat on a gross or hanging weight basis, provided such meat is derived from a single carcass, side, quarter or primal source of meat. With respect to any other retail sale of meat, the seller shall disclose in writing to the buyer the net weight, the selling price per pound and the total selling price of each cut.

3. Disclosures required. A seller of a single carcass, side, quarter or primal source on a gross or hanging weight basis must provide to buyers, in writing, the following at the times indicated:

a. Prior to sale:

i. the name and address of the seller;

ii. the estimated gross or hanging weight of the order;

iii. the U.S.D.A. quality grade of the meat to be supplied, if so graded;

iv. the estimated total price of the order;

v. the estimated cutting loss on the order;

vi. a list, by name and estimated count, of each cut to be derived from each primal source;

vii. the price per pound of the carcass, side, quarter or primal source before cutting and wrapping;

viii. additional costs of cutting, wrapping and freezing, if any; and

ix. that the buyer may keep the cutting loss.

b. At the time of delivery:

i. the name and address of the seller;

ii. the total delivered weight of the meat;

iii. the cutting loss;

iv. a list, by name and count, of each cut derived from each primal source.

c. Exemption. This subdivision shall not apply to the sale of any carcass, side, quarter or primal source of meat which individually has a gross or hanging weight of fifty pounds or less.

4. Violations:

A violation of this section shall be subject to the applicable penalties of this chapter. A violation of this section shall not

constitute a misdemeanor pursuant to the provisions of section forty-one of this chapter unless such violation is committed with intent to defraud.

In addition to the foregoing, an application may be made to a court or justice having jurisdiction to issue an injunction, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation.

§ 191. Standardized packaging. 1. For the purposes of this section:

a. "Food store" shall mean a store selling primarily food at retail, which store is not primarily engaged in the sale of food for consumption on the premises.

b. "Consumer commodities" shall mean:

(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;

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

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

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

c. "Package" shall mean any container or wrapper in which a consumer commodity is enclosed and offered or exposed for sale in a food store.

d. "Package size" shall mean the physical dimensions of a container which encloses a consumer commodity.

e. "Quantity" shall mean the net weight, volume, numerical count, area or linear measure, as appropriate, of the contents of a package.

f. "Person" shall mean any individual, partnership, corporation, association, or firm.

2. Upon the petition of a substantial number of each group of manufacturers, packers, distributors, and retailers of any consumer commodity packaged or wrapped in advance of being offered or exposed for sale in a food store, the commissioner may hold a public hearing upon due notice to consider rules and regulations prescribing standard quantities or package sizes by which any such commodity shall be sold, or offered or exposed for sale in a food store. If the commissioner finds that the proposed standardization will reduce an undue proliferation of package sizes and facilitate the ability of consumers to make price comparisons, he may adopt and promulgate such rules and regulations with respect to such commodity unless a voluntary product standard has been established for such commodity pursuant to the federal fair packaging and labelling act. In addition to any such commodities, the commissioner may by rule and regulation, and without any public hearing, prescribe the existing standard quantities or package sizes for milk, cream, melloream, frozen desserts, flours and meals; thereafter the commissioner may prescribe standard quantities or package sizes for such commodities, whether or not a voluntary product standard has been established, without petition but shall hold a public hearing prior to the promulgation thereof.

3. No person shall sell, offer or expose for sale in a food store any consumer commodity for which the commissioner has prescribed, pursuant to subdivision two herein, a standardized quantity or package size except in a package or by a quantity which conforms to that prescribed by the commissioner.

§ 192. Sale and delivery of petroleum products. 1. No device shall be used for the purpose of dispensing and measuring petroleum products unless the owner of such device has complied with section one hundred eighty-two of this article.

2. a. Devices equipped with automatic temperature compensation shall

be used only if the device is used exclusively for wholesale transactions.

b. Automatic and non-automatic temperature compensation shall not be applied to retail sales of petroleum products.

3. Any person owning or operating any vehicle used for the delivery of any petroleum product and carrying any weighing, measuring or pricing device used in relation thereto shall submit such vehicle for inspection and testing to the weights and measures official of the municipality in which such vehicle is principally stored or kept. Such submission shall be done at least annually and at a location designated by the municipal director.

4. Except where otherwise agreed to by the parties in writing, all petroleum products delivered from a vehicle shall be measured by meter or other measuring device. Where petroleum products delivered from a vehicle are measured by meter, the seller shall provide the buyer with a mechanically prepared metered document which shall show the actual quantities of all grades of petroleum products delivered. Where petroleum products delivered from a vehicle are not measured by meter, the seller shall provide the buyer a mechanically prepared metered document which shall show the actual quantities of all grades of petroleum products transferred to the vehicle. The delivery ticket shall also contain the name and address of the seller and buyer, the date delivered, price per unit measure and total price; provided, however, that such delivery ticket need not set forth the total price if within five days after delivery the seller provides the buyer with a written statement setting forth all the foregoing information including the total price. All deliveries of home heating fuel oil shall be measured by meter, the delivery tickets shall be serially numbered, and a copy retained by the seller for a period of one year.

5. a. It shall be unlawful for any person, firm or corporation to sell or offer for sale at retail for use in internal combustion engines in motor vehicles or motorboats any motor fuel unless such seller shall:

(i) post and keep posted on the dispensing device from which such

motor fuel is sold or offered for sale a sign or placard, at least twelve inches in height and at least twelve inches in width, stating clearly and legibly with the whole cent numerals at least nine inches in height and at least two inches in width, the selling price per gallon of such motor fuel; or

(ii) where such individual pump or dispensing device dispenses more than two differently priced grades of motor fuel, only the highest and lowest selling price per gallon of such motor fuel dispensed therefrom must be posted thereon in conformance with all other provisions of this subdivision; or

(iii) where a multiple product dispensing device is capable of dispensing multiple products at multiple prices, then the selling price per gallon may be posted thereon with numerals at least one-half that height and one-half that width required by subparagraph (i) of this paragraph, although numerals representing tenths of a cent may be displayed at no less than one-half those dimensions which disclose the selling price per gallon of such motor fuel dispensed therefrom.

The signs and selling prices shall be posted so as to be clearly visible to the driver of an approaching motor vehicle or motorboat. The name, trade name, brand, mark or symbol, and grade of quality classification, if any of such motor fuel shall be permanently imprinted on said motor fuel dispensing device. The provisions of this subdivision shall not apply to a city, county, town or village which has already enacted and continues in effect a local law, ordinance, rule or regulation in substantial conformity with this subdivision. The provisions of this subdivision shall be enforced in the counties outside the city of New York by the county or city director of weights and measures, as the case may be, and in the city of New York by the department of consumer affairs.

b. Any person who shall violate the provisions of this subdivision shall be liable to a civil penalty of not more than one hundred dollars and for any subsequent violation shall be liable to a civil penalty of not more than five hundred dollars.

6. Gasoline stations; air pumps required. a. Definition. As used in

this subdivision: "dealer" shall mean any person owning or operating a premise or facility with four or more gas dispensing nozzles for the retail sale of motor fuels for use in motor vehicles.

b. Any dealer must provide on the premises where motor fuel is sold at retail for use in motor vehicles a functioning motor driven air compressor capable of inflating automobile tires for use by customers during hours in which such station is open for business. Jurisdiction in all matters pertaining to this subdivision shall be vested exclusively in the state. Any provision of any local law or ordinance or any rule or regulation promulgated thereto governing tire inflation operation or equipment shall upon the effective date of the chapter of the laws of two thousand twenty that amended this paragraph be preempted. Nothing in this section shall be construed to restrict a municipality from enforcing the provisions of this subdivision as it relates to providing functioning tire inflation equipment as required by the commissioner.

c. Wilful failure to comply with the provisions of this subdivision shall subject a dealer to a civil penalty of up to twenty-five dollars for each day such failure occurs. If the failure to comply results from the breakdown of the air compressor, the failure to repair within a reasonable time shall constitute wilful conduct.

§ 192-a. Fuel octane labelling requirements. 1. Automotive fuel ratings, certification and posting for automotive gasoline. No person shall distribute, sell, or offer for sale any automotive gasoline unless it meets such rating, certification and posting requirements as may be established by regulations duly promulgated by the commissioner. Any such requirements shall be the same as the applicable provisions of Title 15 of the United States Code and any rule adopted pursuant thereto. For purposes of this section, automotive gasoline shall mean an automotive spark-ignition engine fuel, which includes, but is not limited to gasohol, reformulated gasoline and oxygenated gasoline.

2. Regular gasoline. As used in this section, "regular gasoline" means unleaded gasoline, as defined in section one hundred ninety-two-b of

this article, with an octane rating (R+M)/2 of eighty-seven, as defined in Title 15 of the United States Code and rules adopted pursuant thereto. The term "regular", either by itself or in combination with any other term or name, shall not be used in connection with the sale, offering for sale, advertising or marketing of unleaded gasoline at retail that has a posted octane rating other than eighty-seven.

3. Inspection, investigation; recordkeeping. (a) The commissioner or the commissioner's designee, or the director of a municipal consumer affairs office or the director's designee, and/or a municipal director of weights and measures or the director's designee, upon presentation of appropriate credentials, shall be authorized to enter during regular business hours upon or through the business premises of any person who sells or offers for sale automotive gasoline or other petroleum products for use in motor vehicles or any place where such gasoline or petroleum product is stored, for the purposes of making inspections, taking samples and conducting tests to determine compliance with the provisions of this section or any rules or regulations promulgated hereunder and under section one hundred seventy-nine of this chapter.

(b) Whenever the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, has reason to believe that a violation of this section or any rule or regulation adopted pursuant to this section has occurred, he or she shall be authorized to make such investigation as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine any person and may compel the production of all relevant records.

(c) Any person subject to the provisions of this section shall maintain such written records as the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, may prescribe by regulation.

4. Violations and penalties. (a) (1) Upon finding that a person has violated any of the provisions of this section, or of any rule or regulation promulgated thereunder, the commissioner or the director of a municipal consumer affairs office, or a municipal director of weights and measures, or a representative of any one of such officials, may

issue and cause to be served upon such person an order directing the person to cease and desist from engaging in the prohibited activity. Upon the issuance of such an order, the person who is the subject of the order shall be provided written notice of the violation or violations charged and notice of such person's right to appear, in person or by attorney, for a hearing before the commissioner or director, as appropriate, or his or her designee, to be heard with respect to the violation or violations alleged. In the event that the imposition of penalties is to be considered at such hearing, the notice shall set forth the maximum penalties permissible under this section and the grounds for the penalties. Such notice shall further set forth that such person must notify, in writing, the commissioner or a director, as appropriate, within thirty days of the issuance of the notice of his or her intent to contest the violation or violations alleged; failure to so notify shall constitute a waiver of such person's right to a hearing on the violation or violations alleged. Upon receipt of such person's notice of intent to contest the violation or violations alleged, the commissioner or a director, as appropriate, shall schedule a hearing within a reasonable period of time. Following a hearing, the commissioner or a director, as appropriate, shall issue a written determination setting forth his or her findings, including any penalties imposed and cause such findings to be served upon such person by first class mail. The order shall become final upon the expiration of the time allowed for filing any administrative appeal which may be available.

(2) Any person who violates a final order of the commissioner, or of the director of a municipal consumer affairs office or a municipal director of weights and measures, as the case may be, shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars for each violation, notwithstanding the penalty provisions of section forty of this chapter which shall not apply to a violation of such order.

(b) Any person who violates the provisions of this section or any rules or regulations promulgated thereunder with actual knowledge or knowledge fairly implied on the basis of objective circumstances that the act or practice underlying the violation is unfair or deceptive shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars; provided, however, that in

order for any retailer to be held liable under this paragraph for violating any of the provisions of this section related to octane rating, certification or posting, such retailer shall be shown to have had actual knowledge that the act or practice underlying the violation is unfair or deceptive. Any person who engages in a particular act or practice after receiving written notice from the commissioner or the director of a municipal consumer affairs office, or a municipal director of weights and measures, or a representative of any one of such officials, that such act or practice constitutes a violation of this section, shall be presumed to have actual knowledge that such act or practice is unfair or deceptive. Such presumption shall be rebuttable by a preponderance of credible evidence which shows that such person did not have actual knowledge that such act or practice is unfair or deceptive. In determining the amount of any civil penalty imposed under this paragraph, the following shall be considered: the degree of culpability; any history of prior such conduct; ability to pay; effect on ability to continue to do business; and such other matters as justice may require.

(c) In the case of a violation through continuing failure to comply with any of the provisions of this section, any rules or regulations promulgated thereunder, or any order of the commissioner, or of the director of a municipal consumer affairs office and/or a municipal director of weights and measures, issued pursuant to this subdivision, each day of the continuance of such failure shall be treated as a separate violation.

(d) The civil penalties prescribed by the provisions of this subdivision may be imposed by the commissioner, or by the director of a municipal consumer affairs office or a municipal director of weights and measures, as the case may be, after due notice and an opportunity to be heard have been provided for any violation which has not been noticed for a hearing under subparagraph one of paragraph (a) of this subdivision, or may be recovered in a civil action in the name of the state, or the municipality, as the case may be, commenced in a court of competent jurisdiction. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or municipal director of

weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply to a court of appropriate jurisdiction for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court.

(e) Notwithstanding the foregoing, the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, as the case may be, in a manner consistent with the rules, regulations or policies of such commissioner or director or directors, as the case may be, shall cause to be published once each month the name and business location of any person, firm or corporation that has been found to have violated any provision of this section during the month immediately preceding.

(f) The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in this subdivision.

5. Concurrent enforcement by municipalities. The provisions of this section and the regulations promulgated thereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures, except that nothing in this section or in subdivision three, twelve or nineteen of section one hundred seventy-nine of this article or in section one hundred ninety-two-b or one hundred ninety-two-c or one hundred ninety-two-d of this article shall be construed to prohibit a political subdivision of the state from also continuing to implement and enforce any local law and regulations that were in effect prior to the date this section took effect, and any subsequent amendments thereto, provided such local law and regulations or amendments thereto are not inconsistent with

requirements imposed by the provisions of this section or by regulations adopted pursuant to this section. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder at the instance of a municipal enforcement officer shall be retained by the municipality.

6. Authority of commissioner of environmental conservation to prevent or decrease pollution unimpaired. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

7. Rules and regulations. The commissioner shall have the authority to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

§ 192-b. Fuel lead content labelling and requirements. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Distributor" shall mean any person who transports or stores or causes the transportation or storage of gasoline at any point between any plant at which gasoline is produced and any retail outlet or facility of a wholesale purchaser-consumer.

(b) "Gasoline" shall mean any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(c) "Lead additive" shall mean any substance containing lead or lead compounds.

(d) "Leaded gasoline" shall mean gasoline which is produced with the use of any lead additive or which contains more than five one hundredths of a gram of lead per gallon or more than five one thousandths of a gram of phosphorus per gallon.

(e) "Refiner" shall mean any person who owns, leases, operates, controls or supervises a plant at which gasoline is produced.

(f) "Reseller" shall mean any person who purchases gasoline identified by the corporate, trade or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased or controlled by such refiner.

(g) "Retail outlet" shall mean any establishment at which gasoline is sold or offered for sale for use in motor vehicles.

(h) "Retailer" shall mean any person who owns, leases, operates, controls, or supervises a retail outlet.

(i) "Unleaded gasoline" shall mean gasoline which is produced without the use of any lead additive and which contains not more than five one hundredths of a gram of lead per gallon and not more than five one thousandths of a gram of phosphorus per gallon.

(j) "Wholesale purchaser-consumer" shall mean any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least five hundred fifty gallon capacity substantially under the control of that organization.

2. No distributor shall sell or transfer to any other distributor, retailer or wholesale purchaser-consumer any gasoline which is represented to be unleaded unless such gasoline meets the defined requirements for unleaded gasoline set forth in subdivision one of this section.

3. No retailer or employee or agent of a retailer, and no wholesale purchaser-consumer or employee or agent of a wholesale purchaser-consumer, shall sell, dispense or offer for sale gasoline represented to be unleaded unless such gasoline meets the defined requirements for unleaded gasoline set forth in subdivision one of this section.

4. Every retailer and wholesale purchaser-consumer shall affix to each gasoline pump stand in a location so as to be readily visible to the employees of such retailer or wholesale purchaser-consumer and to person operating motor vehicles into which gasoline is to be dispensed a

permanent legible label as follows: (i) for gasoline pump stands containing pumps for introduction of unleaded gasoline into motor vehicles, the label shall state: "Unleaded gasoline"; and (ii) for gasoline pump stands containing pumps for introduction of leaded gasoline into motor vehicles, the label shall state: "Contains lead anti-knock compounds"; provided, however, that where more than one grade of unleaded gasoline is offered for sale at a retail outlet, compliance with this subdivision is required for only one grade.

5. Notwithstanding any other provisions of law to the contrary, in any proceeding to adjudicate a violation of subdivision four of this section, a retailer or wholesale purchaser-consumer may be found not to be liable for violation thereof where it is shown that more than one grade of gasoline is dispensed from a gasoline pump or pump stand and it is demonstrated to the satisfaction of the commissioner that an alternative system of labeling furthers the objectives of such subdivision.

6. Any violation of subdivision three of this section by a retailer or wholesale purchaser-consumer shall also be deemed a violation by:

(a) the reseller, if any, and the refiner, where the corporate, trade or brand name of such refiner or any of its marketing subsidiaries appears on the pump stand or is displayed at the retail outlet or wholesale purchaser-consumer facility from which the gasoline was sold, dispensed or offered for sale. Except as provided in subdivision seven of this section, the refiner shall be deemed in violation of subdivision three of this section irrespective of whether any other refiner, distributor, retailer or wholesale purchaser-consumer may have caused or permitted the violation; or

(b) the distributor who sold such retailer or wholesale purchaser-consumer gasoline contained in the storage tank which supplied the pump from which the gasoline was sold, dispensed or offered for sale which gave rise to the violation, where the corporate, trade or brand name of a refiner or any of its marketing subsidiaries does not appear on the pump stand and is not displayed at the retail outlet or wholesale purchaser-consumer facility from which the gasoline was sold, dispensed or offered for sale.

7. (a) In any case in which a retailer or wholesale purchaser-consumer and any refiner or distributor would be in violation or be deemed in violation of subdivision three of this section, the retailer or wholesale purchaser-consumer shall not be liable if he or she can demonstrate by a preponderance of the evidence that the violation was not caused by such retailer or wholesale purchaser-consumer or his or her employee or agent.

(b) In any case in which a retailer or wholesale purchaser-consumer would be in violation of subdivision three of this section, and a reseller, if any, and any refiner would be deemed in violation under paragraph (a) of subdivision six of this section, the refiner shall not be deemed in violation if he or she can demonstrate by a preponderance of the evidence:

(1) that the violation was not caused by such refiner or his or her employee or agent, and

(2) that the violation was caused by an act in violation of any law, other than the provisions of this section, or an act of sabotage, vandalism, or deliberate commingling of leaded and unleaded gasoline, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this section occurred, or

(3) that the violation was caused by the action of a reseller or a retailer supplied by such reseller, in violation of a contractual undertaking imposed by the refiner on such reseller designed to prevent such action, and despite reasonable efforts by the refiner to insure compliance with such contractual obligation, such as periodic sampling, or

(4) that the violation was caused by the action of a retailer who is supplied directly by the refiner and not by a reseller, in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner to insure compliance with such contractual obligation, such as periodic sampling, or

(5) that the violation was caused by the action of a distributor or other refiner subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by

the refiner on such distributor designed to prevent such action, and despite reasonable efforts by the refiner to insure compliance with such contractual obligation, such as periodic sampling, or

(6) that the violation was caused by a distributor (such as a common carrier) or other refiner not subject to a contract with the refiner but engaged by him or her for transportation of gasoline from a terminal to a distributor, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner to prevent such action, such as specification or inspection of equipment, or

(7) that the violation occurred at a wholesale purchaser-consumer facility; provided, however, that if such wholesale purchaser-consumer was supplied by a reseller, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in subparagraph three of this paragraph.

(8) For purposes of subparagraphs two through six of this paragraph, the term "was caused" means that the refiner must demonstrate by a preponderance of the evidence that the violation was caused by another.

(c) In any case in which a retailer or wholesale purchaser-consumer would be in violation of subdivision three of this section, and a reseller and any refiner would be deemed in violation under paragraph (a) of subdivision six of this section, the reseller shall not be deemed in violation if he or she can demonstrate by a preponderance of the evidence that the violation was not caused by such reseller or his or her employee or agent.

(d) In any case in which a retailer or wholesale purchaser-consumer would be in violation of subdivision three of this section, and any distributor would be deemed in violation under paragraph (b) of subdivision six of this section, the distributor will not be deemed in violation if he or she can demonstrate by a preponderance of the evidence that the violation was not caused by such distributor or his or her employee or agent.

8. (a) The commissioner or the commissioner's designee, or the director of a municipal consumer affairs office or the director's designee, and/or a municipal director of weights and measures or the director's designee, upon presentation of appropriate credentials, shall

be authorized to enter during regular business hours upon or through the business premises of any person who sells or offers for sale automotive gasoline or other petroleum products for use in motor vehicles or any place where such gasoline or petroleum product is stored, for the purposes of making inspections, taking samples and conducting tests to determine compliance with the provisions of this section or any rules or regulations promulgated hereunder and under section one hundred seventy-nine of this chapter.

(b) Whenever the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, has reason to believe that a violation of this section or any rule or regulation adopted pursuant to this section has occurred, he or she shall be authorized to make such investigation as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine any person and may compel the production of all relevant records.

(c) Any person subject to the provisions of this section shall maintain such written records as the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, may prescribe by regulation.

9. (a) Any person who violates the provisions of this section or any rules or regulations promulgated thereunder shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars.

(b) In the case of a violation through continuing failure to comply with any of the provisions of this section or any rules or regulations promulgated thereunder, each day of the continuance of such failure shall be treated as a separate violation.

(c) The civil penalties prescribed by the provisions of this subdivision may be imposed by the commissioner, or by the director of a municipal consumer affairs office or a municipal director of weights and measures, as the case may be, after due notice and an opportunity to be heard have been provided or may be recovered in a civil action in the name of the state, or the municipality, as the case may be, commenced in a court of competent jurisdiction. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section

may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or municipal director of weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court.

(d) Notwithstanding the foregoing, the commissioner, or the director of a municipal consumer affairs office and/or a municipal director of weights and measures, as the case may be, in a manner consistent with the rules, regulations or policies of such commissioner or director or directors, as the case may be, shall cause to be published once each month the name and business location of any person, firm or corporation that has been found to have violated any provision of this section during the month immediately preceding.

(e) The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in this subdivision.

10. The provisions of this section and the regulations promulgated thereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures, except that nothing in this section or in subdivision three, twelve or nineteen of section one hundred seventy-nine of this article or in section one hundred ninety-two-a or one hundred ninety-two-c or one hundred ninety-two-d of this article shall be construed to prohibit a political subdivision of the state from also continuing to implement and enforce any local law and regulations that were in effect prior to the date this section took effect, and any subsequent amendments

thereto, provided such local law and regulations or amendments thereto are not inconsistent with requirements imposed by the provisions of this section or by regulations adopted pursuant to this section. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder at the instance of a municipal enforcement officer shall be retained by the municipality.

11. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

12. The commissioner shall have the authority to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

§ 192-c. Motor fuel standards and labelling; grade of diesel fuel; alcohol content. 1. As used in this section, the following terms shall have the following meanings:

a. "Co-solvent" means an alcohol with a higher molecular weight than methanol which is blended with methanol to prevent phase separation in gasoline.

b. "Diesel motor fuel" means any fuel sold in this state and for use in diesel engines which is commercially known or offered for sale as diesel motor fuel.

c. "Cetane rating" means the property of a diesel motor fuel expressed as a number determined pursuant to a method adopted by the American Society of Testing and Materials, concerning the fuel's ignition properties.

d. "Gasoline" means any fuel sold in this state for use in internal combustion engines which is commercially known or offered for sale as

gasoline.

e. "Refiner" means a person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity producing gasoline or diesel motor fuel.

f. "Distributor" means any person, firm or corporation who purchases, transports, stores or causes the transportation or storage of gasoline or diesel motor fuel at any point between commercial entities.

g. "Reseller" means any person who purchases gasoline identified by the corporate, trade or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brands, and whose assets or facilities are not substantially owned, leased or controlled by such refiner.

h. "Retailer" means a person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity at which gasoline or diesel motor fuel is sold or offered for sale to the general public.

i. "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank which has a capacity of five hundred fifty gallons or more and is substantially under the control of that organization.

j. "Ultimate purchaser" means the first person who purchases gasoline for purposes other than resale.

2. No refiner, distributor, reseller or retailer shall transfer, sell, dispense or offer any grade of diesel motor fuel for sale in this state unless said diesel motor fuel meets the standards and specifications established for such product by regulations promulgated by the commissioner or by the commissioner of environmental conservation, after due notice and public hearing. No refiner, distributor, reseller or

retailer shall transfer, sell, dispense or offer gasoline for sale in this state unless said gasoline meets the standards and specifications, other than those relating to octane and lead content, established for such product by regulations promulgated by the commissioner or by the commissioner of environmental conservation, after due notice and public hearing.

3. a. A refiner, distributor or reseller shall not transfer, sell or dispense gasoline for sale in this state without delivering to the purchaser a bill, invoice or other instrument evidencing the transaction which shall indicate:

(i) the presence of methanol and co-solvent, each as a percentage of the total volume, if the quantity of methanol exceeds three-tenths of one percent; and

(ii) the presence of ethanol, as a percentage of the total volume, if such quantity exceeds one percent of the total volume.

b. A refiner, distributor or reseller shall not transfer, sell or dispense diesel motor fuel in this state without delivering to the purchaser a bill, invoice or other instrument evidencing the transaction which shall indicate the grade of such diesel motor fuel.

c. For the purposes of this section, the instrument evidencing the transaction shall be on such form as may be required by the commissioner. The commissioner shall consult with the department of taxation and finance and to the extent practicable, the form used for certification of prepayment of the sales tax and payment of motor fuel tax shall be modified and adapted for this purpose, such that said form shall indicate the brand, type and quality of each product delivered.

4. a. A refiner, distributor or reseller shall not transfer, sell, dispense, or offer gasoline or diesel motor fuel for sale in this state to a retailer unless the refiner, distributor or reseller provides to the retailer the materials necessary to comply with the posting requirements contained in this section.

b. It shall be a defense to any violation of paragraph a of this

subdivision that a refiner, distributor or reseller, if acting in good faith, had reasonable cause to believe that the retailer had the materials necessary to comply with the posting requirements contained in this section. No common carrier shall be held liable for any violation of paragraph a of this subdivision to the extent that the materials necessary to comply with such posting requirements were not transferred to him or her or his or her agent along with such gasoline or diesel motor fuel.

c. Each retailer shall record, for each day during which gasoline or diesel motor fuel is sold or offered for sale to the general public the cumulative gallon meter readings for each retail petroleum dispensing device and the volume contained in each gasoline and diesel motor fuel storage tank. These records shall be maintained for a period of one year.

5. a. A retailer or reseller shall not transfer, sell, dispense or offer gasoline for sale in this state if it contains more than:

(i) one percent by total volume of ethanol unless the retail petroleum dispensing device displays a sign with at least one-quarter inch block letters on a contrasting background, reading "Contains.....% Ethanol", the blank being filled in with the maximum percentage of ethanol in the gasoline; and

(ii) three-tenths of one percent of total volume of methanol unless the retail petroleum dispensing device displays a sign with at least one-quarter inch block letters on a contrasting background reading "Contains.....% Methanol" and "Contains.....% Co-Solvent", the blanks being filled in with the maximum percentage of methanol and minimum percentage of co-solvent in the gasoline.

b. A retailer shall not transfer, sell, dispense or offer diesel motor fuel for sale in this state unless the retail petroleum dispensing device displays a sign disclosing the grade.

6. No refiner, distributor, reseller or retailer shall store, sell, transfer, dispense or offer for sale gasoline or diesel motor fuel in this state without having in his or her possession a copy of the bill,

invoice, or other written instrument evidencing the transaction by which such refiner, distributor, reseller or retailer came into possession of the gasoline or diesel motor fuel; provided, however, that this requirement shall not apply to refiners with respect to gasoline or diesel motor fuel which such refiner has produced from crude oil.

7. a. Except as otherwise provided, any retailer, reseller or distributor charged with a violation under this section may plead and prove by a preponderance of the evidence that the violation was not caused by him or her or his or her agent or employee as an affirmative defense to such charge.

b. Notwithstanding any other provision of this section, a common carrier transporting gasoline or diesel motor fuel shall be deemed to be liable under the provisions of subdivision two of this section only if it is proved by a preponderance of the evidence that a violation was caused by him or her or his or her agent or employee.

8. a. The commissioner or his authorized representative, upon presentation of appropriate credentials, shall have the right to enter during regular business hours upon or through the premises or property of any refiner, distributor, reseller or retailer, and shall have the right to make inspections, take samples of gasoline and diesel motor fuel being stored, offered for sale or in the process of being delivered or transported, and conduct tests during normal business hours to determine compliance with this section.

b. The commissioner may require a refiner, distributor, reseller or retailer to report information regarding the receipt, transfer, delivery or sale of gasoline and diesel motor fuel and to allow the reproduction of that information except that the refiner, distributor, reseller or retailer shall not be required to provide information not maintained in the normal course of business, except as otherwise required in this section. A refiner, distributor, reseller or retailer shall preserve information regarding the receipt, transfer, delivery, or sale of gasoline and diesel motor fuel for one year.

9. Any refiner, distributor, reseller or retailer who or which violates this section shall be liable for a civil penalty not to exceed ten thousand dollars for each violation, and for the first violation not to be less than two hundred fifty dollars, and for the second violation not to be less than one thousand dollars. In the case of a violation through continuing failure to comply with any of the provisions of this section, or any rules or regulations promulgated thereunder, each day of the continuance of such failure shall be treated as a separate violation. Provided, however, that the penalty for any violation of paragraph c of subdivision four of this section for failure to keep the required records shall be a maximum two hundred dollar civil penalty for the first violation, and a maximum four hundred dollar civil penalty for the second and subsequent violations. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or a municipal director of weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply to a court of appropriate jurisdiction for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court. The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in this subdivision.

10. Whenever the commissioner or an authorized representative of the commissioner shall find that a refiner, distributor, reseller or retailer has transferred, sold, dispensed or offered gasoline or diesel motor fuel for sale in this state in violation of this section, such commissioner or his authorized representative may exercise any remedies

authorized by section one hundred eighty-five of this article. Any refiner, distributor, reseller or retailer violating an order issued pursuant to this subdivision shall be subject to an additional civil penalty not to exceed five thousand dollars, notwithstanding the penalty provisions of section forty of this chapter which shall not apply to a violation of such order.

11. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder shall be retained by the municipality.

12. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

13. The commissioner shall have the authority to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

§ 192-e. Sale and delivery of liquefied petroleum gas. 1. Definition. For the purpose of this section "liquefied petroleum gas" shall mean any material or substance which is predominantly composed of any of the following hydrocarbons or mixtures of the same: propane, propylene, butane, normal or iso-, and butylene.

2. Liquefied petroleum gas shall be sold or offered for sale by avoirdupois net weight, by liquid measure based on the standard United States gallon of two hundred and thirty-one cubic inches, by cubic feet based on the standard cubic foot of one thousand seven hundred and twenty-eight cubic inches, or by the appropriate units in the metric system, or multiple or decimal subdivisions of those units as determined

by the commissioner.

3. When liquefied petroleum gas is sold, offered or exposed for sale by package weight, variations at the rate of one percent under the specified net weight of the container are permitted in individual containers, but the average weight of not less than twelve containers shall not be less than the marked net weight of the containers.

4. Containers used where the gas content is sold by package weight must have the tare weight plainly and conspicuously marked on the container or on permanently attached appurtenances, and the net contents plainly and conspicuously marked on the container or on a tag or other type of label firmly attached thereto. Tare weight shall be construed to be the weight of the container, valve and other permanent attachment but does not include the valve-protecting cap; provided, however, that disposable containers weighing five pounds or less when filled shall be exempt from the tare weight marking requirements.

5. When liquefied petroleum gas is sold or delivered in package form and the cylinder or container is connected to the consumer's apparatus, such cylinder or container shall neither be disconnected nor removed from the premises before it becomes empty, except as may be provided hereinafter. When removed before becoming empty such cylinder or container shall be weighed by the seller to determine the quantity of liquefied petroleum gas remaining in such cylinder or container and a written receipt issued to the purchaser or consumer stating such quantity and the amount of the credit due. When weighed on the customer's premises, weight shall be subject to verification by the seller at the dealer distribution point or the filling plant to determine whether credit is due the customer. A cylinder or container shall be considered empty when the gross weight of the cylinder or container does not exceed the tare weight as marked within the tolerance allowed.

6. Each delivery of liquefied petroleum gas sold on a package basis in cylinders or containers to consumers and each delivery of such gas from a vehicle tank or other vessel into tanks, cylinders or containers

connected to consumer apparatus when sale is based on a quantity so delivered, shall be accompanied by a delivery ticket and duplicate thereof. On such ticket and duplicate thereof shall be distinctly expressed in ink or other indelible substance the date of delivery, the net weight or volume of such liquefied petroleum gas delivered, the price per unit of metric or customary measure, the total price, the name and address of the seller and the name and address of the purchaser of such liquefied petroleum gas; provided, however, that such delivery ticket need not set forth the total price if within five days after delivery the seller provides the buyer with a written statement setting forth all the foregoing information including the total price. Delivery tickets shall be serially numbered or the serial number of the cylinder or container shall be legibly marked on such delivery ticket. One of such tickets shall be delivered to the person receiving the liquefied petroleum gas, and the other ticket shall be retained by the seller of the liquefied petroleum gas for a period of one year and shall be subject to inspection by any weights and measures official within this time. For systems equipped with the capability of issuing an electronic receipt, ticket or other recorded representation, the customer may be given the option to receive any required information electronically by means of a cellular telephone, mobile telephone, computer, computer tablet or any other personal electronic device, in lieu of or in addition to a hard copy.

6-a. a. Definitions. For the purposes of this subdivision:

(i) "liquefied petroleum gas tank" shall mean a cylinder, container or receptacle, fixed in place, that is intended to be used to store liquefied petroleum gas for the purpose of heating, or generating electric power, for a residential customer;

(ii) "qualifying emergency" shall mean:

(A) a federal, state or local state of emergency has been declared, or federal or state authorities have granted a waiver from hours-of-operations limitations affecting liquefied petroleum gas deliveries; or

(B) severe weather or any other similar circumstance exist that may result in an individual being placed in imminent danger of death or injury, or may result in a building structure and/or its fixtures being

at risk of significant damage due to lack of residential heat caused by the lack of sufficient liquified petroleum gas to produce residential heat;

(iii) "regular supplier" shall mean a person, firm, limited liability company or corporation that owns a liquefied petroleum gas tank and that, pursuant to a current contract, has agreed to supply liquefied petroleum gas to such tank for use by a residential customer or the customer's agent or agents; and

(iv) "temporary emergency supplier" shall mean a person, firm, limited liability company or corporation that fills, refills or otherwise delivers liquefied petroleum gas into a liquefied petroleum gas tank it does not own, where such tank is subject to an existing contract between a regular supplier and their customer.

b. Notwithstanding any other law, rule or regulation to the contrary, when a qualifying emergency is in effect, a residential customer who has a contract with a regular supplier to fill a liquefied petroleum gas tank reasonably believes the amount of liquefied petroleum gas in their tank will be insufficient to meet the customer's heating needs, the customer shall make a good faith effort to procure delivery of liquefied petroleum gas from such regular supplier. If the regular supplier is unable to make a scheduled delivery or fulfill the customer's good faith request, directly or through another supplier, for delivery within twenty-four hours, the customer may arrange to have a temporary emergency supplier fill, refill or otherwise deliver liquefied petroleum gas into such liquefied petroleum gas tank, provided that the temporary emergency supplier ensures that such tank, and the devices and pipelines operated in connection with such tank, have been inspected and certified as required by law and all applicable regulations. The temporary emergency supplier shall assume all liability that may result from the improper filling, inspection, or testing of such tank. The temporary emergency supplier that fills, refills, or otherwise delivers liquified petroleum gas under this subdivision must notify the regular supplier, in written form, within five business days, the customer's name and address, the date and quantity delivered, changes made to the system, if any, and pressure test results, if required.

c. When a temporary emergency supplier delivers liquefied petroleum gas to a residential customer pursuant to this subdivision, neither such temporary emergency supplier nor such customer's regular supplier may charge any penalty or fee in addition to any filling, refilling or delivery fees that are usually charged to other customers in the course of business under circumstances when paragraph b of this subdivision is not applicable.

d. Any contract executed subsequent to the effective date of this subdivision for the supply of liquefied petroleum gas to a residential customer shall include provisions relating to delivery and fees pursuant to paragraphs b and c of this subdivision if applicable.

e. Nothing in this subdivision shall be deemed to restrict a liquefied petroleum gas customer who owns a liquefied petroleum gas tank from procuring such gas from any supplier.

f. In all other circumstances other than those described in this section, it shall not be permissible for any person, firm, limited liability company or corporation to remove or fill any liquified petroleum gas from a liquified petroleum gas tank, cylinder, container or receptacle without the consent of the owner of such tank, cylinder, container or receptacle.

6-b. The commissioner, in cooperation with the department of law, shall develop a "propane consumer bill of rights" consistent with this section to address the rights of consumers who enter into contracts for the provision and delivery of liquefied petroleum gas, including the right of customers to purchase liquefied petroleum gas from temporary suppliers pursuant to subdivision six-a of this section. Such bill of rights shall be provided by every regular supplier of liquefied petroleum gas to the consumer when a contract is executed, and then annually while a contract remains in effect and the department shall post such bill of rights on its website.

7. The use of artificial heat for the purpose of expanding liquefied petroleum gas before or during the process of delivery, when the basis

of settlement for such sale or delivery is liquid volume, is prohibited.

8. a. New meters for measuring liquefied petroleum gas sold in the vapor state shall be sealed by the manufacturer thereof as hereinafter provided or by a weights and measures official. The commissioner may prescribe by regulation the specifications and tolerances governing the testing and sealing of such meters and the method of determining the quantity of liquefied petroleum gas, and may authorize any manufacturer or distributor of liquefied petroleum gas to seal used meters upon written agreement to conform to said regulations. The commissioner may revoke for cause the authority so given by him to any manufacturer or distributor of liquefied petroleum gas.

b. Meters equipped with automatic temperature compensation shall be sealed and may be used to compute all retail and wholesale transactions.

9. The provisions of this article shall not apply to interstate tank car and transport truck deliveries to bulk storage, nor to public utility systems using pipes or other fixtures in the public highways or streets for the transmission of liquefied petroleum gas and operating under the jurisdiction of the public service commission of this state, nor to any public service company whose operations are subject to the jurisdiction of the said public service commission.

§ 192-f. Bulk sales or transportation; coal and coke. 1. This section shall apply to the bulk sale or transportation of coal, coke, feed for domestic animals, fertilizer, lime and household goods, and any other commodity or article sold or transported by weight as the commissioner may prescribe in regulations. Bulk sale means the sale of any unpackaged commodity when the weight thereof forms a basis for the amount of the sale. Bulk transportation means the transportation of any article when the weight thereof forms a basis for the amount charged by the transporter. This section shall not apply to the sale or transportation of entire rail carload or shipload lots. The commissioner may by regulation exempt from this section bulk sales or transportation in small lots, defined by quantity, selling price or any other

appropriate standard prescribed by the commissioner.

2. Coal and coke sold in bulk shall be sold by weight.

3. The seller or transporter of any commodity or article covered by this section shall provide the buyer or person for whom transportation is made, at the time of delivery, with a weight ticket issued by a licensed weighmaster. Such weight ticket shall bear the name and address of the seller in the case of a sale and of the transporter in the case of transportation, the date when weighed, and the full signature and license number of the weighmaster. The ticket shall also bear the gross weight of the loaded vehicle, the tare weight of the empty vehicle and the net weight of the commodity or article delivered. If the weight of the product is determined prior to or in the process of loading, the ticket shall bear the net weight of the product and need not bear the gross and tare weights.

4. The operator of any vehicle employed in the delivery of a commodity or article covered by this section shall have in his possession the weight ticket required herein. Any weights and measures official who finds such commodity or article ready for or in process of delivery by vehicle may direct the seller, transporter or vehicle operator to convey the vehicle to an available stationary scale suitable for weighing the loaded vehicle. Such official shall thereupon determine the gross weight of the vehicle and commodity or article and shall direct the seller, transporter or vehicle operator to return to such scale immediately after delivery of the commodity or article, and upon such return such official shall determine the tare weight of the vehicle without load. No seller, transporter or vehicle operator shall fail to take the vehicle, upon the direction of such official, to the scale as aforesaid or refuse to permit the vehicle to be weighed as provided in this section.

§ 192-g. Methyl tertiary butyl ether; prohibited. 1. For the purposes of this section, "gasoline" shall mean any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

2. No person shall import into, or sell, dispense or offer for sale any gasoline which contains methyl tertiary butyl ether.

3. Any person who violates the provisions of this section shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars.

§ 192-h. Alternate generated power source at retail gasoline outlets. 1. Definitions. When used in this section:

(a) "Alternate generated power source" means electric generating equipment that is of a capacity that is capable of providing adequate electricity to operate all dispensers, dispensing equipment, life safety systems and payment-acceptance equipment located at a retail outlet and which can operate independent of the local electric utility distribution system and provide electricity during a general power outage or declared energy or fuel supply emergency to operate the systems named herein.

(b) "Chain of retail outlets" means a network of subsidiaries or affiliates, under direct or indirect common control, that operate ten or more retail outlets located in a single downstate region; provided, however that this term does not include any franchisor of the brand of motor fuel being sold at such outlet, except if such franchisor owns such outlet.

(c) "Controlled access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

(d) "Diesel motor fuel" means any fuel sold in this state and for use in diesel engines which is commercially known or offered for sale as diesel motor fuel.

(e) "Dispenser" means a device located at a retail outlet that is used to pump motor fuel from an above-ground or underground storage tank into a motor vehicle.

(f) "Downstate region" means each of the following regions of the

state:

(i) Long Island region: Includes Nassau and Suffolk counties.

(ii) Lower Mid-Hudson region: Includes Putnam, Rockland and Westchester counties.

(iii) New York city region: Includes Bronx, Kings, New York, Queens and Richmond counties.

(g) "Evacuation route" means those roads designated by each county that are to be used by motorists in case of a hurricane or other natural disaster.

(h) "Franchisor" means a person or company that grants a franchise to a franchisee.

(i) "Gasoline" means any fuel sold in this state for use in internal combustion engines which is commercially known or offered for sale as gasoline, whether or not blended with ethanol or other chemicals.

(j) "Motor fuel" means any petroleum product, including any gasoline or diesel motor fuel, which is used for the propulsion of motor vehicles.

(k) "Retailer" means any person who owns, operates, or controls a retail outlet that is subject to the requirements of subdivision two of this section, provided however, that any retail outlet located in Putnam county shall only be subject to the requirements of this section provided that funding and program services are available for such purposes under subdivisions twenty and twenty-one of section eighteen hundred fifty-four of the public authorities law.

(l) "Retail outlet" means a facility, including all land, improvements and associated structures and equipment, that dispenses motor fuel for sale to the general public.

2. Prewiring and transfer switch. (a) Retail outlets in the downstate region shall be prewired with an appropriate transfer switch for using an alternate generated power source at such retail outlets as follows:

(i) each retail outlet in operation on the effective date of this section that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route shall be prewired by no later than April first, two thousand fourteen;

(ii) each retail outlet beginning operation after the effective date of this section and before April first, two thousand fourteen that is

located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route shall be prewired by no later than April first, two thousand fifteen;

(iii) each retail outlet that is located within one-half mile by road measurement from an evacuation route that is designated as such after the effective date of this section or within one-half mile by road measurement from an exit road that is established after the effective date of this section shall be prewired within one year of such designation or establishment provided that funding is available at such time for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law; and

(iv) thirty percent of all retail outlets that are part of a chain of retail outlets, exclusive of those included in subparagraphs (i), (ii) and (iii) of this paragraph, shall be prewired by no later than August first, two thousand fifteen, provided, however, in the case of an existing retail outlet that becomes part of a chain of retail outlets after the effective date of this section and that has been designated by the chain as an outlet comprising such thirty percent, by no later than August first, two thousand fifteen or one year after becoming part of such chain, whichever is later, and provided further, in the case of a retail outlet that is part of a chain of retail outlets, is part of such thirty percent and is subject to paragraph (b) of this subdivision as required in paragraph (b) of this subdivision.

(b) Each retail outlet for which a building permit is issued on or after April first, two thousand fourteen for new construction or for substantial demolition and reconstruction, shall be prewired with an appropriate transfer switch for using an alternate generated power source.

(c) Such transfer switch and all associated electrical wiring shall be installed, operated, and maintained in compliance with all applicable provisions of the New York state uniform fire prevention and building code or any applicable local building code or standard. Installation of appropriate wiring and transfer switches shall be performed by a licensed electrical contractor.

(d) Each retailer shall keep on file at the retail outlet a written statement in a form approved by the department and containing an attestation by a licensed electrician that the wiring and transfer

switch were installed in accordance with the manufacturer's specifications. In addition, each such retailer shall maintain the wiring and transfer switch in accordance with the manufacturer's specifications.

(e) Each retail outlet in operation on the effective date of this section that sold less than seventy-five thousand gallons of motor fuel per month on average for the period they were in operation during the twelve months prior to the effective date shall be exempt from the requirements of this subdivision.

3. Emergency deployment. In the event that a declaration of an energy or fuel supply emergency issued by the governor, the county executive of a county in the downstate region or the mayor of a city with a population in excess of one million inhabitants is in effect, a retailer of a retail outlet within any such county or city for which such declaration was issued shall deploy and install an alternate generated power source as follows:

(a) For a retail outlet subject to the requirements of: (i) subparagraphs (i), (ii) or (iii) of paragraph (a) of subdivision two of this section or (ii) paragraph (b) of subdivision two of this section that is located in the downstate region and that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route, within twenty-four hours of such declaration, if such outlet is without power at the time of such declaration. Provided, however, if any such outlet loses power following such declaration and while the declaration is still in effect, then the alternate generated power source shall be deployed and installed within twenty-four hours of such loss of power.

(b) For a retail outlet prewired pursuant to the requirements of subparagraph (iv) of paragraph (a) of subdivision two of this section, within forty-eight hours of such declaration, if such outlet is without power at the time of such declaration. Provided, however, if any such outlet loses power following such declaration and while the declaration is still in effect, then the alternate generated power source shall be deployed and installed within forty-eight hours of the loss of power.

3-a. Declaration of energy or fuel supply emergency. Upon issuance of

a declaration of an energy or fuel supply emergency pursuant to this subdivision, a county executive of a county in the downstate region or mayor of a city with a population in excess of one million inhabitants who declared such emergency shall promptly notify the president of the New York state energy research and development authority, the commissioner of homeland security and emergency services, and impacted residents using such means as are practicable and efficient.

4. Plan for alternate generated power source. Each retailer subject to subdivision three of this section shall by the date of the installation of the prewiring and transfer switch required under subdivision two of this section have in place at each applicable retail outlet documentation in a form approved by the department demonstrating a plan to deploy and install an alternate generated power source located at such retail outlet as required under subdivision three of this section. Such plan shall take one of the following forms:

(a) a receipt or other documentation showing ownership of such power source;

(b) for a retailer subject to paragraph (a) of subdivision three of this section, documentation attesting to participation in the program established under subdivision twenty-one of section eighteen hundred fifty-four of the public authorities law; or

(c) a contract with a supplier of such power source providing for deployment and installation of such power source in compliance with the requirements of this section, or other documentation demonstrating the retailer's ability to comply with the requirements of this section, which may include the generator deployment and installation plan of a chain of retail outlets.

5. Inspection; recordkeeping; reporting. The commissioner or the commissioner's designee shall be authorized to enter during regular business hours upon a retail outlet subject to the requirements of subdivision two of this section for the purpose of determining compliance with the provisions of this section and any rules or regulations promulgated hereunder. All documents required pursuant to subdivisions two and four of this section shall be maintained at the applicable retail outlet and made available to the commissioner or the

commissioner's designee upon request. In addition, each retailer of a retail outlet, except for retail outlets granted exemptions under paragraph (e) of subdivision two of this section, shall provide to the department by April first, two thousand fourteen and every two years thereafter written documentation in a form approved by the department certifying that such retail outlet is in compliance with the requirements of this section, and any other requirement specified by any rules or regulations promulgated hereunder; provided, however, that, for each retail outlet that is part of a chain of retail outlets or to which subparagraph (ii) or (iii) of paragraph (a) or paragraph (b) of subdivision two applies, such written documentation shall be provided to the department within ten days after the date of installation of the prewiring and transfer switch required to be installed under subdivision two of this section and every two years thereafter.

6. Rules and regulations; notification of applicability. The commissioner shall have the authority, with the assistance of the commissioner of transportation, the commissioner of homeland security and emergency services, the president of the New York state energy research and development authority, the secretary of state and the chair of the public service commission, to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section. The commissioner shall by June first, two thousand thirteen: (a) notify by first class mail all existing retail outlets that appear to meet the criteria specified in subdivision two of this section of the requirements of this section and include with such notification any other information deemed necessary by the commissioner, including information regarding applicability criteria, compliance measures and potential grant assistance; (b) provide a list of all such retail outlets to the governor, the temporary president of the senate and the speaker of the assembly; and (c) post such list on the department's website. If approval of federal mitigation funds or other approved resources for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law occurs after June first, two thousand thirteen, the commissioner shall provide additional notification of such approval within thirty days. Any retailer of a retail outlet specified on such list shall be subject to

the requirements of this section unless he or she provides written documentation to the department by August first, two thousand thirteen proving that such outlet does not qualify, or is eligible for an exemption pursuant to paragraph (e) of subdivision two of this section. The commissioner shall update such list every five years thereafter and notify all new retail outlets that become subject to the requirements of this section; provided, however, that compliance with the requirements of this section is not conditioned on such notification.

7. Violations and penalties. Any retailer who violates any provision of this section, or any rule or regulation promulgated hereunder, shall be liable to the people of the state for a civil penalty of up to one thousand five hundred dollars per day for every such violation, to be assessed by the commissioner, after a hearing or opportunity to be heard upon due notice and with the right to representation by counsel. In determining the amount of civil penalty, the commissioner shall take into consideration mitigating factors, such as the availability of gasoline at the retail outlet, provided that the retailer did not refuse such delivery, and the extent to which the retailer's action or inaction contributed to the violation. Such penalty may be recovered in an action brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general. Additionally, after such hearing and a finding that such retailer has violated the provisions of this section, or of any rule or regulation promulgated thereunder, the commissioner may issue and cause to be served upon such person an order enjoining such person from violating such provisions and taking all necessary actions for such person to come into compliance with such provisions. Any such order of the commissioner may be enforced in an action brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction.

Notwithstanding the foregoing, such retailer shall not be in violation of subdivision three of this section if he or she is unable to deploy, install or operate an alternate generated power source because of uncontrollable circumstances, including but not limited to, restrictions

imposed by public safety officers to address an emergency situation or that such retail station is made unsafe or unable to operate due to acts of God, fires, floods, explosions or the safety of personnel needed to operate such retail outlet. Additionally, such retailer shall not be in violation of subdivision three of this section if he or she is a participant in the program established under subdivision twenty-one of section eighteen hundred fifty-four of the public authorities law and a generator is not provided to the retailer due to the prioritization allowed under such subdivision or through no fault of the retailer.

8. This section shall not be construed to require any retailer to maintain set business hours in the event of an energy or fuel supply emergency.

9. The provisions of this section shall supersede all local laws or ordinances in the downstate region relating to the installation and deployment of an alternate generated power source or any related electrical or other equipment at any retail outlet.

10. The requirements of this section shall be contingent on the approval of federal mitigation funds or other approved resources for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law. In the event such approval does not occur as of June first, two thousand thirteen, all deadlines with a date of April first, two thousand fourteen shall be delayed by the amount of time such approval is delayed past June first, two thousand thirteen.

§ 193. Fair packaging and labeling of containers. When commodities are sold, or offered or exposed for sale in containers, the net quantity of the contents shall be plainly and conspicuously marked, branded or otherwise indicated, on a label or tag attached thereto, in terms of weight, measure, numerical count or other unit as may be prescribed by the commissioner.

§ 194. False labels. 1. No individual, partnership, corporation, association or firm shall put upon any commodity sold, offered or exposed for sale or upon any container, package, ticket or label used in relation to such commodity, or with which such an article is intended to be sold, any false description or false indication of or respecting the number, quantity, weight or measure of such commodity or any part thereof; or sell or offer or expose for sale any commodity which is falsely described or indicated in any of the manners or in any of the particulars as specified in this article or rules and regulations promulgated hereunder. The term "container" shall include any carton, box, crate, barrel, hamper, keg, drum, jar, jug, crock, bottle, bag, basket, pail, can, wrapper, parcel or package.

2. Any individual, partnership, corporation, association or firm violating this section with intent to defraud shall be guilty of a misdemeanor.

3. Any individual, partnership, corporation, association or firm violating this section without intent to defraud shall be subject to the civil penalties as provided in sections thirty-nine and forty of this chapter.

§ 195. Licensing of weighmasters; duties. 1. No person shall act as a weighmaster, issue or sign any weight tickets, or carry out any functions of a weighmaster unless licensed pursuant to this section.

2. Upon application, a weighmaster's license may be issued by the commissioner to an employee of a person, firm, partnership or corporation whose business requires, by contract or otherwise, that materials or commodities manufactured, produced, distributed, sold or handled by such person, firm, partnership or corporation be weighed by a licensed weighmaster; or such license may be issued to an individual engaged in the weighing of materials or commodities. The applicant shall furnish satisfactory evidence of good character and of ability to weigh accurately and to make correct weight tickets. He shall also furnish evidence that he owns, leases or has access to a stationary scale within

the state suitable for weighing the materials or commodities to be weighed by him or that he is regularly employed by a person, firm, partnership or corporation who owns, leases or has access to such a scale which has been tested and sealed by the weights and measures official charged with such duty. The applicant shall pay a fee of fifteen dollars. A license shall be for a period not exceeding three years and may be renewed in the discretion of the commissioner upon payment of the fee aforesaid. Such license shall be kept at the place where the weighmaster is engaged in weighing and shall be open to inspection. An application may be denied or a license may be revoked by the commissioner, after a hearing upon due notice to the applicant or licensee, for dishonesty, incompetency, inaccuracy or a violation of the provisions of this article or the rules and regulations adopted pursuant thereto.

3. Each weight ticket issued by a weighmaster shall contain the date, full signature and license number of the weighmaster.

4. Each weighmaster shall retain for a period of one year a copy of every weight ticket he has issued.

5. No weighmaster shall make or issue a false or incorrect weight ticket, nor shall any person solicit him to do so. No person shall knowingly use a false or incorrect weight ticket. No weighmaster shall permit any weight ticket to be issued or used which purports to bear his signature and was not in fact signed by him, or which expresses a weight not ascertained by him.

§ 195-a. Weight tickets issued in other states. Whenever in any state requiring weighing licenses or weight tickets, the administrative officer in charge thereof is authorized by statute to recognize and accept weighing licenses and weight tickets of this state, the commissioner in his discretion is authorized to recognize and accept such licenses and tickets provided such tickets have been issued by a licensed weighmaster.

§ 196. Statewide uniformity. 1. Notwithstanding the provisions of any other general, special or local law, the commissioner may, in order to secure uniform regulation of weights and measures throughout the state, reverse, modify or annul in whole or in part any rule, regulation, direction, order, ordinance, local law or other provision adopted by any municipality which contravenes or is inconsistent with the provisions of this article or any rules and regulations promulgated by the commissioner.

2. The order of the commissioner affecting any such municipal provision shall state the date on which it takes effect and a copy thereof, duly signed by the commissioner, shall be filed as a public record in the state department of agriculture and markets.

§ 197. Construction of contracts. All contracts made within the state for work to be done, or for the sale and delivery of personal property by weight or measure shall be construed according to the standards of weights and measures adopted in this article and rules and regulations promulgated pursuant thereto.

§ 197-a. Weights and measures fees. Notwithstanding any other provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all money received in payment of fees under this article in an account within the miscellaneous special revenue fund.

§ 197-b. Retail pricing accuracy. 1. Definitions. a. "Retail store" shall mean a store that sells stock-keeping units directly to consumers and charges or is liable for the collection of sales tax. For the purposes of this section the term "retail store" shall include those stores that use universal product code (UPC) scanners or price-look-up (PLU) codes in checkout systems or use manual pricing of items.

b. "Pricing accuracy inspection" shall mean an inspection of a retail

store for the purpose of ensuring that customers are charged the correct price for the items they purchase.

c. "Price charged" means the price a customer is charged for an item. For prices determined by an automated checkout device, the price charged means the price on the receipt issued to the consumer after the final total has been determined, whether the item is scanned or actually purchased, the device is computing or recording while in training mode, or by using a hand-held device connected to a store's database.

d. "Stock-keeping unit" means each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties.

e. "Retail price" means the lowest advertised, written, posted, or marked price of a stock-keeping unit.

f. "Overcharge" means a price charged that is higher than the retail price.

g. "Undercharge" means a price charged that is lower than the retail price.

h. "Large overcharge" means an error of twenty-five cents on any individual item up to two dollars and fifty cents and ten percent thereafter.

2. Pricing requirements. A retail store shall:

a. Display the retail price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price.

b. Assure that the price charged after the final total has been determined is equivalent to the retail price.

c. If a UPC scanner system is used to determine the price charged, provide the appropriate inspection official access to the checkout system in use at such retail store to verify the price charged for items included in a pricing accuracy inspection. Access shall be provided to the system either in normal operating mode, in training mode, or through a hand-held or other device tied to the store's database.

d. Post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

3. Test procedures and accuracy requirements. a. The commissioner shall, by regulation, adopt test procedures utilizing randomized sampling techniques. Such procedures shall be consistent with the examination procedure for price verification developed by the national conference on weights and measures and published in the national institute of standards and technology handbook one hundred thirty. For purposes of this section, pricing accuracy inspections shall, to the extent possible, be conducted at a time and in a manner that does not interrupt the normal flow of retail business at the retail store.

b. A retail store at least three hundred square feet in size shall be deemed in compliance if ninety-eight percent of the items in the sample selected are accurately priced. For purposes of this section retail stores that are less than three thousand square feet and employ a manual pricing system shall be deemed in compliance if, effective June first, two thousand seven through May thirty-first, two thousand eight, at least ninety-six percent of the items in the sample selected are accurately priced and beginning on June first, two thousand eight at least ninety-eight percent of the items in the sample selected are accurately priced.

c. In addition to establishing a standard frequency of inspection consistent with the provisions of paragraph a of this subdivision, the commissioner or a weights and measures official may conduct inspections of individual items in response to consumer complaints or as a follow-up on items ordered to be corrected in a previous inspection.

4. Enforcement procedures. a. The commissioner or a weights and measures official shall advise the operator of the retail store of any pricing error encountered in an inspection. If the correction cannot be made immediately, then, the commissioner or a weights and measures official shall issue a stop removal order for items subject to overcharges and such stock-keeping units shall be removed from sale until correction is made.

b. Upon finding a violation of this section, the commissioner or the municipal director of weights and measures may impose civil penalties as prescribed in section thirty-nine of this chapter. Such penalty shall not exceed three hundred dollars per violation for violations assessed during an initial inspection in a calendar year and shall not exceed six hundred dollars per violation for violations assessed in a second or subsequent inspection during a calendar year. In determining the amount of any civil penalty imposed, the magnitude of the errors, corrective action taken by the retail store, history of such prior conduct, or other relevant information shall be considered. Penalties may only be imposed for:

(1) Overcharges found in a sample selected using the procedures adopted pursuant to subdivision three of this section, when overcharges number more than two percent of the sample. Each such overcharge may be considered a separate violation provided, however, that any overcharge for a single stock-keeping unit that includes more than one item in such unit shall count as a single violation and not as separate violations for each item in the stock-keeping unit.

(2) A large overcharge found on an individual item.

(3) An overcharge verified in response to a consumer complaint.

(4) Overcharges found on follow-up inspections of items ordered corrected.

(5) Failure to disclose the retail price of a stock-keeping unit pursuant to paragraph a of subdivision two of this section.

(6) Failure to conspicuously post a refund policy pursuant to paragraph d of subdivision two of this section.

5. Local pricing laws. Nothing in this section shall be construed to

prohibit a political subdivision of the state from continuing to implement and enforce any local pricing law or regulation in effect prior to the effective date of this section. Where a political subdivision has a local pricing law in effect prior to the effective date of this section, the provisions of this section shall have no force and effect until such time as the political subdivision repeals its local pricing law. Any political subdivision of the state not having any local pricing law or regulation in effect prior to the effective date of this section shall adopt and implement the pricing accuracy provisions set forth in this section or by regulations adopted pursuant to this section.

ARTICLE 17

ADULTERATION, PACKING, AND BRANDING OF FOOD AND FOOD PRODUCTS

Section 198. Definitions.
199. Application of article.
199-a. Prohibition as to adulterated or misbranded food.
199-b. Powers and duties of commissioner respecting food additives and color additives.
199-c. Disposing of tainted food.
199-d. Prohibition as to sulfites.
199-e. Prohibition as to sale of irradiated foods.
199-f. Food allergies and intolerances notice in food service establishments.
199-g. Allergen labeling for prepackaged foods.
200. Adulteration of food.
201. Misbranding of food.
201-a. Kosher food and food products; packaging.
201-b. Retail sale of kosher food or food products.
201-c. Persons certifying as kosher; filing with department.
201-d. Notice of violation.
201-e. Halal food and food products; packaging.
201-f. Retail sale of halal food or food products.
201-g. Persons certifying as halal; filing with department.
201-h. Notice of violation.

201-i. Misbranding of certain fish species.
202. Unavoidable added poisonous or deleterious substances.
202-a. False advertising.
202-b. Seizure and quarantine.
202-c. Proceedings to review, violations and remedies.
203. Manufacture and sale of imitation maple, birch, walnut or beech sugar and syrup prohibited.
204. Branding and labeling of maple, birch, walnut or beech sugar and syrup mixtures.
204-a. Olive oil mixtures.
204-b. Foods containing fats and/or oils.
204-c. Prepared horseradish.
204-d. Adulteration of natural fruit juices.
205. Defining honey.
206. Relative to selling a commodity in imitation or semblance of honey.
207. Definition of vinegars and adulterated vinegars.
208. Manufacture and sale of misbranded vinegar prohibited.
209. Packages containing vinegar to be branded.
210. Packaging in the shape of firearms.
210-a. Pork processing.
213. Repacking fruit and farm produce.
214. Guaranty established.
214-a. Samples.
214-b. Regulations.
214-c. (Enacted without section heading).
214-d. Legislative finding and declaration of policy.
214-e. Temporary marketing and manufacturing permits.
214-f. Temperature requirements for manufacture, transportation and storage of certain foods.
214-g. Labeling of certain frozen foods.
214-h. Unit pricing.
214-j. Small quantities of fruits and vegetables.
214-k. Sale and labeling of charcoal.
214-l. Sale of talc coated rice prohibited.
214-m. Labeling of certain food products.
214-n. Treatment and sale of apple cider.

214-o. Labeling requirements for fish wholesalers.

§ 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, the federal poultry products inspection act, or the federal meat inspection act.

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.

11. "Game or wild game" means any deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting.

§ 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.

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.

§ 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 in 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 act as amended.

§ 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 act 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.

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.

§ 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.

§ 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.

*** § 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 an 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.

* NB Expired September 1, 1995

§ 199-f. Food allergies and intolerances notice in food service establishments. 1. Definitions. For the purposes of this section:

(a) "Menu" shall mean a list or pictorial display of a prepared food item or items available for sale for the purpose of permitting a customer to order such food item or items, including such list or pictorial display posted online for a customer to place food orders for delivery or take out.

(b) "Food service establishment" shall mean any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption occurs on or off the premises, or whether or not there is a charge for the food, including retail food stores, as defined in section five hundred of this chapter.

2. The commissioner shall make available on the department's website, in English and in the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau, a notice containing information for staff of food service establishments regarding food allergies and intolerances. Such notice shall include:

(a) the procedures to be followed if a customer informs staff of such food service establishment that such customer has a food allergy or intolerance;

(b) any procedures to be followed to prevent cross contact; and

(c) the procedure to be followed if a customer has an allergic reaction, including a recommendation regarding the circumstances in which to call 911.

3. Every food service establishment shall post the notice containing information on food allergies and intolerances established pursuant to subdivision two of this section in a conspicuous location accessible to

all employees involved in the preparation or service of food, in at least one of the languages spoken by each employee to the extent such languages are among those in which the department makes the notice available pursuant to subdivision two of this section.

4. The commissioner shall make available on the department's website, in the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau, (a) a translation of the following: "If you have a food allergy or intolerance, please notify us."; and (b) a food allergy or intolerance message that food service establishments may use to inform customers about allergy or intolerance information for prepared food items.

5. Every food service establishment that makes available a menu shall include in a conspicuous manner on each menu or the assembly upon which the menu or menus are included, either, (a) the following notice: "If you have a food allergy or intolerance, please notify us."; or (b) a food allergy or intolerance message that informs the customer about the allergy or intolerance information for each prepared food item or items on such menu. If such menu is available in a language other than English for which the department makes a translation available pursuant to subdivision four of this section, such food service establishment shall also include such translation in a conspicuous manner. Every food service establishment that makes available a menu online for a customer to place orders for delivery or take out, including under a third-party food delivery agreement pursuant to section three hundred ninety-one-v of the general business law, shall also include on such menu a food allergy notification to customers and either, (1) provide a method by which a customer may indicate any food allergy or intolerance such customer has; or (2) provide a food allergy or intolerance message that informs the customer about the allergy and intolerance information for each prepared food item or items on such menu.

6. Any food service establishment that violates the provisions of this section or any of the rules or regulations promulgated hereunder shall

be liable for a civil penalty not to exceed one hundred twenty-five dollars for each violation.

§ 199-g. Allergen labeling for prepackaged foods. 1. As used in this section, the following terms shall have the following meanings:

(a) "Prepackaged food" means food that is prepared, prepacked, and offered or sold to customers on the same premises. Prepackaged food does not include food that is not in packaging or is packaged after a customer has ordered.

(b) "Food establishment" means any place where food is prepared and intended for consumption, including retail food stores, as defined in section five hundred of this chapter.

(c)(i) "Major food allergen" means:

(A) milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, sesame, and soybeans; and

(B) a food ingredient that contains protein derived from a food named in clause (A) of this subparagraph.

(ii) "Major food allergen" does not include:

(A) any highly refined oil derived from a food specified in clause (A) of subparagraph (i) of this paragraph or any ingredient derived from such highly refined oil; or

(B) any ingredient that is exempt under the petition or notification process specified in the federal Food Allergen Labeling and Consumer Protection Act of 2004, as amended.

2. Every food establishment shall label all prepackaged food with a written notification on the package or on a label attached to the package identifying any ingredient with which a product is made that constitutes a major food allergen. Such label need not identify any ingredient that does not constitute a major food allergen under federal or state law.

§ 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, or if it 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 amended; provided, that where a pesticide chemical has been used 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, 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.

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 liquor, wine, beer or cider 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 liquor, wine, beer or cider 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 liquor, wine, beer or cider for consumption off the premises where sold unless:

(i) each package is a sealed package, as received from the manufacturer or distributor;

(ii) each sealed package, as received from the manufacturer or distributor, in a format to be established or approved by the commissioner, prominently bears the following statements, provided that such statements may refer to either liquor, wine, beer or cider or a combination thereof:

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

(B) This product is made with (insert liquor, wine, beer and/or cider) 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 liquor, wine, beer or cider are made available to the public provided that such sign or poster may refer to either liquor, wine, beer or cider or a combination thereof:

"THIS AREA CONTAINS (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER FROZEN DESSERTS

The sale of (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER FROZEN DESSERTS to individuals under the age of twenty-one years is prohibited.

(INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER FROZEN DESSERTS contain alcohol up to five percent by volume.

NOTICE: (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER FROZEN DESSERTS 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 OR HER OWN FOR THE PURPOSE OF ATTEMPTING TO PURCHASE (INSERT LIQUOR, WINE, BEER AND/OR CIDER) ICE CREAM OR OTHER FROZEN DESSERTS."

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

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

(A) a written notice that individual servings of ice cream or other frozen desserts made with liquor, wine, beer or cider 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 ice cream or other frozen desserts made with liquor, wine, beer or cider for consumption off the premises, unless, with each shipment, such manufacturer and/or distributor provides:

(A) a written notice that packages of ice cream or other frozen desserts made with liquor, wine, beer or cider 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 201-f. Retail sale of halal 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 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.

§ 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.

§ 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.

§ 201-i. Misbranding of certain fish species. 1. As used in this section: (a) "escolar" shall mean any variety of fish known as escolar, walu, snake mackerel, or any other common name of the scientific species name lepidocybium flavorbrunneum.

(b) "oilfish" shall mean any variety of fish known as oilfish or any other common name of the scientific species name ruvettus pretiosus.

(c) "white tuna" shall mean the fish species known as albacore tuna, long fin tuna, or the scientific species name thunnus alalunga.

2. No person, wholesaler, distributor, retail food store or food service establishment shall willfully sell, offer for sale, distribute, import, or export the species of fish commonly known as escolar or oilfish under the name tuna, albacore tuna, white tuna, or any other species name, common or scientific, other than the recognized common or scientific species names for such species defined in subdivision one of this section.

§ 202. Unavoidable added poisonous or deleterious substances. 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.

§ 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.

§ 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.

§ 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.

§ 203. Manufacture and sale of imitation maple, birch, walnut or beech

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 in imitation or semblance of birch 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 in imitation or semblance of walnut syrup, which is not pure 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 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.

(d) 1. No person shall manufacture for sale, keep for sale, or offer

or expose for sale, any sugar in imitation or semblance of beech sugar which is not pure beech sugar, nor any syrup in imitation or semblance of beech syrup, which is not pure beech syrup, nor shall any person manufacture, offer or expose for sale any sugar as and for beech sugar which is not pure beech sugar, nor any syrup as and for beech syrup which is not pure beech syrup.

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

§ 204. Branding and labeling of maple, birch, walnut or beech 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, walnut or beech 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, walnut or beech 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.

§ 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.

§ 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 package 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 subdivisions 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

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 act 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.

§ 214-c. 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.

§ 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.

§ 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 an untrue statement of fact, or (3) the need therefore no longer exists.

§ 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.

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

§ 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 the 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 O157: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 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.

§ 214-o. Labeling requirements for fish wholesalers. 1. Any wholesaler that sells, offers for sale, transports or transacts in the purchase or sale of fish for human consumption and packages such fish in sealed containers, shall cause such containers to be clearly labeled with the following:

(a) the identity and the weight, standard measure or numerical count of the fish;

(b) the name and address of the shipper, packer or distributor thereof; and

(c) the state of the origin thereof.

2. The provisions of this section shall be deemed to comply with and shall be implemented in accordance to any federal law, rule or regulation relating to fish.

ARTICLE 17-A
ENRICHMENT OF CERTAIN FOODS

Section 215. Declaration of policy.
215-a. Standards for enriched foods.
215-c. Rules and regulations.

§ 215. Declaration of policy. Since nineteen hundred forty-five the legislature has recognized the need for providing satisfactory nutritional levels in bread and flour. The legislature now finds that undernourishment still exists in a substantial number of families in this state including, but not limited to, families whose diet is restricted by economic, cultural, or social factors.

In order to insure that these nutritional guarantees apply notwithstanding cultural and other differences in dietary patterns, the legislature hereby extends the authority of the commissioner of agriculture and markets to require the enrichment of food products, to include other staple foods such as rice, macaroni and noodle products.

The legislature also finds that in the interest of public health, the statutory enrichment program should be made more flexible in order to take advantage of present and future developments in nutritional knowledge and food technology.

§ 215-a. Standards for enriched foods. 1. The commissioner is hereby authorized and empowered to establish after public hearing definitions, standards of identity and standards of enrichment for any or all of the food products within the following categories:

(a) wheat flour, corn flour and related products;
(b) bread, rolls and related bakery products;
(c) milled rice;
(d) macaroni and noodle products.

2. The standards of enrichment so established may prescribe maximum and minimum amounts of vitamins, minerals and other nutrients which enriched products must contain, or such standards may prescribe single level requirements, with provisions for a reasonable overage within the limits of good manufacturing practice. In establishing such standards of enrichment, the commissioner shall conform, insofar as he finds practical, to standards of enrichment promulgated by the secretary of health, education and welfare pursuant to the federal food, drug and cosmetic act, and acts amendatory thereof. Any standard established by the commissioner after public hearing may be amended without hearing, if the amendment substantially conforms to standards promulgated under the federal act.

§ 215-c. Rules and regulations. The commissioner is hereby authorized and empowered to promulgate, amend and repeal rules and regulations to carry out and give full force and effect to the provisions of this article including rules and regulations prescribing the methods which may be used to accomplish the enrichment of the food products governed by this article and rules and regulations governing the labeling of enriched foods.

ARTICLE 17-B
LICENSING OF FOOD SALVAGERS

Section 216. Application of article.
217. Definitions.
218. License required.
219. Application.
220. Granting or revoking licenses.
221. Review.
222. Rules and regulations.

§ 216. Application of article. The general purpose of this article is to protect the public safety and health by controlling the salvaging of damaged or contaminated food, food products and devices which come into intimate contact with food or food products.

§ 217. Definitions. (a) The term "food salvager" as used in this article, means a person engaged in the business of reconditioning, labeling, relabeling, packing, repacking, sorting, cleaning, culling, or by other means salvaging food or food products, single service food containers and utensils, soda straws, paper napkins or any product of a similar nature that may have become damaged, contaminated, adulterated or misbranded as a result of fire, flood, transit wreck, accident or other cause, or by water, smoke, chemicals, or any other adulterating agents. The term food salvager shall not include a person who collects donated farm salvage from lands owned, occupied or leased by such person with the intent to donate such farm salvage to a charitable not-for-profit organization provided that such salvage is in fact so donated. A person who manufactures animal feed or an animal feed ingredient from food products in a facility registered pursuant to section one hundred twenty-nine of this chapter shall not be considered a food salvager based on such activity.

(b) "Donated farm salvage" shall mean an agricultural crop that is unharvested, surplus or unmarketable but otherwise nutritious and edible.

§ 218. License required. No person shall act as a food salvager unless licensed by the commissioner as provided in this article.

§ 219. Application. Application for license as a food salvager shall be made upon a form prescribed by the commissioner. The applicant shall satisfy the commissioner of his or her character and that he or she has adequate physical facilities for salvaging food and food products. If so

satisfied, the commissioner shall issue to the applicant a non-transferable license, which will expire on the thirtieth of June of the next even numbered year following its issuance. Application for renewal of such license for a period of two years shall be made biennially, upon a form prescribed by the commissioner and submitted no later than thirty days prior to the expiration of the existing license. Where a person operates more than one salvage warehouse a separate license is required for each location.

§ 220. Granting or revoking licenses. The commissioner may decline to grant a license or may suspend or revoke a license already granted, after due notice to the applicant or licensee by mail or otherwise and opportunity to be heard, when it appears (1) that any statement in the application or upon which it was issued is or was false or misleading, (2) that the applicant or licensee does not have adequate physical facilities for salvaging food and food products, (3) that the applicant has been convicted of a crime, or (4) that the applicant or licensee has failed to comply with any of the provisions of this chapter or rules and regulations promulgated pursuant thereto.

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

§ 222. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary.

ARTICLE 18

WOOD PRODUCTS DEVELOPMENT

Section 225. Wood products development council.

§ 225. Wood products development council. 1. There is hereby established within the department a wood products development council. Such council shall consist of the commissioner, the commissioners of environmental conservation and economic development, or their designees, and ten other persons to be appointed by the governor, including one member on the recommendation of the temporary president of the senate; one member on the recommendation of the speaker of the assembly; one member on the recommendation of the minority leader of the senate; and one member on the recommendation of the minority leader of the assembly. Of the members so appointed, at least one member shall be a sawmill owner, one member shall be a secondary wood products manufacturer, one member shall be a logger, one member shall be a maple syrup producer, one member shall be a commercial forest owner, one member shall be a nonindustrial forest owner, one member shall be a representative of a statewide forest industry organization, and one member shall be a representative of a statewide forest landowners association. Members shall be appointed for a term of three years and may serve until their successors are chosen, provided, however, that of the members first appointed, three shall serve for a term of one year, three shall serve for a term of two years, and four shall serve for a term of three years. The governor shall select a member of the council to serve as chairperson. Council members shall not receive compensation for their services, but may be paid their actual and necessary expenses incurred in serving upon the council.

2. The council shall work with wood-using manufacturers to increase the economic contributions and employment opportunities related to the practice of forestry and manufacture of wood products in New York state. The council shall give priority to increasing private investment in working forests; maintaining access to working and family forests; coordinating policy and permitting issues with state agencies, academia and the private sector; working to improve public understanding of and appreciation for forestry and forest products; and increasing export and

market opportunities for New York forest products. The council shall deliver an annual report outlining its work and making recommendations with regard to economic development and marketing initiatives and research and development initiatives consistent with the purposes of the council. The report shall be delivered to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly and the minority leader of the senate.

3. The department shall provide necessary support services to the council, including, within funds available, the appointment of an executive director to coordinate the work of the council.

ARTICLE 18-A

NATURAL FIBER TEXTILE DEVELOPMENT

Section 226. Natural fiber textile development workgroup.

§ 226. Natural fiber textile development workgroup. 1. There is hereby established within the department a natural fiber textile development workgroup. The commissioner, in conjunction with the commissioner of economic development shall convene an annual workgroup of stakeholders which may include but not limited to a producer of animal-based fibers, a producer of plant-based fibers, a representative of a statewide agricultural organization, a representative of a regional or statewide organization of animal or plant fiber producers, a representative of fiber and textile manufacturers which is defined as a fiber processor or spinning mill, a knitting mill, a weaving studio, or wet finishing (dyeing, printing or fabric finishing), a representative from designers/producers which is defined as including apparel, home textile products, industrial textiles and healthcare products, and a representative of an academic institution offering textile or design education, and a representative of an academic institution offering fiber-producing livestock education. This workgroup shall study and identify methods to, including but not limited to:

(a) increase the economic contributions and employment opportunities related to animal and plant fiber agriculture and textile manufacturing

in New York state;

(b) increase private investment in, and utilization of, New York state produced and processed natural fibers in all categories of textile: manufacturing including apparel, home textile products, industrial textiles, and health care products;

(c) improve public understanding of and appreciation for natural fiber textiles; and

(d) increase export and market opportunities for New York produced natural fiber textiles.

2. The workgroup shall submit recommendations to the commissioner, the commissioner of economic development, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly and the minority leader of the senate within one year of the effective date of this section and every two years thereafter.

ARTICLE 19

REFRIGERATED WAREHOUSES AND LOCKER PLANTS

Section 230. Definitions.
231. Licenses, issuance of.
232. Licenses, suspension or revocation of; review.
233. Licensee to render financial statements.
234. Records to be kept by refrigerated warehouse licensee.
234-a. Records to be kept by locker plant licensee.
235. Marking of food held under refrigeration.
236. Removal of marks.
237. Reports of holdings.
238. Exemptions as to locker plants.
239. Unfit food to be condemned.
240. Length of storage period.
241. Transfer of food held in refrigerated warehouse.
242. Power of commissioner to investigate.
243. Rules and regulations.

§ 230. Definitions. As used in this article: 1. The term

"refrigeration," shall mean the storage or keeping of articles of food in a refrigerated warehouse at or below a temperature above zero of forty-five degrees Fahrenheit.

2. The term "refrigerated warehouse" shall mean any establishment or structure, or portion thereof, where space is rented or hired for the storage of food at or below the temperature of forty-five degrees Fahrenheit for more than thirty days.

3. The term "temporary storage place" shall mean any establishment or structure, or a separate and distinct portion thereof, artificially cooled to or below a temperature above zero of forty-five degrees Fahrenheit, in which food is stored for periods in no case exceeding thirty days.

4. The term "locker plant" shall mean any building, or portion thereof, under such chemical refrigeration, in which individual compartments or lockers, each of not more than one hundred cubic feet capacity, are rented for the purpose of freezer storage of articles of food.

§ 231. Licenses, issuance of. No person or corporation shall maintain or operate any refrigerated warehouse and/or locker plant unless licensed by the commissioner. Application shall be made upon a form prescribed by the commissioner. The applicant shall satisfy the commissioner of his or her character, financial responsibility, and competency to operate a refrigerated warehouse or locker plant. The commissioner, if so satisfied, shall issue to the applicant a license or licenses which will expire on the thirtieth of September of the next odd numbered year following its issuance. Application for renewal of such license or licenses for a period of two years shall be made biennially, upon a form prescribed by the commissioner and submitted no later than thirty days prior to the expiration of the existing license or licenses.

§ 232. Licenses, suspension or revocation of; review. The commissioner

may suspend a license if any warehouse or locker plant covered by the license shall be found to be conducted in an insanitary manner, such suspension to continue until the unsatisfactory conditions of sanitation are corrected. The commissioner may, after opportunity be given to the licensee to be heard, revoke a license (a) if it appears that any statement upon which the license was issued is false or misleading, (b) if the licensee violates any of the provisions of this chapter, or (c) if the financial condition of the licensee changes so as to imperil the interests of those who store food in the warehouse or locker plant of the licensee, or of those who extend credit upon the security of goods so stored.

The action of the commissioner in refusing to grant a license, or in revoking or suspending a license, shall be subject to review by a proceeding under article seventy-eight of the civil practice law and rules, but the decision of the commissioner shall be final unless within thirty days from the date of the order embodying such action such proceeding to review has been instituted.

§ 233. Licensee to render financial statements. A licensee shall from time to time, when required by the commissioner, make and file with the commissioner a verified statement exhibiting his or its financial condition as of a date to be prescribed by the commissioner. Such statements shall be received by the commissioner on a confidential basis and shall not be open to public inspection.

§ 234. Records to be kept by refrigerated warehouse licensee. The refrigerated warehouse licensee shall assign to each lot of food, when received for storage in a refrigerated warehouse, a distinguishing lot number for the purpose of identification, and shall keep an accurate record of such lot number, and shall also make and keep a record of the date of the receipt and of the date of removal of each lot of food.

§ 234-a. Records to be kept by locker plant licensee. The locker plant

licensee shall assign a designating number to each locker and keep an accurate record of the name and address of lessee of each locker, by its designated number.

§ 235. Marking of food held under refrigeration. No person or corporation shall place, receive or keep in a refrigerated warehouse any article of food, except fruits and vegetables, unless plainly marked or tagged, either upon the container in which it is stored or upon the article of food itself, with the identification lot number assigned and recorded pursuant to the foregoing section.

§ 236. Removal of marks. It shall be unlawful for any person to alter, mutilate, destroy, obscure, obliterate, or remove any mark or tag required by this article to be placed on any article of food or the container thereof while the same is stored in a refrigerated warehouse.

§ 237. Reports of holdings. Licensed refrigerated warehouses shall submit monthly reports to the commissioner, upon a form to be prescribed by him, setting forth the quantity of each and every food product stored in the refrigerated warehouse of the licensee, except holdings in break-up rooms, processing rooms and ice cream hardening rooms. Such reports shall be filed on or before the fifth business day of each month and shall show the holdings on the last day of the preceding month.

§ 238. Exemptions as to locker plants. Sections two hundred thirty-four, two hundred thiryt-five two hundred thirty-six, and two hundred thirty-seven of this chapter shall apply to locker plants, only, when, in addition to their locker operations, such plants conduct a refrigerated warehouse business within the meaning of the law.

§ 239. Unfit food to be condemned. No article of food shall be placed, received, or kept in any refrigerated warehouse or locker plant unless

the same is in an apparently pure and wholesome condition. The commissioner may seize and condemn any articles of food in any refrigerated warehouse or locker plant which are found to be unfit for consumption; and such articles of food shall be destroyed or otherwise disposed of so as to prevent their being used for food.

§ 240. Length of storage period. 1. No person or corporation shall keep or permit to remain in any refrigerated warehouse or locker plant any article of food beyond the time when it is sound and wholesome and fit to remain in storage. If any article of food is found to be fit for immediate consumption, but unfit for further storage, such article of food shall at once be removed from storage and not again stored. No article of food shall be kept or permitted to remain in any refrigerated warehouse for a longer aggregate period than twenty-four calendar months, except by order of the commissioner. Upon evidence satisfactory to him that the food is sound and wholesome and fit for further storage, the commissioner may, in his discretion, grant an extension of the storage period. He may, in his discretion, cause any articles of food to be examined to ascertain if the food is sound and wholesome and fit for further storage.

2. In the event that any article of food is held in a refrigerated warehouse for a period of longer than twenty-four calendar months without extension having been applied for and granted by the commissioner, and that neither the operator of the refrigerated warehouse nor the commissioner can locate the owner of the said article of food, after ten days' notice by registered mail directed to the last known address of such owner, then, and in that event, the commissioner shall have the power to order the disposition and sale of the said article of food for the purpose of payment of charges for storage or other valid liens against same. If a sale as herein provided is ordered by the commissioner, the proceeds of such sale shall be applied, first, to the payment of any and all charges for storage and service in connection with said property, and second, for any other valid liens against the said property. Any balance then remaining from the proceeds of the sale shall be paid to the owner of the said property, if such

owner can be located; and, in the event the owner cannot be located within one year of date of notification, then any balance shall be paid into the treasury of the state of New York.

3. If through non-use of any locker or lockers by the lessee thereof during a period of twelve calendar months, or if for any reason it becomes apparent to the operator of a locker plant that articles of food are possibly being held in any locker or lockers for a period beyond the time when such articles of food may be sound and wholesome or fit to remain in storage, he shall notify the lessee to immediately inspect the contents of his locker or lockers; and, if any article of food is found unfit for further storage, the operator shall require its prompt removal.

4. If the operator of the locker plant, after ten days' notice by registered mail directed to the last known address of such lessee, is unable to locate the lessee of the said locker or lockers, then, and in that event, he shall so notify the commissioner. The commissioner shall thereupon cause the articles of food to be examined, and, if found fit for immediate consumption, he shall have the power to order the disposition and sale of the said article or articles of food for the purpose of payment of the locker charges or other valid liens against same. If a sale as herein provided is ordered by the commissioner, the proceeds of such sale shall be applied, first, to the payment of any and all charges due the locker plant operator for rental and service, and, second, for any other valid liens against the said property. Any balance then remaining from the proceeds of the sale shall be paid to the owner of the said property if such owner can be located; and, in the event that the owner cannot be located within one year of date of notification, then any balance shall be paid into the treasury of the state of New York.

5. In carrying out any order of the commissioner for sale or disposition of any property under the provisions of sections two hundred and thirty-nine or two hundred and forty of this chapter, the owner or operators of the refrigerated warehouse or locker plant are hereby relieved from any liability to the original owner or any other person or

persons for the custody of said property, and from any legal liability under any warehouse receipt issued and outstanding covering the said property.

§ 241. Transfer of food held in refrigerated warehouse. The transfer of any food from one refrigerated warehouse or locker plant to another for the purpose of evading any provisions of this article is hereby prohibited.

§ 242. Power of commissioner to investigate. The commissioner shall have power to investigate any transaction in connection with the operation of any refrigerated warehouse or locker plant, and may examine the records of any person or corporation applying for or holding a license; but information relating to the general business of the applicant or licensee which may be disclosed by such investigation, and which is not related to the immediate purpose thereof, shall be deemed of a confidential nature by the commissioner.

§ 243. Rules and regulations. The commissioner shall adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary. Such rules and regulations shall be filed and open for public inspection at the principal office of the department, and shall have the force of law.

ARTICLE 20

LICENSING OF FARM PRODUCTS DEALERS

Section 244. Statement of policy and application of article.
245. Definitions.
246. Unlawful conduct.
247. Power of commissioner to investigate.
247-a. Liability to person injured.
248. Dealers to be licensed and to provide security and to deposit fee.

249. Granting, revoking or suspending licenses.
250. Form and amount of security; agricultural producers security fund; scope of coverage.
250-a. Trust upon farm products and sales proceeds for the benefit of producers.
250-b. Producer claims against security and agricultural producers security fund.
250-c. Stationery and advertising to show license.
250-d. Record and report of sales; preservation of records by dealers.
250-e. Records to be kept by dealer-processors; deductions for payments to cooperatives.
250-f. Stated grape price.
250-g. Release of security by commissioner.
250-h. Review.
250-i. Rules and regulations.
250-j. Penalties.
250-k. Remedies.

§ 244. Statement of policy and application of article. 1. This article is enacted in the exercise of the police power of the state and its purposes generally are to suppress and prevent unfair and fraudulent practices in the marketing within this state of farm products produced therein and to safeguard the producers and dealers of this state in certain marketing transactions relative to such farm products. This article shall apply only to transactions concerning farm products produced within this state, or concerning livestock produced outside the state when such transactions are either entered into or attempted within the state, and where such transactions involve a dealer doing business within this state. Farm products shipped from a point within this state shall be presumed to have been produced within the state.

2. (a) This article shall not apply to the sale of farm products at auction held at the premises of the owner of said farm products and where said sales do not exceed one sale a year, nor to any agricultural cooperative corporation as defined in subdivision (a) of section one

hundred eleven of the cooperative corporations law when receiving, processing, and marketing farm products of its producer members, nor to persons required to file and maintain a mandatory surety under the federal packers and stockyards act with respect to their transactions regulated under that act.

(b) The licensing, bonding and stated grape price provisions of this article shall not apply to: (i) any person whose annual dealings in farm products do not exceed the sum of twenty thousand dollars; or (ii) any agricultural cooperative with respect to the receipt, processing and marketing of grapes or grape products of its producer members or non-members of such cooperative on the basis of their patronage, provided, however, that the annual purchase of grape or grape products from non-members of such cooperative shall not exceed the sum of one hundred thousand dollars; or (iii) a charitable not-for-profit organization which receives for distribution donated farm salvage, as defined in section two hundred seventeen of this chapter.

§ 245. Definitions. 1. "Farm products" includes all agricultural, horticultural, floricultural, and vegetable and fruit products of the soil, Christmas trees, livestock and meats, poultry, nuts, honey, maple tree sap and maple products produced therefrom, wool, hides, hay, straw and grains; but shall not include eggs, dairy products or timber products, except as hereinabove set forth.

2. "Dealer" means any person who buys or receives farm products from a producer for resale, or arranges, facilitates or brokers the sale of farm products from a producer to a dealer or any other person; and shall also include "commission merchants", "net-return dealers", "brokers" and "processors". A "commission merchant" means any person engaged in the business of receiving farm products for sale on commission, however computed. A "net-return dealer" means a dealer who solicits or receives shipments of farm products under a promise to pay for the same on the basis of current market prices on receipt or at a price bearing some specified premium above or below established market quotations. A "broker" means any person engaged in the business of negotiating sales and purchases of farm products for or on behalf of the vendor or the

purchaser. A "processor" means any person who bakes, brines, bottles, cans, concentrates, dehydrates, dresses, dries, freezes, juices, packages, pickles, preserves, presses or waxes and/or encloses such stabilized farm products, or their derivative products, in any container, whether or not hermetically sealed, provided, however, that a person who buys farm products only for sale, including sale in a processed form, at retail to the ultimate consumer shall not be deemed a dealer for purposes of this article. Sale at retail to the ultimate consumer shall not include sales to industrial, institutional, commercial or agricultural users.

3. "Prompt payment" means payment within thirty days of the date farm products sold by a producer to a dealer are delivered to such dealer, or other person as the purchaser may designate, or such other period of time as otherwise agreed upon in a writing signed by the dealer and the producer on or before delivery of said farm products, provided that in no event shall such period exceed one hundred twenty days from said date of delivery.

4. "Producer" means any person who grows farm products or sells livestock within this state.

5. "Person" means any individual, corporation, partnership or association.

6. "Poultry" means any live or slaughtered domesticated chicken, duck, turkey, goose, pheasant, squab or guinea hen.

9. "Bond" means a bond executed by a surety company authorized to do business in this state.

10. "Letter of credit" means an irrevocable letter of credit conforming to article five of the uniform commercial code, and executed by a bank or trust company authorized to do business in this state.

§ 246. Unlawful conduct. It shall be unlawful: 1. For any person to

act as a dealer unless licensed pursuant to the provisions of this article.

2. For any dealer to make any fraudulent charge in respect to any farm product.

3. For any dealer to reject or fail to account and make prompt payment, without reasonable cause, for any farm products, bought or contracted to be bought or negotiated to be bought by such dealer.

4. For any dealer to discard, dump or destroy, without reasonable cause, any farm products received by him or her.

5. For any dealer to make any false or misleading statement, or other misrepresentation concerning the condition, quality, grade, quantity or disposition of or condition of the market for any farm products received by or bought or contracted to be bought by such dealer, or the purchase or sale of which is negotiated by such dealer.

6. For any dealer directly or indirectly to purchase for his or her own account farm products received by him or her for sale on commission, without prior authority from or without notifying the consignor thereof.

§ 247. Power of commissioner to investigate. The commissioner and his or her authorized representatives shall have access to and may enter at all reasonable hours all places where farm products are being held, packaged, processed or stored, or where such farm products are being bought, sold or handled, and shall have access to the books, papers, records and documents relating to transactions involving farm products, and shall have the power to inspect and copy the same, and may take testimony under oath concerning any matter related to the administration and enforcement of this article. Any information relating to the business disclosed by such investigation shall be held by the commissioner as confidential except that such information may be disclosed in the administration and enforcement of this article. In the event any person refuses the commissioner or his or her authorized

representatives access to any premises, the commissioner may apply to the state supreme court for an administrative inspection warrant which shall be granted upon a showing by the commissioner that the premises sought to be inspected are or may be utilized by such person to conduct any activity subject to regulation under this article.

§ 247-a. Liability to person injured. Any dealer, who violates any provisions of section two hundred forty-six of this article, shall be liable to the person injured thereby for the full amount of damages resulting from such violation.

§ 248. Dealers to be licensed and to provide security and to deposit fee. 1. (a) No person shall act as a dealer unless licensed as provided in this article. Application shall be made upon such forms and at such times as prescribed by the commissioner. Renewal applications shall be submitted to the commissioner at least thirty days prior to the expiration of the existing license. No action will be taken on applications deemed incomplete by the commissioner. The applicant shall furnish evidence of his or her good character, financial statements, prepared and certified by a certified public accountant when required by the commissioner, and evidence that he or she has adequate physical facilities for receiving and handling farm products or processing farm products if he or she is to act as a dealer. The commissioner, if so satisfied, shall issue to such applicant, upon the filing of a bond or letter of credit and upon payment of a fee to be deposited into the agricultural producers security fund as hereinafter provided, a license entitling the applicant to conduct the business of a dealer in farm products for a period of one year. Notwithstanding any other provision of this section, an applicant who intends to pay and a licensee who pays upon delivery for purchases of farm products from producers, in cash, or cash equivalent, including only certified or bank check, money order, electronic funds transfer, or by debit card, shall be exempt from filing a bond or letter of credit. In the event that a licensee who has been so exempted from filing a bond or letter of credit fails to pay cash or a cash equivalent upon delivery for any purchase of farm products from a

producer, such licensee shall file a bond or letter of credit as otherwise required by this section with the commissioner no later than ten business days from the date the commissioner notifies the licensee that such bond or letter of credit is required.

(b) The commissioner is authorized to stagger the commencement of the license year among licensees, and shall prorate the license application fee and agricultural producers security fund fee accordingly. Notwithstanding any other provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all license fees received pursuant to this section in the agricultural producers security fund.

2. Before commencing or doing any business for the time for which a license has been issued, said license shall be enclosed in a suitable wood or metal frame having a clear glass space and a substantial wood or metal back so that the whole of said license may be seen therein, and shall be posted and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same.

§ 249. Granting, revoking or suspending licenses. The commissioner may decline to grant or renew a license, or revoke or suspend a license already granted, upon due notice and opportunity for a hearing to the applicant or licensee, and upon finding of one or more of the following:

1. That the licensee or applicant has violated any provision of section two hundred forty-six of this article.

2. That the licensee has made a general assignment for the benefit of creditors or is insolvent or where a money judgment has been secured against him or her, upon which an execution has been returned unsatisfied and the time to appeal therefrom has expired.

3. That there has been a continued course of dealing or operation of the business of the applicant or licensee of such a nature as to satisfy the commissioner of the inability or the unwillingness of the applicant

or licensee to conduct his or her business in compliance with the provisions of this chapter, or of such rules and regulations as the commissioner may adopt.

4. That there has been a continued failure to keep records required by the commissioner or by law.

5. That the applicant or licensee has failed to provide such security as required by the commissioner pursuant to this article.

6. That the applicant or licensee has been a party to or is conspiring to enter a combination to fix prices contrary to law.

7. That the applicant or licensee has solicited, purchased or received farm products contracted to another licensee.

8. That the applicant or licensee has failed to comply with any other provisions of this chapter, article or rules and regulations promulgated thereunder.

9. That the applicant or licensee has made any false or misleading statement in his or her application to the commissioner for a license, or concerning any matter enumerated in this article.

10. That the applicant or licensee or any individual holding any position or interest or power of control of the applicant or licensee had previously been responsible in whole or in part for any act on account of which a license may have been suspended or revoked pursuant to the provisions of this article.

11. That the licensee has violated the posting requirements of section two hundred forty-eight of this article.

§ 250. Form and amount of security; agricultural producers security fund; scope of coverage. 1. (a) The bond or letter of credit required by section two hundred forty-eight of this article shall be upon a form

prescribed by the commissioner and shall be in the sum fixed by the commissioner, provided that the sum shall not be less than three thousand dollars nor more than four hundred thousand dollars, and shall be conditioned on the faithful compliance by the licensee with the provisions of this article. Upon notice, the commissioner may increase the security based upon review of the applicant's or licensee's financial statements and other materials in support of its application. In the case of an applicant or licensee owned in whole or in part by a producer, said producer may execute a waiver of his or her right to recover from the applicant or licensee's security and the agricultural producers security fund and the amount of the security said applicant or licensee is required to provide shall be adjusted accordingly.

(b) In addition to the bond or letter of credit required by section two hundred forty-eight of this article, a fee for deposit in the agricultural producers security fund shall be paid annually to the commissioner at the time application is made for a license. Such fee shall be determined on the basis of the annual dollar volume of purchases of farm products as shown in the application for license under this article in accordance with the following schedule:

Annual Volume	Fee
$5,000,000 and over	$2,500
3,000,000 - 4,999,999	1,750
1,000,000 - 2,999,999	1,000
500,000 - 999,999	750
300,000 - 499,999	500
50,000 - 299,999	300
20,000 - 49,999	200

(c) In lieu of filing the bond or letter of credit required by section two hundred forty-eight of this article and paying the fee as provided for in paragraph (b) of this subdivision, the applicant may elect to file a bond or letter of credit in the amount determined by the commissioner, but which shall not be less than an amount covering ninety percent of the previous year's dollar volume of purchases of New York state farm products.

(d) Upon initial application for a license under this article, the applicant who elects to participate in the agricultural producers security fund shall pay into the fund an amount equal to one-half the

fee determined in paragraph (b) of this subdivision, based on an applicant's good faith estimate of his or her annual dollar volume of purchases.

(e) There is hereby established in the joint custody of the comptroller and commissioner of taxation and finance a fund to be designated as the agricultural producers security fund. The commissioner shall deposit all moneys received from dealers pursuant to paragraph (b) of this subdivision into the fund. The moneys so received and deposited in the agricultural producers security fund shall not be deemed state funds. The comptroller shall be empowered to invest such funds pursuant to section ninety-eight-a of the state finance law consistent with the purposes of this article. The commissioner is hereby authorized to draw upon such funds, in his or her discretion, to purchase credit insurance for the benefit of the agricultural producers security fund. The expense of administering the licensing and bonding provisions of this article shall be paid from the fund upon vouchers certified by the commissioner. Payments from the fund for administrative expenses shall not exceed five percent of the maximum amount authorized for the fund. The commissioner shall make an annual report of the receipts to and disbursements from the fund, including the costs of administration of the fund, which report shall be made available to each dealer and to any other person having an interest in the fund, and any person who may request a copy of that report.

(f) (i) At any time the fund exceeds six million dollars on the one hundred twentieth day prior to the commencement of the next license year, the commissioner shall suspend collection of the security fund fee, unless such commissioner has reason to believe that pending claims may reduce the fund below that amount.

(ii) In the event that the fund exceeds six million dollars on the one hundred twentieth day prior to the commencement of the next year, but when adjusted for the rate of inflation, the security fund does not provide the same level of protection to the producers as provided for by subparagraph (i) of this paragraph, the commissioner shall continue the collection of security fund fees for such year.

2. When and as required by the commissioner, a licensee shall file with the commissioner a verified statement of his or her disbursements

during a period to be prescribed by the commissioner which shall contain the names of the producers from whom farm products were received or purchased and the amount due to the producers. Prior to acceptance of such statement for filing, the commissioner may require, at the expense of the licensee, the submission of an audit by a certified public accountant. If, in the judgment of the commissioner, it appears from such statement or from facts otherwise ascertained by him or her that the security afforded to producers delivering or selling farm products to such licensee does not protect such producers to the extent intended by this section, the commissioner may require such licensee to give an additional bond or letter of credit in a sum to be determined by the commissioner, but in no event shall the combined bonds for the licensee exceed four hundred thousand dollars.

3. If satisfied from an investigation of the financial condition, character and record of the person applying for a license that (a) such person is solvent and possessed of sufficient assets reasonably to assure compensation to producers of farm products; and (b) the gross volume of farm products purchased from producers by said applicant will not exceed one hundred thousand dollars during the license year, the commissioner, in his or her discretion, may relieve such applicant from the provision of this section requiring the filing of a bond or letter of credit.

4. The commissioner, at least annually, shall publish the names of all licensees and the amount of their security and shall, upon request, furnish such list to any person.

§ 250-a. Trust upon farm products and sales proceeds for the benefit of producers. 1. Farm products received by a dealer in all transactions and all inventories of food or other products derived from farm products and any receivables or proceeds from the sale of such farm products, food or other products shall be held by such dealer in trust for the benefit of all unpaid producers of such farm products until full payment of the amounts owing in connection with such transactions has been received by such producers.

2. To preserve the trust benefit provided by this section, a producer must within sixty days from the date by which the dealer was obligated by statute, regulation or written agreement to make payment to the producer, give written notice to the dealer that the producer is electing the trust benefit. The written notice shall set forth information in sufficient detail to identify the transaction subject to the trust. Notwithstanding any other provision of this subdivision, nothing shall prevent a producer from providing notice of the trust benefit election to a dealer prior to the date by which the dealer was obligated to make payment.

3. Trust beneficiaries shall have a cause of action to enforce payment from the trust. The supreme court is hereby vested with jurisdiction to entertain such actions. A producer who prevails in an action to enforce payment from the trust shall recover from the dealer related costs, fees and disbursements and may recover reasonable attorney fees as determined by the court.

§ 250-b. Producer claims against security and agricultural producers security fund. 1. (a) A producer who has not received full payment of amounts due for farm products in accordance with the prompt payment provisions of sections two hundred forty-five and two hundred forty-six of this article shall immediately notify the commissioner in writing of such default in payment. The notification shall set forth the dates of the transactions, the dealer to whom the farm products were sold and/or delivered, the type of product delivered, the amount and the price agreed upon for such product.

(b) If the commissioner has reason to believe that a licensed dealer has defaulted in making payments for farm products to producers, the commissioner shall give notice to producers to file verified claims within thirty days of such notice. The commissioner shall examine the claims so filed, determine the amount due upon such claims, and certify the amounts due each claimant. No claims against the security or the agricultural producers security fund shall be allowed for sales of farm products: (i) to any unlicensed person; (ii) that occurred more than one

hundred twenty days after the earliest transaction between the producer and the dealer that remains unpaid as of the date the claim is filed, whether or not that earliest unpaid transaction is included in the claim; or (iii) where a claim is submitted more than three hundred sixty-five days after sale and delivery, but in no event beyond the expiration of the thirty day period provided in the notice published by the commissioner pursuant to this section.

(c) Claims shall be chargeable first against any initial or additional bond or letter of credit provided by the defaulting dealer, and in the event such security is not sufficient to pay the amount owed to all producers, the amounts recovered shall be divided pro rata among all claimants. Any remaining amount of the certified claim shall be payable as set forth in paragraph (d) of this subdivision. The commissioner may bring an action upon the bonds or letter of credit and for purposes of such action his or her determination certifying the amounts due shall be presumptive evidence of the facts stated therein. In the event that the issuer of the bond or letter of credit fails or refuses to honor its obligation to pay under the bond or letter of credit within thirty days from the date of the commissioner's demand for payment, the commissioner may pay from the agricultural producers security fund the amount of the demand and bring an action to recover the amount of the demand from the issuer of the bond or letter of credit. Any recovery in such action shall be deposited in the agricultural producers security fund.

(d) The remainder of such claims against a licensee who elects not to be subject to the additional bonding requirements which are not satisfied by the bond or letter of credit or alternative security shall be processed first against any credit insurance purchased pursuant to this article and any balance thereafter against the agricultural producers security fund. Payment of individual claims against the fund shall not exceed eighty percent of the difference between the total amount recovered on that claim against the bond or other security and the amount determined to be owed pursuant to paragraph (b) of this subdivision. In the event that the fund is not sufficient to pay such amounts owed to the claimants, recovery from the fund shall be divided pro rata.

2. If any claim is paid from the agricultural producers security fund,

the defaulting licensee shall be liable to the commissioner for the benefit of the fund for the amount of claims so paid. If the defaulting licensee has not paid the commissioner within fifteen days after personal service upon him or her of the commissioner's certification of payment of a claim from the fund for which the licensee has been found liable to the claimant, the commissioner may issue a warrant under seal of the department directed to the sheriff of any county of the state commanding him or her to levy upon and sell the real and personal property of the defaulting licensee, found within his or her county, for the payment of the amount of such claim with interest and the cost of executing the warrant, and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The commissioner may file with the clerk of any county a copy of such warrant, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the defaulting licensee designated in the warrant, and in appropriate columns the amount of the licensee's liability to the commissioner for claims, interest and costs, and the date when such copy is filed. Thereupon, the amount of such warrant so docketed shall become a lien, relating back to and deemed perfected as of the date of the dealer's earliest default in payment to producers as determined by the commissioner, upon and shall bind the real and personal property and chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. Upon such filing of a copy of a warrant, the commissioner shall have the same remedies to enforce the licensee's liability as if he or she had recovered judgment against the licensee for the amount of the warrant.

§ 250-c. Stationery and advertising to show license. Where a licensee displays on his or her stationery or in his or her advertising the words licensed or bonded, or a combination of the words licensed and bonded,

said licenses shall have printed on said stationery or in said advertising the following statement: "New York State Licensed and Bonded Farm Products Dealer".

§ 250-d. Record and report of sales; preservation of records by dealers. Every dealer shall, upon receipt of farm products and as he or she handles and disposes of the same, make and preserve for at least three years a record thereof, specifying the date of receipt, the kind and quantity of such farm products, and the name and address of the producer or other person from which said farm products were received, and any fees relative to the sale and the date and method of payment, including any offsets in the purchase price. In the event a dealer is also a producer of farm products, such dealer-producer shall maintain a separate record for those farm products produced by him or her.

§ 250-e. Records to be kept by dealer-processors; deductions for payments to cooperatives. 1. It shall be unlawful for a dealer to purchase or receive, or for a seller to deliver, farm products for processing as defined by this article unless the party receiving or purchasing such farm products thereupon furnishes the party selling or delivering said farm products with a certificate legibly printed in the English language upon which there shall be stated the true name of the party purchasing or receiving such farm products for processing; the processing plant license number of said party; the date the farm products are purchased or received; the price to be paid for such farm products except where the farm products are delivered to a cooperative corporation by a member patron or except where the farm products are delivered pursuant to a written contract of purchase and sale which specifies the method by which full payment will be calculated; the method of payment and a payment schedule; the name of the product or products purchased or received; the quantity of the product or products purchased or received; and the name and address of the party from whom the farm products are purchased or received.

2. A member of an agricultural cooperative corporation may by contract

with such cooperative corporation, or by separate authorization in writing to the licensee, authorize any person licensed pursuant to this article to make deductions from money due such member for farm products received or purchased by such licensee for processing. The amount of such deductions and the names of the members from whose account deductions are to be made, shall be set forth in a written certificate presented to the licensee by the cooperative, or in the separate written authorization filed with the licensee by the individual member of the cooperative. The licensee shall deduct from moneys due such member of the cooperative the amounts so authorized and shall forward all moneys so deducted to the designated cooperative on or before the fifteenth of the month following the month for which payment is due, together with a statement showing the amounts and agreed prices of farm products received or purchased from the member by the licensee.

3. Every processor shall, at the time of making final payment according to agreements or contracts with each producer from whom he or she has received or purchased farm products, deliver a statement to such producer showing the total quantity of farm products purchased or received, the price per unit, the credits claimed and the manner of computing the amount of such final payment.

4. A producer delivering apples to a dealer or a dealer's designee for processing shall, at the time of delivery, receive from the dealer or the dealer's designee a certificate of official inspection which shall state the grade of the apples delivered as determined by an official federal or state inspection conducted at the time of delivery. In the absence of a written document signed by the producer and the dealer or the dealer's designee stating the standards to be used in such inspection, the current standards for processing apples adopted by the United States Department of Agriculture shall be used.

§ 250-f. Stated grape price. Notwithstanding any provision of subdivision one of section two hundred fifty-e of this article, except with respect to such cooperative member patrons, it shall be unlawful for any processor doing business in New York to purchase or receive or

attempt to purchase or receive grapes grown in New York state unless the processor sets forth and makes available to any selling or delivering party, not later than August fifteenth in the year in which the grapes are to be delivered, the sum total in dollars and cents of all amounts paid or to be paid per unit; provided, however, that a processor and a producer may negotiate without restriction a price for up to five tons of grapes per variety, not to exceed a maximum of twenty tons of grapes total, other than the price originally set forth pursuant to this section provided that any such negotiated prices shall be set forth in writing by the processor no later than the date of delivery of said grapes. Where a selling or delivering party has a contract for delivery of such grapes to a processor, the processor shall, not later than August fifteenth in the year in which such grapes are to be delivered, mail to the delivering or selling party written notice of the stated grape price and of the opportunity to refuse to so deliver with respect thereto. Such notice may also be provided by facsimile, or other electronic means to selling or delivering parties who have the ability to accept notice in that manner and have agreed to accept service by such means. The processor shall also provide to the commissioner by mail, facsimile, or other electronic means, no later than August fifteenth of each year in which such grapes are to be delivered, a written statement of the stated grape price to be paid for such grapes.

§ 250-g. Release of security by commissioner. If upon investigation by the commissioner, the licensee is found to have fully paid all the producers of farm products received or purchased by him or her, the commissioner may cancel the license of such licensee upon request of the licensee and release security deposited with a bank or trust company pursuant to section two hundred fifty of this article, other than contributions to the agricultural producers security fund. Such contributions to the agricultural producers security fund shall not be construed to create a legal and equitable interest in such funds for any licensee or producer.

§ 250-h. Review. The determination of the commissioner in refusing to

grant, suspending or revoking a license, or in determining a claim filed pursuant to this article shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules. The determination of the commissioner shall be final, unless within thirty days from the date of service thereof on the applicant, licensee, claimant, or any other person adversely affected, a proceeding is instituted to review such determination.

§ 250-i. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt such rules and regulations as he or she may deem necessary to administer the provisions of this article. Such rules and regulations shall be filed and open for public inspection at the principal offices of the department and with the secretary of state.

§ 250-j. Penalties. Each transaction by a dealer may be considered a separate violation subjecting the dealer to liability pursuant to section thirty-nine of this chapter, in addition to remedies provided in this article.

§ 250-k. Remedies. The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provisions of this article or of any rule or regulation promulgated hereunder. In addition to any other remedy prescribed in article three of this chapter, or otherwise, if necessary to protect the producers or dealers of this state, the commissioner 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 department.

ARTICLE 20-C
LICENSING OF FOOD PROCESSING ESTABLISHMENTS

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

251-z-2. Definitions.
251-z-3. Licenses; fees.
251-z-4. Exemptions.
251-z-5. Granting, suspending or revoking licenses.
251-z-6. Review.
251-z-7. Records to be kept by licensee.
251-z-8. Power of commissioner to investigate.
251-z-9. Rules and regulations.
251-z-10. Penalties.
251-z-11. Remedies.
251-z-12. Food safety education.
251-z-13. Severability.

§ 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.

§ 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.

§ 251-z-3. Licenses; fees. 1. a. 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.

b. The applicant shall furnish evidence of the applicant's 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 waive the license fee for two years for a first time applicant that processes food in a kitchen incubator food processing facility, which for the purposes of this section is a food processing facility used by multiple small and emerging food processing businesses, including both full-time facility tenants and businesses that rent space on a temporary basis. 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.

c. Notwithstanding any other provision of this section, an applicant that is a "small-scale processor" shall pay a license fee of one hundred seventy-five dollars per facility. For the purposes of this section, a "small-scale processor" shall be defined as a processor which operates a food processing establishment that is not exempt from licensing pursuant to section two hundred fifty-one-z-four of this article, is not a chain store, and employs no more than ten full time employees.

2. The provisions of this section shall not apply to processors of syrup made from tree sap or honey who do not purchase syrup made from tree sap or honey from others for repackaging, and who do not combine syrup made from tree sap or honey with any other ingredients capable of supporting the growth of infectious or toxigenic organisms, provided that such establishments are maintained in a sanitary condition and manner.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 251-z-13. Severability. If any provision of this article or the application thereof 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.

ARTICLE 21

MILK CONTROL

Section 252. Division of milk control.
253. Definitions.
254. General powers.
254-a. Milk marketing advisory council.
255. Rules and orders.
256. Entry, inspection and investigation.
256-a. Audits of books and accounts of milk dealers and cooperatives.
256-b. Accounting of milk dealers and cooperatives to producers.
257. Licenses to milk dealers.
257-a. Transportation and storage of milk.
258. Application for license.
258-a. License fees.
258-b. Prompt payment for milk purchases; security funds; bonding of milk dealers.
258-c. Granting and revoking licenses.
258-d. Proceedings to review.
258-e. Violations; remedies.
258-f. Records.
258-g. Reports.
258-j. Construction, exceptions and limitations.
258-k. Declaration of policy.
258-l. Producers' bargaining agencies and distributors' bargaining agencies.
258-m. Orders fixing prices for milk and marketing agreements.
258-n. Interstate and federal compacts.
258-o. (Enacted without section heading).

258-p. Declaration of policy.
258-q. Action for a uniform northeast market.
258-r. Actions to eliminate trade barriers.

§ 252. Division of milk control. There shall be in the department a division to be known as the division of milk control. The head of the division shall be a director who shall be appointed by the commissioner and serve during his pleasure. The functions, powers and duties of the department, as provided by this article, and by article four of this chapter, shall be exercised and performed therein by and through the division of milk control. The commissioner may delegate any of his powers to, or direct any of his duties to be performed by the director of the division of milk control.

§ 253. Definitions. As used in this article unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Division" means the division of milk control created by this article.

2. "Director" means the director of the division of milk control.

3. "Person" means any person, firm, corporation, co-partnership, association, co-operative corporation or unincorporated co-operative association.

4. "Milk dealer" means any person who purchases, handles or sells milk, or bargains for the purchase or sale of milk, including brokers and agents. Each corporation which if a natural person would be a milk dealer within the meaning of this article, and any subsidiary and affiliate of such corporation similarly engaged, shall be deemed a milk dealer within the meaning of this definition. A hotel or restaurant which sells only milk consumed on the premises where sold, or a producer who delivers milk only to a milk dealer, or a person who purchases milk from licensed dealers to be combined by him with non dairy products in

the manufacture of candy, soup or other food products (except melloream) shall not be deemed a milk dealer.

6. "Licensee" means a licensed milk dealer.

7. "Milk", for the purposes of this article, means all skim milk resulting from the separation of butterfat from whole milk, or resulting from reconstituting or recombining nonfat milk solids with water, and all butterfat in the form of or contained in milk, homogenized milk, vitamin D milk, vitamin-mineral fortified milk, flavored milk, standardized milk, concentrated milk in consumer packages, fluid skim milk, modified skim milk, skim milk drinks, buttermilk, fresh cream, half and half, or any product or products having the appearance and taste of any of the above, regardless of the name by which they are labeled or represented. It includes such skim milk and butterfat contained in melloream whose appearance, odor or taste is similar to any of the aforesaid. In each instance where quantity is referred to the intent is to include the combined product pounds of skim milk and butterfat contained therein.

8. "Producer" means a person producing milk.

9. "Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.

10. "Store" means an individual business establishment at one location including a grocery store, hotel, restaurant, soda fountain, dairy products store, automatic milk vending machine, gasoline station or a similar mercantile establishment offering goods and/or services at retail to individual consumers. The commissioner may after due notice and public hearing define as a store such other mercantile establishment as he finds conforms to the definition as herein provided.

11. "Milk broker" means any person who buys and sells milk for licensees on a fee or commission basis or who arranges for or negotiates contracts to buy or sell milk among licensees.

§ 254. General powers. The department through the commissioner is hereby vested with the powers heretofore conferred with respect to milk gathering stations, manufactories and plants, including the following:

(a) To supervise and regulate the entire milk industry of New York state, including the production, transportation, manufacture, storage, distribution, delivery and sale of milk and milk products in the state of New York; provided, however, that nothing contained in this article shall be construed to abrogate or affect the status, force or operation of any provision of the public health law, the public service law, the state sanitary code or any local health ordinance or regulation.

(b) To investigate all matters pertaining to the production, manufacture, storage, transportation, disposal, distribution and sale of milk and milk products in the state of New York. The commissioner shall have the power to subpoena milk dealers, their records, books and accounts, and any other person from whom information may be desired to carry out the purpose and intent of this chapter and may issue commissions to take depositions of witnesses absent from the state. Any designated employee may sign and issue subpoenas and may administer oaths to witnesses and conduct hearings and investigations. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(c) The commissioner may act as mediator and arbitrator in any controversy or issue that may arise among or between producers, among or between producers and milk dealers, among or between milk dealers, as between themselves or that may arise between them as groups.

(d) The operation and effect of any provision of this article conferring a general power shall not be impaired or qualified by the granting by this article of a specific power or powers.

§ 254-a. Milk marketing advisory council. 1. There shall be established a milk marketing advisory council to advise the commissioner in planning, programs and policy pertaining to milk marketing. The council will be convened at the request of the commissioner not less than two times per year.

2. This advisory council shall consist of not less than seven members who shall be appointed by and serve at the pleasure of the commissioner. The commissioner shall designate one member to serve as chairman of the council. The membership of the council shall include, but not be limited to milk producers, milk dealers, representatives of general farm organizations and dairy farmer cooperative associations, and representatives of milk consumers and representatives of milk retailers. The members shall serve without salary, but shall be entitled to reimbursement of their ordinary and necessary travel expenses.

3. The duties and responsibilities of the milk marketing advisory council shall be prescribed by the commissioner and he may specifically delegate to the council any or all of the following duties and responsibilities:

(a) The recommendation to the commissioner of proposed rules and regulations to effectuate the purposes of this article.

(b) The recommendation to the commissioner of changes or amendments to rules and regulations.

(c) The recommendation to the commissioner of policy positions with respect to proposed federal legislation and regulations affecting milk marketing within the state.

(d) Assisting the commissioner in the collection and assembly of information and data necessary for the proper administration of this article.

(e) Study of milk marketing matters pertaining to the administration of this article and inform the commissioner of their findings.

(f) The performance of such other duties relating to the administration of this article as the commissioner shall designate.

§ 255. Rules and orders. The commissioner may adopt and enforce all rules and all orders necessary to carry out the provisions of this article. Every rule or order shall be filed in the office of the department of state, except an order directed only to a person or persons named therein which shall be served by personal delivery of a copy, or by mailing a copy in a sealed envelope with postage prepaid to each person to whom such order is directed, or, in the case of a

corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with the provisions of the civil practice law and rules. The filing of any rule and of any order, not herein required to be served, in the office of the department of state, shall constitute due and sufficient notice to all persons affected by such rule or order. A rule when duly filed as provided in this section shall have the force and effect of law.

§ 256. Entry, inspection and investigation. Any employee designated for the purpose shall have access to and may enter at all reasonable hours all places where milk is being stored, bottled or manufactured, or where milk or milk products are being bought, sold or handled, or where the books, papers, records or documents relating to such transactions are kept, and shall have power to inspect and copy the same in any place within the state, and may administer oaths and take testimony for the purpose of ascertaining facts which in the judgment of the commissioner are necessary to administer this chapter.

§ 256-a. Audits of books and accounts of milk dealers and cooperatives. It shall be the duty of the commissioner to examine and audit from time to time, as the commissioner deems necessary and proper, the books and accounts of milk dealers and cooperatives licensed or subject to license under this article, for the purpose of determining how payments to producers for the milk handled are computed, whether the amounts of such payments are fair, and whether any provisions of this chapter affecting such payments, directly or indirectly, have been or are being violated, and for the purpose of determining the costs of the handling, distribution and marketing of milk and milk products, and for the purpose of determining the manner of disposition of the total income of each and every milk dealer and cooperative. For the purposes hereof, the commissioner or any employee designated for that purpose shall have access to and may enter at all reasonable hours all places where milk is being stored, bottled or manufactured or where milk and milk products are being bought, sold or handled, and where books, papers, records or documents relating to such purchase or sale are kept, and shall have

power to inspect and copy and audit all of said books and accounts. No person or corporation shall in any way hinder or delay the commissioner or any employee in conducting such examination or audit. The commissioner may reveal any of the findings of such examination or audit to the producers interested therein, or may publish all or any part of such findings, as in his judgment will best serve the public interest and accomplish the purposes of this chapter.

§ 256-b. Accounting of milk dealers and cooperatives to producers. 1. For purposes of this section, any corporation or association of persons engaged in the production of agricultural products and operating for the mutual benefit of its members in conformity with the requirements of the Capper-Volstead Act, and any federation of such corporations or associations, shall be deemed to be a cooperative.

2. Every milk dealer and cooperative, subject to license or regulation under this article, in making payments to producers for milk sold or delivered to such dealer or cooperative, shall clearly set forth the unit price for such milk, whether determined pursuant to federal or state market order or pursuant to agreement, together with the amount of all premiums, subsidies or differentials, all deductions, service fees, hauling charges, supply expenses, costs or adjustments of any nature whatsoever, in such a manner as to fully disclose to the producer the rate, basis and manner of computing such payment.

3. Each cooperative subject to license or regulation pursuant to this article shall, prior to its annual meeting, mail or personally deliver a copy of a written report of audit, prepared in the form and manner prescribed under section seventy-five of the cooperative corporations law, to each member of the cooperative and to individual producer members of any constituent cooperatives. The printing of such report in a publication regularly distributed to the cooperative's entire membership shall satisfy the delivery requirement.

4. Each milk producer who applies for membership in such a cooperative shall, prior to issuance of a membership certificate or entry into a

milk marketing agreement with the cooperative, be provided with the following documents of such cooperative and of any federation of cooperatives of which it is a member: (a) a copy of the cooperative's written report of audit required to be provided to the cooperative's membership, pursuant to subdivision three of this section, for the fiscal year preceding the date of such application; (b) a copy of the certificate of incorporation; (c) a copy of the bylaws in effect at the time of such producer's application for membership; and (d) a written statement of the current equity requirements and policy on the allocation of net margins and losses.

5. The commissioner may make or permit disclosure of a written report of audit made pursuant to subdivision three of this section for any cooperative subject to license or regulation pursuant to this article.

6. The commissioner may promulgate rules and regulations necessary to assure such uniform requirements as will carry out the provisions of this section.

§ 257. Licenses to milk dealers. 1. No milk dealer shall buy milk from producers or others or deal in, handle, sell or distribute milk unless such dealer be duly licensed as provided in this article. It shall be unlawful for a milk dealer to buy milk from or sell milk to a milk dealer who is unlicensed, or in any way deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of this chapter.

2. The commissioner may by official order exempt from the license requirements provided by this article, milk dealers who purchase or handle milk in a total quantity not exceeding three thousand pounds in any month, and/or milk dealers selling milk in any quantity in markets of one thousand population or less.

3. A store shall be exempt from the license requirements provided by this article if such store does not engage in the customary functions of a milk dealer and meets all the following conditions:

(a) Sells no milk other than that purchased or received from a duly licensed milk dealer, or a milk dealer exempted by official order of the commissioner from the license requirements of this article.

(b) Does not operate a milk pasteurizing plant.

(c) Delivers no milk to hotels, restaurants, lunch counters, soda fountains, or any eating establishment to be consumed on the premises.

(d) Sells not more than three thousand pounds of milk in any month for off-premises delivery.

(e) Does not deliver or transport or cause to be delivered or transported milk to a store or stores, except milk delivered to such store by a licensed milk dealer or milk dealers.

(f) Does not sell milk to other stores.

(g) Does not purchase, buy, sell or deal in milk received from unlicensed dealers.

4. Farmers (including individuals and partnerships but not corporations) selling not more than one hundred quarts daily average of milk, or any amount of milk pasteurized on the farm where produced, to customers coming there for it shall be exempt from the license requirements provided by this article.

5. Any person who sells food and beverages through vending machines shall be exempt from the licensing requirements provided that such person (a) sells no milk in bulk or in containers that are greater than one pint in size; (b) sells no milk other than that purchased or received from a duly licensed milk dealer, or a milk dealer exempted by official order of the commissioner from the license requirements of this article; (c) does not operate a milk pasteurizing plant; and (d) is subject to those provisions of the state sanitary code that regulate the sale of food and beverages through vending machines.

§ 257-a. Transportation and storage of milk. 1. Any vehicle transporting pasteurized milk for retail sale in the same container shall be transported in a vehicle capable of maintaining milk at a temperature of at least forty-five degrees fahrenheit or cooler.

2. It shall be unlawful for milk excluding UHT/aseptic packaged milk and milk products to be shipped or stored in the same enclosed refrigerated compartment which contains any hazardous or toxic chemicals, or solid waste. "Toxic and hazardous chemicals" shall not mean common household products normally sold in grocery stores and supermarkets or those products normally provided to commercial establishments by a food service company, that are packaged and handled in a manner which avoids contamination of milk or milk products. "Solid waste" shall not mean any packaging that is approved for reuse such as returnable milk bottles.

3. It shall be the responsibility of any milk dealer who sells milk or dairy products intended for resale to another distributor to obtain certification from such distributor that the requirements for proper refrigeration transportation as provided in this section are met.

4. The commissioner may exempt persons who purchase or handle milk in a total quantity not exceeding twenty gallons per day from the requirements of this section.

§ 258. Application for license. An applicant for a license to operate as a milk dealer shall file an application upon a blank prepared under authority of the commissioner. An applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the commissioner are necessary for the administration of this chapter. Such application shall be accompanied by the license fee required to be paid. The commissioner may, for the purpose of establishing the rate of license fees and otherwise carrying out the duties of the commissioner under this chapter, classify licenses and issue licenses to milk dealers to carry on a certain kind of business, including but not limited to the purchase of milk, sale or distribution of milk, processing or manufacture of milk, bargaining and collecting for the sale of milk, dealing in or brokering milk, and hauling milk. Upon a finding that the applicant qualifies for a license under the standards set forth in section two hundred fifty-eight-c of this article, the commissioner shall issue such applicant a license.

A license shall be for a period not exceeding one year. An application for renewal of license must be duly made at least sixty days before the expiration of such license by all milk dealers then doing business.

§ 258-a. License fees. 1. A milk dealer receiving, purchasing, handling or selling during any of the twelve calendar months immediately preceding the period for which the license is issued a daily average total quantity of milk not exceeding four thousand pounds shall pay a license fee of one hundred dollars; and for each additional four thousand pounds of milk or fraction thereof received, purchased, handled or sold, the license fee shall be increased forty dollars. In no event, however, shall a license fee in excess of seven thousand five hundred dollars be required.

2. An applicant who has not previously engaged in such business shall pay the minimum license fee as provided herein for the type of business which he proposes to conduct. Any such applicant who during any calendar month of the first year covered by his license receives, purchases, handles or sells a greater quantity of milk than that upon which the license fee paid by such milk dealer was based shall for each additional four thousand pounds of milk or fraction thereof pay an additional license fee of forty dollars.

3. It is not the intent that milk utilized by the applicant or licensee or sold by him in the form of manufactured products shall be included in the determination of the amount of license fee. Sales by a milk dealer of milk outside of the state not involving the receipt or handling or distribution within the state shall not be included in the determination of the license fee.

4. The commissioner may, by rule or order, provide for licensing, at any rate of license fee less than the rates herein fixed, any milk dealer or class of milk dealers which he is authorized to exempt from license requirements.

5. A milk dealer who neither buys nor sells milk but who operates a plant in which milk is pasteurized, processed or handled shall pay a license fee of one hundred dollars.

6. A milk dealer which is a producers' bargaining and collecting cooperative and does not operate milk plants or handle milk physically or operate farm bulk tank milk routes shall pay a license fee of one hundred dollars.

7. A milk dealer who neither buys nor sells milk but who operates a plant in which milk is manufactured shall pay a license fee of one hundred dollars.

8. A milk broker shall pay a license fee of one hundred dollars.

9. A milk dealer who is not a cooperative corporation and who does not buy or sell milk but who hauls milk for other milk dealers shall pay a license fee of one hundred dollars.

10. Notwithstanding any law to the contrary, all receipts of the department pursuant to this section shall be deposited in an account in the miscellaneous special revenue fund and shall be available solely for the administration of this article. The comptroller is authorized and directed to permit interest earnings on any balances to accrue to the benefit of this account.

§ 258-b. Prompt payment for milk purchases; security funds; bonding of milk dealers. 1. Scope of coverage. (a) For purposes of this section, a cooperative corporation or association of producers shall be deemed to be a producer and not a dealer with respect to the milk of its producer members under contract with such cooperative, and shall be deemed to be a dealer with respect to milk purchased or received from non-member producers.

(b) Notwithstanding any other provision of this section, sales or other transfers of milk between cooperatives shall not be subject to bond or assessment under the security provisions of this section.

(c) Any corporation or association of persons engaged in the production of agricultural products which is operated for the mutual benefit of its members and which qualifies as such under the provisions of the Capper-Volstead Act shall be deemed to be a cooperative corporation or association for purposes of this section.

(d) Upon an application of a dealer, and pursuant to regulations promulgated to effectuate the provisions of this paragraph, a dealer that purchases less than one hundred thousand pounds of milk per month shall not be subject to bond or assessment under the security provisions of this section when the commissioner waives such provisions. Notwithstanding such waiver, a claim may be filed and pursued against such a dealer as provided for in this section; and any claim that is certified for payment by the commissioner shall be paid from funds derived from license fees assessed upon milk dealers pursuant to section two hundred fifty-eight-a of this article.

The defaulting dealer shall be liable for reimbursement to the commissioner for the value of the claim in the same manner as if the claim was paid out of the milk producers security fund as provided for in paragraph (e) of subdivision five of this section.

2. Prompt payment for milk. (a) Every milk dealer shall: on or before the last day of each month, or such date of payment as established by a federal milk marketing order regulating the marketing of milk in the state or a state milk marketing order promulgated pursuant to section two hundred fifty-eight-m of this article, whichever is earlier, pay for all milk received from producers during the first fifteen days of such month based upon a price or formula as determined by the commissioner and every such milk dealer shall, on or before the twentieth day of each month, or such date of payment as established by a federal milk marketing order regulating the marketing of milk in the state or a state milk marketing order promulgated pursuant to section two hundred fifty-eight-m of this article, whichever is earlier, pay the balance owed producers for milk received during the preceding month.

(b) Notwithstanding any other provision of this section, the commissioner may extend the time for payment from dealers with respect to purchases from producers of non-grade A milk for up to one hundred

twenty days after the last day of the month in which the milk was received, provided such producers have requested the extension in writing in such manner as may be acceptable to the commissioner.

(c) Any producer who does not receive payment for milk sold or delivered to a milk dealer, within the time prescribed in paragraph (a) of this subdivision, shall promptly notify the commissioner of such fact.

(d) All wholesale purchasers of milk buying from a licensed milk dealer shall provide not less than seven days' notice to their milk dealer supplier before changing suppliers. All wholesale purchasers shall make payment in full to their milk dealer supplier or satisfy their debts by an appropriate surety bond posted or other legal instrument of payment provided, less any legal rebates, discounts, or other credit earned, before changing suppliers. The provisions of this paragraph shall apply only if the milk dealer has satisfied all substantial pre-existing contractual agreements with the wholesale purchaser prior to final delivery. For the purposes of this paragraph, the definition of the term "wholesale purchaser of milk" shall not include public institutions.

(e) The commissioner may, if he or she finds it is necessary, promulgate after hearing additional rules and regulations prescribing the period within which stores, restaurants, hotels, public institutions and other wholesale purchasers of milk shall pay for milk purchased or received from a licensed dealer. No milk dealer or cooperative shall sell or deliver milk, except on a cash on delivery basis, to any wholesale purchaser who has failed to make full payment within the period prescribed in regulations promulgated by the commissioner pursuant to this paragraph.

3. Payments to security funds. (a) Fund and filing of surety bonds. Any milk dealer, except a cooperative, who has not filed a bond or other security in full satisfaction of the requirements of subdivision six or seven of this section and who buys, receives or otherwise handles milk received from producers, shall, unless entitled to offsetting credits under paragraph (b) of subdivision four of this section, pay monthly to the commissioner during each fiscal year an amount up to one and one-half tenths of one percent of a price per hundredweight of milk as

determined by the commissioner or the average statistical uniform price per hundredweight of milk for the previous calendar year, as determined and announced by the commissioner on or before the thirty-first day of March of each year, on each hundredweight of all such milk purchased, received or handled. Such payments by dealers shall be deposited in the milk producers security fund established by subdivision four of this section.

(b) Whenever the commissioner determines that the balance in the milk producers security fund exceeds fifteen percent of the value of milk purchases covered by the fund, the maximum rates established by paragraph (a) of this subdivision shall be reduced from one and one-half tenths of one percent to one-tenth of one percent.

(c) (1) In addition to making such payments for deposit in the milk producers security fund, any such dealer shall file with the commissioner a mandatory minimum surety bond, executed by a surety company authorized to do business in this state and approved by the commissioner, conditioned for the prompt payment of all amounts due to producers for milk sold or consigned by them to such dealer during the license year and all amounts due to the equalization or producer settlement fund of any order promulgated by the commissioner pursuant to section two hundred fifty-eight-m or two hundred fifty-eight-n of this article or to the equalization or producer settlement fund of a federal milk marketing order. The bond shall be twelve times the amount equal to (i) the value of milk purchased or received from producers in the two consecutive months during the preceding twelve months in which the dealer purchased or received the highest aggregate value of milk divided by the number of days in those two months and (ii) the amount owed in the same two-month period to the equalization or producer settlement fund, divided by the number of days in such months.

(2) Upon an application of a dealer and pursuant to regulations promulgated to effectuate the provisions of this paragraph, the commissioner shall examine the financial condition of the applicant and may exempt the applicant from the provisions of this paragraph if the commissioner finds that the granting of the application would not materially affect security for producers or the viability of the milk producers security fund; provided however, that for any applicant where the amount calculated in subparagraph one of this paragraph multiplied

by forty-three is less than two hundred fifty thousand dollars, the commissioner shall exempt such applicant from the provisions of this paragraph unless the commissioner finds that the granting of the application would materially affect security for producers. Rules and regulations to effectuate the provisions of this subparagraph shall specify the criteria to be used in reviewing the applicant's financial condition, the viability of the milk producers security fund, and the effect of the proposed exemption on the security afforded to producers delivering milk to the applicant.

(d) The commissioner may require a milk dealer, in addition to making payments to the producers security fund and filing such mandatory minimum surety bond, to execute and file such further additional surety bond or other security as he may deem acceptable and sufficient, at any time the commissioner finds (1) that the milk dealer has insufficient property located within this state upon which to levy, pursuant to paragraph (e) of subdivision five of this section, in the event of a default by a dealer making two monthly payments for forty days purchases of milk, or (2) that the dealer's participation in the fund and filing such mandatory minimum surety bond will not otherwise afford adequate security to all producers protected by the fund.

4. Milk producers security fund. (a) There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a fund to be designated as the milk producers security fund. The commissioner shall deposit all monies received from milk dealers pursuant to paragraph (a) of subdivision three hereof into the fund. The funds so received and deposited in such milk producers security fund shall not be deemed to be state funds. The comptroller shall be empowered to invest such funds pursuant to section ninety-eight-a of the state finance law consistent with the purposes of this section. The commissioner is hereby authorized to draw upon such funds, in his or her discretion, to purchase credit insurance for the benefit of the milk producers security fund. The expense of administering the provisions of the milk producers security fund and of administering subdivision one hereof shall be paid from the fund to the commissioner on vouchers certified by the commissioner with the approval and consent of the director of the budget. Such payments from the fund shall not exceed two

and one-half percent of the total fund or one hundred thousand dollars per annum, whichever is greater, provided that, upon approval of the director of the budget, the actual costs incurred by the department in carrying out its responsibilities with respect to such provisions of this article may be assessed against any monies available to the fund upon appropriation by the legislature. The commissioner shall make an annual report of the receipts to and disbursements from the fund, including the cost of administration of the fund, which report shall be made available to each milk dealer and to any other person having an interest in the fund. A copy of such report shall be forwarded to the director of the division of the budget, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee.

(b) After the milk producers security fund shall have equaled twelve million dollars or such greater or lesser amount, up to fifteen percent of the value of milk purchases to be covered by the fund, calculated upon the basis of the average value of the milk covered by the fund during the preceding calendar year, as the commissioner may determine is sufficient to protect the interests of producers, he or she shall administer the fund in the manner prescribed herein. Periodically, but at least twice each year, he or she may credit each milk dealer with an amount which bears the same relationship to the total money in the fund as that dealer's payments to the fund bear to the total payments to the fund by all dealers. If the amount so credited to a milk dealer is greater than that due from such milk dealer, the excess shall be paid or credited to such milk dealer by the comptroller. No such credits or payments shall be made unless the commissioner finds that the fund can be maintained at a level which is sufficient to protect the interests of producers. Any such credit to a milk dealer's account shall not be considered as payments to the fund in computing further credits of such nature.

(c) If a milk dealer participating in the security fund elects to terminate his or her participation therein, he or she shall give notice in writing to the commissioner six months prior to the expiration of the license year and file a surety bond or other security on the first day of the second month before the end of the license year. A milk dealer may thereupon apply for the return of his or her pro rata share of the

monies in the security fund, less administrative costs, based upon his or her payments to the fund. Upon being satisfied that the milk dealer is not in default in any payments to producers or cooperatives and upon renewal of the license, the commissioner shall authorize the comptroller to pay to such milk dealer his or her pro rata share in up to six equal monthly payments.

(d) If a milk dealer who participated in the milk producers security fund ceases to do business as a milk dealer or sells or transfers his or her business to another milk dealer, he or she may apply for the return of his or her pro rata share or assign his or her interests to the buying dealer with the approval of the commissioner.

(d-1) The commissioner shall employ every reasonable effort to identify and locate all persons entitled to receive unclaimed pro rata shares of former security fund participants. In addition, the commissioner shall for a period of five years after identifying any person's unclaimed share of one hundred dollars or more, or until the amount due is claimed, whichever is sooner, publish such person's name and notice of his entitlement in a newspaper of general circulation in every county where the commissioner knows or has reason to believe such person maintained a principal office. Notwithstanding any provision of the abandoned property law, the pro rata shares of former security fund participants which remain unclaimed for five years or more shall remain in the producer security fund for use as set forth in this subdivision and subdivision five of this section.

(e) Any milk dealer who first elects to participate in the milk producers security fund shall make an initial payment to the fund, at the rate most recently announced by the commissioner, pursuant to subdivision three of this section, for milk purchased, received or handled from producers during the six months immediately preceding the date that notice of such election is given the commissioner, pursuant to subdivision ten of this section. Upon the payment of the initial deposit into the fund and filing of the mandatory minimum surety bond, as required herein, a milk dealer electing to participate in the fund may apply to the commissioner for termination or adjustment of an existing bond or the return or adjustment of any existing alternative security filed with the commissioner. If there have been no prior purchases, receipts or handling of milk by the dealer, such initial payment and the

amount of such bond shall be based upon an estimate of the purchases, receipts or handling of milk by such dealer for the first six months following entry into the fund. After the first six months, the commissioner may adjust such bond and initial deposit so that the amount of the initial deposit and bond are based upon the actual deliveries.

5. Claims against mandatory minimum surety bond and milk producers security fund. (a) If the commissioner has reason to believe that a licensed milk dealer who is participating in the milk producers security fund has defaulted in making payments for milk to producers, the commissioner shall give reasonable notice to the producers believed to be affected to file verified claims and may fix a reasonable time within which such claims must be filed. Upon learning of such default, the commissioner shall immediately examine the records of the defaulting dealer and shall identify the amounts which are reasonably estimated to be owed to producers. Within sixty days of the receipt of a claim by a producer and on the basis of such estimates, the commissioner may authorize the comptroller to pay any such producer up to seventy-five percent of such estimate. In connection with such payment, the commissioner may make provisions for the recovery for the benefit of the fund of any payments made pursuant to this paragraph.

(b) No claims against the producers security fund shall be allowed for: (1) sales of milk to dealers not licensed by the state of New York, or (2) sales of milk by a producer to a milk dealer subsequent to its failure to pay within the time periods prescribed in subdivision two of this section, where the commissioner finds, after due notice and opportunity of hearing, that such extension of credit, whether direct or indirect, to such milk dealer by the producer did not constitute a reasonable exercise of business judgment, or (3) the value of milk produced on farms not located in New York state. Claims shall be limited to: (1) the price the claimant was required to be paid pursuant to the milk marketing order under which the milk was pooled, if the claimant did not pool the milk, or (2) the value of the milk as determined by the commissioner pursuant to provisions of the milk marketing order under which the milk was pooled, if the claimant pooled the milk, or (3) such other price as determined by the commissioner as appropriate for milk not pooled under a milk marketing order, and in no event shall a claim

be allowed for deliveries of milk in excess of the amount owed for milk sold or delivered within the first forty consecutive day period for which payment was not received from a dealer. Claims filed by a market administrator may be allowed for amounts owed by a dealer to a producer settlement or equalization fund of an order promulgated under section two hundred fifty-eight-m or two hundred fifty-eight-n of this article, or to a producer settlement or equalization fund of a federal milk marketing order under which the milk is pooled.

(c) The commissioner shall examine the claims so filed, determine after hearing upon reasonable notice to the claimant and to the defaulting dealer the amount due upon such claims, and certify the amount due each claimant, provided, however, that no hearing shall be required with respect to a claim in which the defaulting dealer does not dispute liability and the claimant and defaulting dealer agree and stipulate to the amount found by the department to be payable on said claim. In determining the amount payable on any claim against a surety bond or the milk producers security fund, the commissioner may allocate any payments for milk made by a milk dealer to a claimant subsequent to its failure to pay within the prescribed time period, to the earliest debt owed such claimant by the milk dealer. Any amounts determined to be payable on a claim will be chargeable first against the mandatory minimum surety bond and any additional surety bond or other security filed pursuant to subdivision three of this section. In the event the amount of the mandatory minimum surety bond and any additional surety bond are not sufficient to pay the amount owed the producers for the deliveries of milk made in the first forty consecutive days for which payment was not received from a dealer, a claim against the producer's security fund may be allowed in an amount not to exceed the difference between the amount recoverable on such bonds, and the amount owed for milk delivered in such applicable period.

(d) The commissioner's determination certifying the amount due each claimant shall be final unless the defaulting milk dealer or the claimant shall institute a proceeding pursuant to article seventy-eight of the civil practice law and rules within thirty days from the date of personal service of a copy of the written determination upon the milk dealer and producer affected thereby. If after the expiration of the thirty day period the commissioner's determination has not been stayed

by the supreme court in a proceeding instituted to review it, the commissioner shall bring an action on the bond or bonds and proceed to obtain from any other security filed funds with which to pay the claims and, to the extent that such funds are insufficient to pay the amount due, direct the comptroller to pay the claimants from the moneys available in the milk producers security fund. For the purposes of any action brought on a bond, the commissioner's determination shall be presumptive evidence of the facts stated therein.

(e) If any claim is paid from the milk producers security fund, the defaulting dealer shall be liable to the commissioner for the benefit of the fund for the amount of claims so paid. After service by first class mail upon the defaulting dealer of the commissioner's certification of payment of a claim from the fund for which the dealer has been found liable to the claimant, the commissioner may issue a warrant under seal of the department directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the defaulting dealer, found within his county, for the payment of the amount of such claim with interest and the cost of executing the warrant, and to return such warrant to the commissioner and pay to him the money collected by virtue thereof within sixty days after the receipt of such warrant. The commissioner may file with the clerk of any county a copy of such warrant, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the defaulting dealer designated in the warrant, and in appropriate columns the amount of the dealer's liability to the commissioner for claims, interest and costs, and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien, relating back to and deemed perfected as of the date of the dealer's earliest default in payment to producers as determined by the commissioner, upon and shall bind the real and personal property and chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. Upon such filing of a copy of a warrant, the commissioner shall

have the same remedies to enforce the dealer's liability as if he had recovered judgment against the dealer for the amount of the warrant.

(f) In the event that the surety company who shall have executed a bond for a milk dealer shall fail to make prompt payment of all amounts due producers for milk sold or consigned by them to such milk dealer during the license year and all amounts due to the equalization or producer settlement fund of any order promulgated by the commissioner pursuant to section two hundred fifty-eight-m or two hundred fifty-eight-n of this article such surety company shall, in addition to making such payment on the bond, pay interest at the rate provided for in section 5-501 of the general obligations law on the amounts so owed from the date of the claim together with reasonable attorneys' fees and court costs.

6. Surety bonds. (a) Each milk dealer who buys, receives or otherwise handles milk received from producers may execute and file with the commissioner a surety bond in lieu of participation in the milk producers security fund and the filing of a surety bond or bonds pursuant to subdivision three of this section. The bond shall be executed by a surety company authorized to do business in this state and shall be approved by the commissioner. The bond shall be conditioned for the prompt payment of all amounts due to producers for milk sold or consigned by them to such milk dealer during the license year and all amounts due to the equalization or producer settlement fund of any order promulgated by the commissioner pursuant to section two hundred fifty-eight-m or two hundred fifty-eight-n of this article or to the equalization or producer settlement fund of a federal milk marketing order. Additionally, the bond shall make provisions for an advance payment pursuant to subdivision nine of this section.

(b) The bond shall be in an amount equal to (1) the value of milk purchased or received from producers in the two consecutive months during the preceding twelve months in which the dealer purchased or received the highest aggregate value of milk, divided by the number of days in those two months and multiplied by forty, and (2) the amount owed in the same two-month period to the equalization or producer settlement fund of a state or federal milk marketing order, divided by the number of days in such months and multiplied by forty.

7. Alternative security. Each milk dealer buying milk from producers may in lieu of filing a surety bond pursuant to subdivision three or six of this section provide an equal amount of protection for the producers from whom he or she purchases or receives milk by filing an irrevocable letter or letters of credit for the account of the milk dealer authorizing the commissioner to draw on a bank or trust company or banks or trust companies authorized to do business in the state of New York. Such letter or letters shall contain such terms and conditions as the commissioner may require. Additionally, the irrevocable letter of credit shall make provisions for an advance payment pursuant to subdivision nine of this section.

8. Additional bond or alternative security. Whenever the commissioner shall determine that the value of milk purchased or received from producers by a dealer who is not participating in the producers security fund has increased, or that such increase may reasonably be anticipated, so that the total amount of security does not comply with the formula set forth in subdivision six hereof, as applied to any consecutive two month period during the current year, the commissioner shall require such additional surety bond or securities in lieu thereof as will afford producers the protection intended by this section.

9. Claims against bond or alternative security. Claims by producers against a dealer who had filed a bond or alternative security shall be processed by the commissioner in the same manner as is provided in subdivision five hereof with respect to claims against the producers security fund and such claims shall be subject to the same limitations. Upon receiving a claim against a dealer who had filed a bond or alternative security, the commissioner shall immediately examine the records of the defaulting dealer and shall identify the amounts which are reasonably estimated to be owed to producers. Within sixty days of the receipt of a claim, and on the basis of such estimates, the commissioner is authorized to pay any such producer up to fifty percent of such estimate and proceed to obtain from such security the funds with which to pay any advances on the claims. In connection with such payment, the commissioner shall make provisions for the recovery of any

payments made pursuant to this subdivision. The commissioner's determination certifying the amounts due claimants shall be subject to judicial review in the same manner and subject to the same limitations. In the case of a dealer who has filed alternative security, the commissioner shall proceed to obtain from such security the funds with which to pay the claims. If recovery upon the alternative security is not sufficient to pay all claims, the amount recovered shall be divided pro rata among claimants. In the case of a dealer who has filed a surety bond, the commissioner may bring an action on the bond, and for the purposes of such action his determination certifying the amounts due shall be presumptive evidence of the facts therein stated. In the event that recovery on such bond has not been made within sixty days of the commissioner's certification of the amounts due producers covered by the bond, the commissioner shall direct the comptroller to pay such amounts to claimants from whatever monies are available in the milk producers security fund. In the event that recovery against the bond has not been made within one hundred eighty days of certification of the amounts due claimants, each and every dealer having filed a bond pursuant to subdivision six of this section shall pay monthly to the commissioner an amount not to exceed one-half of one-tenth of one percent of the average uniform price per hundredweight of milk for the previous calendar year, as determined by the commissioner on or before the thirty-first day of March of each year, on each hundredweight of such milk purchased, received or handled. Such payments shall continue for such period of time as the commissioner deems necessary in order to return to the fund, no later than three years from the date of such payment therefrom, the total amount paid as a result of the default of such dealer plus interest, at the rate provided for in section 5-501 of the general obligations law on the amount of such payment from the date of such payment. In the event of a recovery on the bond after the commencement of such payments, the commissioners shall authorize the comptroller to pay to each dealer making such payments its pro rata share of the amount by which the total of such payments exceeds the difference between the amount received and the total amount paid to claimants.

10. Time for providing security. Surety bonds or securities, whether filed in addition to or in lieu of participation in the fund, for the

license year shall be filed with the commissioner not later than the first day of the second month before the beginning of each license year. Whenever an additional surety bond or alternative security is required to be filed, pursuant to paragraph (a) of subdivision three of this section, such bond or alternative security shall be filed with the commissioner within the time limits fixed by the commissioner. A milk dealer who elects to participate in the security fund and file a bond or bonds pursuant to subdivision three of this section, in lieu of filing a surety bond or alternative security pursuant to subdivision six of this section, shall notify the commissioner not later than three months prior to the date on which such change is to be made, and shall file the bond or bonds and make the initial payment, as required by paragraph (e) of subdivision four of this section, not later than two months before such change is to be made.

11. (a) Notice of failure to provide security. Whenever a milk dealer fails to pay into the producers security fund or to file any surety bond or alternative security, as provided pursuant to this section, within the time or times fixed by this section or the commissioner's demand for additional security, the commissioner shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk is sold or delivered to such milk dealer reside, a notice stating that he made such demand or request of said milk dealer; that the milk dealer has failed to comply; that the commissioner does not have on file such surety bond or alternative security as demanded, or that he has not paid monies due the producers security fund as required by him; and that adequate security to protect such producers may not be available to them as provided in this section. In addition to such published notice to producers, the commissioner shall send by certified mail a copy of such notice to each producer delivering milk to such milk dealer as he may be able to determine from records available to him and such notice shall be addressed to such producer's last known place of residence. In addition to providing such notice, the commissioner shall issue a notice of hearing directing the licensee to appear within twenty-four hours or such longer period as he may direct and show cause why an order should not be entered revoking such dealer's license or denying the renewal thereof for failure to provide required

security.

(b) Payments to farmers. (1) It is hereby determined and declared that the assurance of prompt and full payment to dairy farmers is for the benefit of all the people of the state, and is so directly related to the public interest, the public health and general welfare that it is an essential government function.

(2) The commissioner shall annually no later than November first, assess the status of the milk producer security fund, the anticipated payments from and receipts to the fund for the following fiscal year and, in connection with such assessment, estimate the additional amounts, if any, which may be needed by the fund to meet the fund's objectives in assuring prompt and full payment to dairy farmers. The commissioner shall transmit this information in a report to the governor for his use in the preparation of the budget, and to the speaker of the assembly and the president pro tempore of the senate for use in the consideration of the budget for such fiscal year.

(3) In the event an appropriation is made for the purposes of this paragraph and, thereafter, upon certification by the commissioner, with approval of the director of the budget, that a further sum is required by the milk producers security fund to meet its obligations and accomplish the purposes of this section, the comptroller shall, within the limits of such appropriation, draw a warrant for the payment to the milk producers security fund of an amount up to the amount of such sum. Such amount shall be a liability of the milk producers security fund and shall be repaid to the general fund pursuant to a plan of repayment. Prior to the institution of such a plan, a copy thereof shall be forwarded to the chairman of the senate finance committee and the chairman of the assembly ways and means committee, for use in the consideration of the budget for such fiscal year.

(4) Whenever the comptroller draws a warrant for payment to the milk producers security fund as provided in subparagraph three hereof, the commissioner shall implement the plan of repayment by promulgating through regulation after hearing an increase in the amount of assessment imposed under subdivision three of this section to an amount not exceeding two-tenths of one percent of the average uniform price for the previous year.

15. Prohibitions and violations. It shall be unlawful for a milk dealer to purchase or receive milk from producers or from other dealers for resale or manufacture unless such dealer files a surety bond or bonds as required pursuant to this section and makes prompt payment of any assessment as required pursuant to this section. It shall also be unlawful for a milk dealer to sell milk to another milk dealer, if he has been notified by the commissioner that the buying dealer has failed to make prompt payment to producers, to the producer settlement fund or equalization fund or to the milk producers security fund, or if such buying dealer has exceeded the credit period as provided pursuant to subdivision two of this section and the sale was not made upon the basis of cash on delivery.

In addition to penalties imposed by other provisions of this article a violation of this section shall subject a milk dealer to a penalty in the sum of one hundred dollars for each day that he is late in making payment into the milk producers security fund the assessment required by this section, for each day he sells milk to a milk dealer after being notified by the commissioner of that milk dealer's failure to make any required payment into the milk producers security fund, or for each day a milk dealer sells milk to another milk dealer who has failed to make payments for milk purchased as provided pursuant to subdivision two of this section. Any person who buys or sells milk in violation of the credit period provided in subdivision two of this section, shall be liable for a civil penalty of one hundred dollars a day for each day of violation.

16. Rules and regulations. The commissioner after due notice and public hearing may promulgate rules and regulations to carry out the provisions and intent of this section.

§ 258-c. Granting and revoking licenses. No license shall be denied to a person not now engaged in business as a milk dealer, or for the continuation of a now existing business, and no license shall be denied to authorize the extension of an existing business by the operation of an additional plant or other new additional facility, unless the

commissioner finds after due notice and opportunity of hearing to the applicant or licensee, that the applicant is not qualified by character or experience or financial responsibility or equipment properly to conduct the proposed business, provided however, that no new application shall be denied solely for the reason of inadequate equipment if it is shown that provision has been made for the acquisition of same. The commissioner may also decline to grant or renew a license or may suspend or revoke a license already granted in whole or in part, upon due notice and opportunity of hearing to the applicant or licensee, when he is satisfied of the existence of any of the following reasons:

(a) That a milk dealer has rejected, without reasonable cause, any milk purchased or has rejected without reasonable cause or reasonable advance notice, milk delivered in ordinary continuance of a previous course of dealing, except where contract has been lawfully terminated.

(b) That the milk dealer has failed to account and make payment without reasonable cause, for any milk purchased.

(c) That the milk dealer has committed any act injurious to the public health or public welfare.

(d) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or where a money judgment has been secured against him, upon which an execution has been returned wholly or partly unsatisfied.

(e) Where the milk dealer has continued in a course of dealing of such a nature as to satisfy the commissioner of his inability or unwillingness properly to conduct the business of receiving or selling milk or to satisfy the commissioner of his intent to deceive or defraud producers or consumers.

(f) Where the milk dealer has been a party to a combination to fix prices, contrary to law. A co-operative association of dairymen organized under or operated pursuant to the provisions of chapter seventy-seven of the consolidated laws and engaged in making collective sales or marketing for its members or shareholders of dairy products produced by its members or shareholders shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly nor shall the contracts, agreements, arrangements or combinations heretofore or hereafter made by such association, or the members, officers or directors thereof, in making such collective sales

and marketing and prescribing the terms and conditions thereof, be deemed or construed to be conspiracies or to be injurious to public welfare, trade or commerce, if otherwise authorized by such chapter or law. The provisions of and the remedies provided by this subdivision, section and article shall be in addition to and shall not preempt or displace the provisions of article twenty-two of the general business law.

(g) Where there has been a failure either to keep records or to furnish the statements or information required by the commissioner.

(h) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular.

(i) Where the applicant or licensee has been convicted of a felony.

(j) Where the applicant is a partnership or a corporation and any individuals holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which a license may be denied, suspended or revoked, pursuant to the provisions of this article.

(k) Where the milk dealer has violated any of the provisions of this chapter.

(l) Where the milk dealer has been duly required to give a bond or an additional bond and has failed to do so, or has failed to make timely payment to the producers security fund if he has elected to participate therein, or to the cooperative security fund if required to make payments thereto.

(m) Where the required permit from the local health officer has terminated or been revoked.

(n) Where the milk dealer has ceased to operate the milk business for which the license was issued.

(o) Notwithstanding any provision of this article to the contrary, no license shall be granted by the commissioner in the event an applicant for such license is buying or accepting the business of another dealer until the applicant has furnished the commissioner sufficient evidence that all payments due producers for milk delivered to the selling dealer have been made in full or that a portion of the purchase price reasonably sufficient to satisfy such claims has been placed in an escrow account with the commissioner.

(p) Assumption of business by licensed dealer. No licensed dealer purchasing the assets or assuming the operation of another licensed dealer may distribute milk in the area served by the dealer whose assets are being purchased or whose operation is being assumed unless such dealer purchasing the assets or assuming such operation has furnished the commissioner sufficient evidence that all payments due producers for milk delivered have been made in full or that a portion of the purchase price reasonably sufficient to satisfy such claims has been placed in an escrow account with the commissioner.

The commissioner may grant or renew a license or may decline to suspend or revoke a license conditionally, or upon the agreement of the licensee or applicant to do or omit to do any definite act, but such condition and/or agreement must have some appropriate relation to the administration of this article.

Whenever a milk dealer's license is denied or revoked or any application for an original license is denied, there shall be filed in the office of the division of milk control a memorandum by the commissioner, which memorandum shall state the reasons for the denial of the application or the denial or revocation of the license. There shall also be filed a transcript of the testimony taken at the hearing given to the applicant or licensee. A transcript of the testimony taken at the hearing shall be given to the applicant or licensee for whom the hearing was held. In addition, the said memorandum as filed in the office of the division of milk control shall set forth findings of fact and the conclusions upon which the said commissioner shall base his denial or revocation. The use of the word license in this article shall include the application for or denial of an extension of license. Upon the filing of the memorandum in the office of the division of milk control a copy thereof shall be mailed forthwith to the applicant or licensee and to his attorney if the applicant or licensee has appeared by attorney.

The commissioner shall notify an applicant for a license within thirty days of receipt of the application as to whether all information required by the commissioner is stated within the application. Upon receipt of a completed application, the commissioner shall conduct any

investigation and hearing and shall make a final determination on a license within one hundred twenty days or, if a hearing has been held with respect to such license, within one hundred eighty days. Where the commissioner finds that a final determination cannot be made within such period, he shall indicate his reasons for extending the application review period by not more than one hundred twenty days to the license applicant. Any delay resulting from adjournments granted at the request of the applicant, or as the result of a judicial order, shall not be counted toward any time period provided for in this paragraph.

§ 258-d. Proceedings to review. The action of the commissioner in refusing to grant or renew a license, or in revoking or suspending a license, or in conditioning or limiting the granting or renewal of a license, may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, and the decision of the commissioner 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 such action. The pleadings upon which such review proceeding is instituted shall be served upon the commissioner or upon an assistant commissioner, personally, in the manner provided for the personal service of a summons in an action unless a different manner of service is provided in an order to show cause granted by the supreme court.

§ 258-e. Violations; remedies. 1. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of the statutes, rules and orders committed to his administration, and in addition to any other remedy under article three of this chapter or otherwise may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

2. In addition to remedies provided by subdivsion one of this section;

Whenever the commissioner has reason to believe that any person has been or is engaged in conduct which violates any provision of this article or of any regulation promulgated thereunder he may issue a complaint specifying the charges and giving reasonable notice of a hearing thereon.

Whenever the commissioner has reason to believe that any milk dealer, whether licensed or subject to license under this article, has been or is engaging in any conduct for which a license may be declined or revoked pursuant to section two hundred fifty-eight-c, the commissioner may issue a complaint specifying the charges and giving reasonable notice of a hearing thereon.

The person so complained of shall appear and show cause why an order should not be entered by the commissioner requiring such person to cease and desist from the conduct charged, or to perform those acts which will constitute a discontinuance of the conduct charged. After due notice and opportunity of hearing or after default of such person to appear and proceed, if the commissioner shall find such person to have violated any provision of this article or any regulation promulgated thereunder or to have engaged in conduct for which a license may be declined or revoked pursuant to section two hundred fifty-eight-c, he shall enter an order requiring such person to cease and desist from the acts, practices or omissions so found or to perform acts as aforesaid, and imposing such civil penalty as he deems appropriate within the limits of subdivision four.

3. The order of the commissioner issued pursuant to subdivision two of this section shall be final subject to review proceedings under subdivision five of this section, and shall not be stayed by any court except as provided in such subdivision five. Upon failure of such person to obtain a stay as herein provided, the commissioner may apply to the supreme court of Albany county for an order directing compliance, and if such order is issued, any failure to obey such compliance order may be punished as a contempt of court.

4. Any civil penalty imposed by an order issued pursuant to subdivision two of this section shall be in an amount not less than one hundred dollars, or more than one thousand dollars for each violation of this article or any regulation promulgated thereunder. In determining the amount of any penalty to be assessed under this subdivision, the commissioner shall consider, but not be limited to consideration of: (i) the seriousness of the violation for which the penalty is to be imposed and (ii) the nature and extent of any previous violations for which penalties have been assessed against the person. Each day's violation may, in the discretion of the commissioner, be deemed to constitute a separate offense. If, after the expiration of the thirty day review period prescribed by subdivisions three and five of this section, such order has not been stayed by the supreme court in a proceeding for judicial review thereof, the commissioner may file with the clerk of any county the original or a certified copy of the order directing payment of a civil penalty, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the person against whom the penalty was assessed by such order, and in appropriate columns the amount of such person's liability for such penalty, together with interests and costs, and the date that such order is filed. Upon such filing, the amount of the penalty so docketed shall become a lien upon and bind the real and personal property of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk, and the commissioner shall have the same remedies to enforce such liability as if a judgment in a court of record had been recovered against such person.

5. Any person aggrieved by final order of the commissioner made pursuant to this section may within thirty days after service of such order upon him, institute a proceeding for a review thereof pursuant to article seventy-eight of the civil practice law and rules; provided, however, that no stay shall be issued, unless applied for within seven days after the effective date and unless the applicant makes a clear and convincing showing of present, substantial and irreparable injury, clearly over-balancing the public interest in immediate compliance which is hereby declared as the policy of this act.

§ 258-f. Records. The commissioner may require milk dealers to keep the following records:

(a) A record of all milk received, detailed as to location, and as to names and addresses of suppliers, with butterfat test, pounds of protein, butterfat, other solids and solids not fat, prices paid, deductions or charges made.

(b) A record of all milk sold classified as to grade, location and market outlet and size and style of container, with prices and amounts received therefor.

(c) A record of quantities and prices of milk sold.

(d) A record of the quantity of each milk product manufactured and quantity of milk and/or cream used in the manufacture of each product. Also the quantity and value of milk products sold.

(e) A record of wastage or loss of milk or butter fat.

(f) A record of the items of the spread or handling expense and profit or loss, represented by the difference between the price paid and the price received for all milk.

(g) A record of all other transactions affecting the assets, liabilities, or net worth of the licensee.

(h) Such other records, and information as the commissioner may deem necessary for the proper enforcement of this article.

§ 258-g. Reports. Each milk dealer shall, from time to time, as required by rule or order of the commissioner, make and file a verified report on forms prescribed by the commissioner of all matters on account of which a record is required to be kept, together with such other information or facts including an audited financial statement as may be pertinent and material within the scope of the purpose and intent of this chapter. Such report shall cover a period of time specified in the order.

§ 258-j. Construction, exceptions and limitations. The license required by this article shall be in addition to any other license

required by this chapter or otherwise required by law. This article shall apply to the city of New York, but shall not be construed to conflict with, alter or repeal laws in force relating to the board of health or the department of health of the city of New York, nor the health code in force in such city or any amendments thereof duly adopted nor shall any provision of this article or any regulations adopted thereunder, relating to matters of health, sanitation or purity or wholesomeness of milk which is in conflict with the health code or the regulations of the board of health or the department of health of the city of New York, apply to the city of New York, or to the production and transportation of milk for said city. No milk dealer shall hereafter accept for sale or distribution in a marketing area or at a plant supplying such marketing area when such marketing area is regulated by a state milk marketing order, milk from any premises on which milk is produced or from any plant in which milk is handled unless such premises constitute a milk production area dairy farm as defined by section two hundred fifty-eight-l or unless the milk from such plant has been received for sale or distribution in such marketing area or at a plant subject to such order within the past two full calendar years without first satisfying the commissioner that such proposed added milk supply is reasonably needed for such marketing area, and that the acceptance of such added milk supply will not deprive any municipality or any other marketing area of a supply, present or future, more conveniently related to it. If any clause, sentence, paragraph or part of this article shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States constitution and to the laws of the United States enacted pursuant thereto. Technical, legal and other assistants and employees in the service of the milk control board at the time such transfer takes place shall be transferred to the division, subject to qualifying examinations to be conducted by the civil service commission as soon as convenient after transfer, and in the meantime

they shall serve without examination. The civil service commission shall designate, upon advice of the commissioner the positions which it is not practicable to fill by competitive examinations, including the director, assistant director, counsel and assistant counsel.

§ 258-k. Declaration of policy. For the purpose of implementing the provisions of section two hundred fifty-eight-k through section two hundred fifty-eight-n of this article, it is hereby declared that the dairy industry is a paramount agricultural industry of this state and the normal processes of producing and marketing milk have become an enterprise of vast economic importance to the state and of vital interest to the consuming public which ought to be safeguarded and protected in the public interest; that it is the policy of this state to promote, foster and encourage the intelligent and orderly marketing of milk through producer owned and controlled cooperative associations and to promote, foster and encourage as an incident of such marketing, the maintenance, by such associations, jointly or in cooperation with other cooperative associations of programs designed, by means of advertising, publicity, education or otherwise, to promote increased demand for and consumption of milk and dairy products; that unfair, unjust and destructive demoralizing trade practices have been and are likely to be carried on in the production, sale, processing and distribution of milk and that it is a matter of public interest and for the public welfare for the state to promote the orderly exchange of commodities and in cooperation with the federal government or other states in the regulation of interstate commerce, to take such steps as are necessary and advisable to protect the dairy industry and insure an adequate supply of milk for the inhabitants of this state; that for such purpose public interest requires, as necessity therefor has arisen or may arise, the fixing of prices of milk to be paid to producers and associations of producers where there has been or is a disruption of orderly marketing of milk in any marketing area by reason of surpluses or by reason of unfair, unjust or destructive trade practices, that in order to make such price-fixing effective it is necessary that the benefits of the fluid market and the burden of, and the expense of, handling of surpluses, be shared equally by all producers of milk for the marketing

area and to this end that dealers not handling their proportionate share of the surplus shall as part of the price of their milk make payments to a fund to equalize the prices of milk to producers and to share the cost of handling surplus so as to remove one of the principal causes of price demoralization.

§ 258-l. Producers' bargaining agencies and distributors' bargaining agencies. (a) Incorporated producers' associations operated under and subject to the cooperative corporations law of this state, or similar laws of another state and organized and controlled by milk producers, may establish producers' bargaining agencies for the various production areas of the state designated by the commissioner. Cooperative corporations similarly incorporated hereafter and owned and controlled by producers shall be entitled to use and participate in such a bargaining agency and be represented by it in order that producers not now represented by a cooperative association may be entitled to the benefits of this act.

Upon presentation of a written certification by a cooperative corporation qualified to receive cooperative payments under a state or a joint federal and state milk marketing order, or orders, or by a cooperative corporation affiliated with a federation of cooperative corporations similarly qualified, to a licensed milk dealer, setting forth a list of its members for the payment of whose milk said dealer is responsible, such dealer shall make payments to such cooperative corporation from moneys due such listed members for milk purchased by the dealer in such amounts as such cooperative shall certify is payable to it; provided that (a) at least the names of 10 members are one the list, or (b) in the case of dealers receiving milk from 17 or less producers at a plant, the names of at least 51% of such producers are on the list. Such amounts shall be payable monthly to the treasurer of the cooperative corporation, together with a compilation of milk poundage to which such payment is related. At intervals, not more frequent than monthly, each such cooperative shall certify to the dealer involved any additions or withdrawals from its listed membership. As to such changes in memberships so certified, the dealer shall make payments on the

additional producers, but shall not be required to make payments to the cooperative corporation on the withdrawn producers. In no event shall a dealer be required to make payments on a producer who is not listed as a member by the certifying cooperative corporation.

The voting power of each association participating in such an agency shall be on the basis of one vote for each one hundred producers under contract with such association for the marketing of their milk within such marketing area, and in case of an association with less than one hundred producers under contract with it, a fractional vote in proportion to the number of such producers. Only active contracts shall be considered.

The purpose of a producers' bargaining agency is to negotiate agreements on the basis of orders in the respective marketing areas for presentation to the commissioner for his consideration and approval, as provided in section two hundred and fifty-eight-m herein. A producers' bargaining agency shall be authorized to negotiate with a distributors' bargaining agency in such marketing area in regard to arrangements or agreements to be presented to the commissioner as a basis of marketing agreements or orders pursuant to said section two hundred and fifty-eight-m.

Each association upon joining or employing the producers' bargaining agency shall file with it a certified copy of its certificate of incorporation, its by-laws, copies of form of contracts with its producers and a certified statement of the number of such contracts which are in force.

A producers' bargaining agency may appear before and negotiate with the commissioner in regard to marketing agreements or orders, as provided in section two hundred and fifty-eight-m herein.

It shall be lawful for such producers' bargaining agency to act as a common marketing agency for the various cooperative associations of producers which it represents and such cooperative associations may make contracts with each other and with such producers' agency for such

purpose and for the collective processing, preparing for market, handling and marketing of the products of such associations and for effectuating the purposes of this act. In order to carry out and effectuate such purposes, contracts and agreements may be made pursuant to section twenty-five of the co-operative corporations law and as to interstate commerce pursuant to act of congress of February eighteenth, nineteen hundred twenty-two, entitled "An act to authorize association of producers of agricultural products,"

(b) A distributors' bargaining agency may be organized by the distributors in a marketing area. The voting power of each distributor in such bargaining agency shall be in proportion to the quantity of milk distributed by him in such area. Such quantity shall be determined by that distributed during the preceding year as reported to the commissioner. In the New York metropolitan milk marketing area the voting power of each distributor shall be on the basis of one vote for each ten million pounds of milk distributed in such market during the preceding year and in case of a distributor handling a less quantity of milk, a proportionate fractional vote. In other marketing areas the voting basis shall be one vote for each one hundred thousand pounds distributed during the preceding year in such market with a proportionate fractional vote in case of distributors handling a less quantity of milk. The purpose of distributors' bargaining agencies is to negotiate with producers' bargaining agencies as to the agreements or the basis of orders in the respective marketing areas for presentation to the commissioner for his consideration and approval, as provided in section two hundred fifty-eight-m herein.

A distributors' bargaining agency may appear before and negotiate with the commissioner in regard to marketing agreements or orders, as provided in section two hundred fifty-eight-m herein.

Producers' bargaining agencies and distributors' bargaining agencies may also meet and negotiate in order to carry out the purposes of this act and subject to the approval of the commissioner, as provided in section two hundred fifty-eight-m, may make marketing agreements with each other and with cooperative associations in relation to the marketing of milk which may be handled or distributed in more than one

marketing area. Such agencies may also meet and negotiate and take such reasonable measures as are necessary and advisable to cooperate with the commissioner and legally constituted authorities of other states and of the United States with respect to the handling and control of milk handled in interstate commerce and carry out and effectuate the provisions of section two hundred fifty-eight-n.

Except as specifically provided in section two hundred fifty-eight-m, the activities and operations of producers' bargaining agencies and distributors' bargaining agencies and of the constituent members thereof, and contracts, agreements or arrangements made by them, pursuant to the provisions of this subdivision, and of section two hundred fifty-eight-m hereof, shall not be deemed or construed to be conspiracies, combinations, contracts or agreements in restraint of trade or commerce or an illegal monopoly.

"Milk production area" as used in this article means those dairy farms maintained primarily as a source of fluid milk for a marketing area. Such primary source of supply shall include farms from which all shipments of milk have been subject to the minimum uniform price provisions of a marketing order or agreement for such market during at least a portion of the preceding two years, together with such other farms as may hereafter be designated by the commissioner as a source of supply for the marketing area in the manner prescribed by section two hundred fifty-eight-j.

§ 258-m. Orders fixing prices for milk and marketing agreements. 1. Upon the petition of a producers' bargaining agency of the production area supplying a marketing area, such agency representing at least thirty-five per centum of the producers of milk therein, alleging the existence of conditions so affecting the orderly marketing of milk in such area that public interest requires regulation of prices of milk in such area and equalization of the burden of surplus milk and expense of handling it, and sharing the benefits of the fluid market in order that the public policy declared in section two hundred fifty-eight-k of this chapter shall be effective, and upon the written request of the petitioner, the commissioner shall set, without a hearing, an interim

price for class I fluid milk, and may set an interim price for class II and/or III milk. In determining such interim price, the commissioner shall take into consideration, among other factors: (a) the prices being paid to producers; (b) the costs of production to producers; (c) any changes in the ratio of index of prices received for milk to index of prices paid by dairy farmers; (d) the level of prices paid to producers in adjoining markets; and (e) the interests of the general public. Such interim price shall be set within five days of such written request and to the extent practicable apply to any milk purchased on or after the first day of the month following such determination. Such interim price shall be in effect until the final determination regarding the petition is made pursuant to the provisions of this article and is enforceable and effectuated, provided however, such interim price shall be in effect for no longer than one hundred eighty consecutive calendar days. During such time when the interim price is in effect, the commissioner shall provide for and enforce a mechanism for compensatory payments and have the authority to establish and administer an equalization pool throughout the entire state or any part thereof. Such interim price shall be reviewable by a person aggrieved in a proceeding pursuant to article seventy-eight of the civil practice law and rules. The effectiveness or enforcement of such interim price regulation shall not be restrained, stayed, or enjoined pendente lite. In addition, it shall be the duty of the commissioner to call a public hearing for the consideration of said petition and to give notice thereof by advertising such call in such newspaper or newspapers of general circulation in such marketing area as the commissioner deems advisable. Such notice shall specify a time and a place within the marketing area at which the hearing will be held and at which the applicants and other persons, including producers, distributors and consumers and associations thereof, may be heard. In not more than fifteen days upon receiving the petition the commissioner shall set the hearing date in accordance with the above provisions. Such hearing shall commence in not less than fifteen days but not more than twenty days of the notice specifying the date and time of the hearing. Such hearing shall conclude within fifteen days of commencement, provided however, if the commissioner determines in writing that the hearing has been conducted with due diligence but an extension is necessary to accord due process, he or she may extend the

hearing for a period not to exceed ten days. If after such hearing the commissioner shall find, upon the record of the proceeding that conditions referred to in section two hundred fifty-eight-k of this chapter exist so affecting the orderly marketing of milk in such area, that public interest requires that the public policy declared in section two hundred fifty-eight-k of this chapter shall be effective and that it is necessary that prices for milk to producers and associations of producers be fixed by the commissioner, as expressed by section two hundred fifty-eight-k of this chapter, and that it is favored by at least sixty-six and two-thirds per centum of the producers of milk produced in the production area for said marketing area voting, individually or through cooperatives, in the referendum, the commissioner may by order fix and determine for such marketing area fair and equitable minimum prices to be paid to producers. The determination of the commissioner as to whether or not by order to fix and determine minimum prices shall be made within forty days after such hearing, effective on the first day of the month following the determination. If the commissioner determines not to fix and determine minimum prices, he shall state his reasons in writing and transmit same to the petitioner, the governor, the temporary president of the senate and the speaker of the assembly. Such price fixing order or orders shall be rescinded effective at the end of the current month after a public hearing whenever the commissioner shall find either that such conditions have ceased to exist or that such termination is favored by at least thirty-five per centum of the producers of milk handled within such market. For purposes of this subdivision, unless otherwise specified, days shall mean business days.

2. The commissioner may, from time to time upon like petition, during the existence of such conditions revise the prices so fixed, after holding a hearing thereon. Whenever as herein provided a producers' bargaining agency of a production area supplying a marketing area shall file a petition and/or amended petition praying for any relief provided in this article, it shall be lawful for a distributors' agency of such marketing area to file a petition and/or amended petition providing for the consideration of issues therein raised relative to the petition and/or amended petition of the producers' bargaining agency, or to an

existing milk marketing order. Upon receipt of any such petition of a producers' bargaining agency for any such marketing area, the commissioner shall mail a copy thereof to the secretary of the distributors' bargaining agency for such marketing area, if any, which meets the qualifications set forth in the last sentence of this paragraph. If such distributors' bargaining agency files either a petition or an amended petition with the commissioner or notifies the commissioner that no such petition will be filed, the commissioner may proceed to give notice of hearing as provided in subdivision one of this section; otherwise the commissioner shall defer the giving of such notice of hearing for a period of ten days after such distributors' bargaining agency has received from the commissioner a copy of the petition and/or amended petition of the producers' bargaining agency. The commissioner shall mail a copy of the distributors' bargaining agency petition to the secretary of the producers' bargaining agency and shall give such notice of such petition by publication or otherwise as the commissioner deems advisable. Evidence upon the proposals set forth in both the producers' and distributors' bargaining agency petitions shall be received at the same hearing. The commissioner shall not be required to furnish a copy of any petition of a producers' bargaining agency to a distributors' bargaining agency nor shall such distributors' bargaining agency be entitled to file a petition and to be heard as herein provided unless within the calendar year preceding the filing with the commissioner of the producers' bargaining agency petition such distributors' bargaining agency shall have filed with the commissioner a list of its distributor members and the names and addresses of its officers and unless such distributors' bargaining agency represents not less than sixty per centum of the quantity of milk distributed in such marketing area, exclusive of that distributed by cooperative corporations, as determined by the reports submitted to the commissioner during the preceding license year.

The provisions of this subdivision relative to distributors' bargaining agency petitions shall not apply to any milk marketing area or order, jointly administered by the commissioner and any officer or agency of the United States or of any other state.

3. Before fixing any prices pursuant to the provisions of the two preceding paragraphs, the commissioner shall investigate what are reasonable costs and charges for producing, hauling, handling, processing and/or other services performed in respect of milk and what prices for milk in the market or markets affected by such prices and under varying conditions will be most in the public interest. The commissioner shall take into consideration the balance between production and consumption of milk, the cost of production and distribution, including compliance with all sanitary regulations in force in the market or markets affected, the cost of feeding stuffs used in the production of milk, the supply of milk in such market and the purchasing power and welfare of the public. The commissioner shall fix prices to producers on the basis of the use thereof in the various classes, grades and forms. Any prices fixed or approved by the commissioner shall be deemed to be prima facie reasonable.

4. In determining the approval or request for an order as herein provided or the termination thereof on the part of producers the commissioner shall consider the approval, request or favor in respect thereto by any bona fide cooperative association of producers engaged in marketing milk within such marketing area as the approval, request or favor either of making an order or of termination thereof of the producers who are under contract with such cooperative association of producers.

The commissioner shall appoint a referendum advisory committee to assist and advise him in the conduct of the referendum. Such committee shall review referendum procedures and the tabulation of results, and shall advise the commissioner of its findings. A record of the committee's advice, recommendations and findings shall be kept and made available to any person upon request. The final certification of the referendum results shall be made by the commissioner. The committee shall consist of three members. One member shall be appointed from at least three nominations of producers submitted by the producers bargaining agency, one shall be an independent producer, and one shall be appointed from at least three nominations of producers submitted by any general farm organization. The members of the committee shall not

receive a salary but shall be entitled to actual and reasonable expenses in the performance of their duties.

5. Marketing agreements. It shall be lawful for a producers' bargaining agency of the production area supplying a marketing area and a distributors' bargaining agency for such marketing area to enter into marketing agreements as to the prices to be paid by distributors to producers for milk sold or otherwise utilized in said marketing area, as to rules and regulations covering the method of determining the proportion of the product of the entire dairy herd of a producer which shall be accepted and paid for pursuant to such price or prices, as to reasonable trade practices affecting the relations between producers and distributors in such market. Such agreement may also contain provisions for a committee to administer the provisions of said marketing agreement. No agreement, however, shall be effective until a copy thereof signed by all persons parties thereto shall have been filed with the commissioner.

If the commissioner shall have reason to believe that any such marketing agreement results in a monopoly or restraint of trade to such an extent that the price of milk is unduly enhanced by reason thereof, he shall serve upon the parties to such agreement a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing specifying a date and place, not less than thirty days after the service thereof, requiring the parties to such marketing agreement to show cause why an order should not be made directing them to cease and desist from such monopolization or restraint of trade. The parties so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given at such a hearing shall be taken under such rules and regulations as the commissioner shall prescribe, reduced to writing and made a part of the record therein. If upon such hearing the commissioner shall be of the opinion that such marketing agreement results in monopoly or restraint of trade to such an extent that the price of milk in the marketing area affected by such agreement is unduly enhanced, he shall issue and cause to be served upon the parties to said agreement an order reciting the facts found by him and directing them to cease and

desist from such undue enhancement of prices. If such order is not obeyed by the parties to such agreement, the commissioner shall file with the attorney-general a certified copy of the order, evidence of such disobedience and all of the records in the proceeding, and the attorney-general may apply to the supreme court for an order or decree affirming, modifying or setting aside such order or for making such other order or decree as the court may deem equitable in the premises.

Upon application of the parties to said marketing agreement and after a hearing, as provided in subdivision one of this section, the commissioner may by order make the provisions of said marketing agreement, relative to prices to producers and other provisions thereof, effective as to all producers, distributors and handlers in said market notwithstanding that they may not have approved of said agreement if he shall find that the terms and conditions of said agreement are fair, equitable and in public interest, that the agreement has been fairly entered into without fraud, that public interest so requires, in order to effectuate the declaration of policy contained in section two hundred fifty-eight-k of this chapter, that the proportion of the producers and distributors who have executed such agreement or shall have approved same upon the hearing is equal to that required for an order under subdivision one of this section, and further provided that the commissioner shall determine that the prices set forth in said marketing agreement are reasonable and proper prices, as required by this section for prices fixed by an order of the commissioner. Any order so issued shall terminate effective on the last day of the current month, and in the same manner and upon the same request after a hearing, as provided for the termination of an order in subdivision one of this section.

6. If approved by sixty-six and two-thirds per centum of the producers affected voting individually or through their cooperative in the referendum, any order or marketing agreement fixing the price to producers under either subdivision one or subdivision five of this section for market or markets, may provide for an equalization of prices to all producers of the production area of the market affected so that each producer or co-operative association shall receive the same base price for all milk delivered subject to reasonable differentials for

quality and location and for services. Any such order may contain provisions requiring from persons who bring milk or cream into the marketing area regulated by such order payments on all such milk or cream whenever such persons are not otherwise regulated by the order.

In order to effect such equalization of prices to producers the commissioner shall require a monthly report from each dealer receiving milk from producers for such market showing the disposition of all milk handled by the reporting dealer in such market and shall thereafter require payment by each dealer, to a trust company designated as a fiscal agent by the commissioner, of any amount by which the sum otherwise due by such dealer to its producers in accordance with the prices fixed by such order exceeds the equalized base price as determined by the commissioner from such reports, which amounts so paid to said fiscal agent, the commissioner shall direct it to pay to those dealers whose reports show that the base prices they will pay their producers in accordance with such order are less than the equalized base price as so determined by the commissioner, for repayment in turn by such dealers to their producers so as to bring all lower rates of payment up to the equalized base price. Such payments to said fiscal agents shall not be deemed to be state funds. Such equalization shall include milk of all grades and produced by all breeds of cows, and may include milk, approved by a board or boards of health having jurisdiction in a marketing area designated in an order under this section, which was produced by a dealer.

The provisions of this subdivision shall not become operative as to the New York state metropolitan market production area, however, until pursuant to federal or state statutes, or by action of authorities duly constituted and authorized thereunder, prices to producers are so equalized and made effective throughout all the production area of the New York state metropolitan market area.

7. After the commissioner shall have fixed prices in any area or approved prices in a marketing agreement to be charged or paid for milk in any form included in the definition of milk as used in this article whether by class, grade or use, it shall be unlawful for a milk dealer

to buy or offer to buy milk at any price less than such price or prices as shall be applicable to the particular transaction, and no method or device shall be lawful whereby milk is bought or sold or offered to be bought or sold at a price less than such price, or prices, as shall be applicable to the particular transaction, whether by a discount or rebate, or free service, or advertising allowance, or a combined price for such milk together with another commodity or commodities, or service or services, which is less than the aggregate of the prices for the milk and the price or prices for such other commodity or commodities, or service or services, when sold or offered for sale separately or otherwise.

8. It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this article respecting such milk so produced shall apply and the powers conferred by this article shall attach.

9. No marketing agreement or order shall prevent a cooperative association from blending as heretofore the proceeds of all sales and distributing to its producers the resultant blended price subject to deductions and differentials as provided by its contracts with its producers, but no such cooperative association shall sell milk at prices lower than the prices fixed by the commissioner in an order for the markets affected.

10. Any marketing agreement or order of the commissioner may provide for necessary deductions from payments to producers to cover the cost of administering such marketing agreement or order, including the cost of auditing milk dealers' classifications, and the cost of other services to producers. The funds so derived from such deductions shall be deposited in an account within the miscellaneous special revenue fund and shall not be deemed to be state funds. The commissioner may, in his or her discretion, appoint an administrator and such assistant administrators as in his or her opinion may be necessary to administer the terms of any agreement or order, and the persons so appointed shall

be deemed to occupy positions confidential to the commissioner and may be appointed without competitive examination. All other persons employed by the commissioner in the administration of such a marketing agreement or order shall be selected in accordance with the civil service law and rules.

11. Any marketing agreement or order of the commissioner may provide (a) for payments to cooperative associations of producers in cases where the commissioner finds that such associations are actually rendering marketing services to producers under contract with them, which services enure to the benefit of all producers in the market or to the benefit of the market as a whole and may include the conduct and maintenance, jointly with other cooperative associations, of plans or campaigns, by advertisement or otherwise, including participation in similar regional or national plans or campaigns, to promote the increased consumption of milk and milk products, to acquaint the public with the dietary advantages of milk and milk products and with the economy in the diet, and to command, for milk and dairy products, consumer attention consistent with their importance and value, or that such associations are rendering services in the control and disposition of surplus for the benefit of the market; (b) for payment to milk dealers or to cooperative associations of producers which operate milk receiving stations or manufacturing plants for services rendered by them, in the stabilizing of the supply of fluid milk and cream within the market at times either of surplus or of shortage of milk; and (c) for adjustments in payments to producers to effect a more favorable seasonal balance as between the production and consumption of milk. Such adjustments may be made in the form of deductions and additions to the fund to equalize prices of milk to producers, or by apportioning among producers the total value of all milk subject to equalization on the basis of their marketings of milk during a representative period of time. Any such deductions from the fund to equalize prices shall not be deemed to be state funds. Such moneys shall be held in reserve and used solely for additions to the fund to equalize prices, in such manner as the order may provide. The commissioner shall make no provision for adjustment in payments under this section with respect to a state milk marketing order, except on the petition of a producers' bargaining agency of a production area

supplying a marketing area and after a public hearing and subsequent producer approval as required by this section.

12. "Distributor" as used in this and the preceding section means a milk dealer as defined in this article who delivers milk to stores and/or consumers within the marketing area, from a milk depot or milk plant owned and/or operated by such dealer.

§ 258-n. Interstate and federal compacts. The commissioner is hereby authorized to confer with legally constituted authorities of other states and of the United States with respect to uniform milk control, including sanitary requirements with states and/or as between states, and with the federal government in its control of milk handled in interstate commerce, and may exercise his powers hereunder to effect such uniform milk control. He may join with such other authorities federal and state in conducting joint investigations, holding joint hearings and issue joint or concurrent orders, or orders supplementary to those of the federal government, and shall have the power to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent or supplementary orders.

In order to carry out the policies set forth in sections two hundred fifty-eight-k and two hundred fifty-eight-p, the commissioner is hereby vested with the authority to enter into a compact or compacts or other types of agreements, with the legally constituted authorities of other states and/or the United States to provide for uniform milk control and, in order to effectuate such uniform milk control, he may join with an agent or agencies to exercise under such compact or compacts or other types of agreements the powers conferred upon him by this article with respect to the administration of uniform milk control. In the case of market orders including those covering prices, any such compact or compacts or other types of agreements may provide for necessary assessments upon the handlers regulated thereunder, in order to cover the cost of administering such uniform milk control, including, without limitation, the cost of auditing milk dealers' classifications.

The commissioner may effectuate this section by any type of agreement other than a formal compact if a formal compact is not constitutionally required.

§ 258-o. The commissioner is hereby authorized and directed to make a study of the sanitary regulations, codes and rules applicable to milk and milk products produced in the state of New York, and to study and report to the governor the possible economic impact of a national sanitation act upon New York milk production and New York dairy farmers.

§ 258-p. Declaration of policy. It is hereby declared: that the milk industry is a paramount agricultural activity of this state and of the northeast in a region comprising the New England states and the Middle Atlantic states and is a business affecting the public health and welfare of the inhabitants of this state and of the northeast; that the production and marketing of milk of the dairy farms of this state and of states in the northeast region is of vast economic importance to the state and to the region; that compliance with reasonable requirements for the production and marketing of a safe and high quality milk supply is a matter of great importance both to the welfare of the dairy farmers of this state and the northeast, and the health and welfare of the consumers of milk and dairy products; that the production conditions in the northeast including the climate, topography and soils are about the same but marketing conditions are unique as compared to the remainder of the United States in that practically all of the milk in the northeast is produced for fluid markets because of the concentration of population. The natural marketing area, under present conditions of production and marketing, lies within the boundaries of the eleven different states with widely different laws and regulations which govern the economic climate and sanitary conditions under which milk and dairy products are marketed. Artificial barriers have contributed significantly to the loss of competitive position by New York and other Northeastern states. The market share held by milk producers in the region has declined. The marketing system for milk and dairy products in the northeast has been and still is badly fragmented. Assembly,

administration, operating and sales costs are excessively high. Cooperative membership is below that in most areas of the country. Competition from other regions of the country will increase. A common marketing area in the northeast is necessary for a prosperous and growing dairy industry and it is in the best interest of consumers. It is therefore essential that there be uniformity of laws and regulations governing the production, processing and marketing of milk and dairy products in the northeast. The lack of uniformity of laws and regulations involving inspection of farms and plants, labeling of dairy products and their imitations, standards for dairy products, licensing of milk dealers and the terms of milk market orders have been a serious deterrent to expanding markets for northeast dairy products and costly to consumers.

§ 258-q. Action for a uniform northeast market. The commissioner is hereby authorized and directed to act independently or through the Northeastern Association of State Departments of Agriculture, the National Conference on Interstate Milk Shipments and any other group or agency, to achieve uniformity of laws and regulations involving inspection of farms and plants, sanitary codes, labeling of dairy products and their imitations, standards for dairy products, licensing of milk dealers and the terms of both federal and state milk marketing orders in effect in the area. He is further directed to work toward the elimination of the unnecessary and costly barriers to the free flow of milk created by laws and regulations originally enacted to help the income of dairy farmers but whose present effect is to interfere with the free flow of milk and to reduce the efficiency of distribution. The commissioner will continuously endeavor to effectuate the purpose of this section by seeking uniform laws and regulations, joint investigations, joint hearings, and joint and concurrent orders and regulations. He further will endeavor to create a joint agency or joint agencies to carry out and enforce joint and concurrent orders and any other joint activities.

§ 258-r. Actions to eliminate trade barriers. 1. Any dairy farmer or

cooperative producing milk within this state, any licensed milk dealer or general farm organization may file a complaint with the commissioner alleging that unconstitutional or otherwise illegal barriers to or burdens upon interstate commerce in milk or other dairy products exist in the laws, regulations or practices of any other state, or in the municipalities, agencies or instrumentalities thereof or in the regulations or practices of any federal agency. The complaint shall specify the nature of such barriers or burdens and the manner in which the complainant, or its individual members, is aggrieved thereby.

2. The commissioner shall determine whether such barriers or burdens have or may ultimately have an adverse impact upon New York producers or dealers generally and determine whether the public interest would be served by their elimination. If the commissioner concludes that action upon such complaint is in the general public interest of this state, he shall refer the complaint to the attorney general. The commissioner shall, within ninety days of the receipt of such complaint, inform in writing, the complainant and the attorney general as to the status thereof. Upon making a determination with respect to such complaint, the commissioner shall provide to the complainant and the attorney general a written statement of such determination setting forth the reasons therefor.

3. The commissioner shall maintain a continuing review of the laws, regulations and policies of the eleven Northeast states, their municipalities and federal agencies for the purpose of identifying unconstitutional or illegal barriers to the marketing of New York milk and dairy products. The commissioner may initiate and refer to the attorney general his own complaints with respect to any such barriers.

4. Upon referral of any complaint by the commissioner, the attorney general may bring an action in any state or federal court within or outside the state, for the purpose of invalidating such barriers or burdens upon interstate commerce and for such other relief as may be appropriate. The attorney general may bring such action in a parens patriae capacity.

5. The attorney general shall, within ninety days of receipt of such referral, inform the commissioner in writing as to the status of such referral. Upon deciding whether to commence an action with respect to the complaint, the attorney general shall provide to the commissioner a written statement of such decision and the reasons therefor.

ARTICLE 21-AA

DAIRY PROMOTION ACT

Section 258-aa. Dairy promotion act.

§ 258-aa. Dairy promotion act. 1. Declaration of policy. It is hereby declared that the dairy industry is a paramount agricultural industry of this state, and is an industry affecting the health and welfare of the inhabitants of the state; that the continued existence of the dairy industry and the continued production of milk on the farms of this state is of vast economic importance to the state and to the health and welfare of the inhabitants thereof; that it is essential, in order to assure such continued production of milk and its handling and distribution, that prices to producers be such as to return reasonable costs of production, and at the same time assure an adequate supply of milk and dairy products to consumers at reasonable prices; and to these ends it is essential that consumers and others be adequately informed as to the dietary needs and advantages of milk and dairy products and as to the economies resulting from the use of milk and dairy products, and to command for milk and dairy products, consumer attention and demand consistent with their importance and value. It is further declared that continued decline in the consumption of fluid milk and some other dairy products will jeopardize the production of adequate supplies of milk and dairy products because of increasing surpluses necessarily returning less to producers; and that continued adequate supplies of milk and dairy products is a matter of vital concern as affecting the health and general welfare of the people of this state. It is therefore declared to be the legislative intent and policy of the state:

(a) To enable milk producers and others in the dairy industry, with the aid of the state, to more effectively promote the consumption of

milk and dairy products;

(b) To provide methods and means for the development of new and improved dairy products, and to promote their use; and

(c) To this end, eliminate the possible impairment of the purchasing power of the milk producers of this state and to assure an adequate supply of milk for consumers at reasonable prices.

2. Definitions. As used in this section the following terms shall have the following meanings:

(a) "Dairy products" means milk and products derived therefrom, and products of which milk or a portion thereof is a significant part.

(b) "Producer" means any person in this state who is engaged in the production of milk or who causes milk to be produced for any market in this or any other state.

(c) "Advisory board" means the persons appointed by the commissioner from nominations from producers as herein defined to assist the commissioner in administering a dairy promotion order.

(d) "Milk dealer" means any person who purchases or handles or receives or sells milk, including individuals, partnerships, corporations, cooperative associations, and unincorporated cooperative associations.

(e) "Dairy promotion order" means an order issued by the commissioner, pursuant to the provisions of this section.

(f) "Cooperative" means an association or federation or cooperative of milk producers organized under the laws of New York state, or any other state, having agreements with their producer members to market, bargain for or sell the milk of such producers, and is actually performing one or more of these services in the marketing of the milk produced by their members, through the cooperative or through a federation of milk cooperatives in which the cooperative has membership.

3. Powers and duties of the commissioner. (a) The commissioner shall administer and enforce the provisions of this section and shall have and may exercise any or all the administrative powers conferred upon the head of a department. In order to effectuate the declared policy of this section the commissioner may, after due notice and hearing, make and issue a dairy promotion order, or orders.

(b) Such order or orders shall be issued and amended or terminated in accordance with the following procedures:

(i) Before any such order may become effective it shall be approved by fifty-one per centum of the producers of milk voting in the referendum for the area to be regulated by such order. Such referendum shall not constitute valid approval unless fifty-one per centum of all milk producers for the area to be regulated vote in the referendum.

(ii) Producers may vote by individual ballot or through their cooperatives in accordance with the following procedures:

(1) Cooperatives may submit written approval of such order within a period of one hundred twenty days after the commissioner has announced a referendum on a proposed order, for such producers who are listed and certified to the commissioner as members of such cooperative, provided, however, that any cooperative before submitting such written approval shall give at least sixty days prior written notice to each producer who is its member, of the intention of the cooperative to approve such proposed order, and further provide that if such cooperative does not intend to approve such proposed order, it shall likewise give written notice of at least sixty days to each such producer who is its member, of its intention not to approve of such proposed order.

(2) Any producer may obtain a ballot from the commissioner so that they may register their own approval or disapproval of the proposed order.

(3) A producer who is a member of a cooperative which has notified such producer of its intent to approve or not to approve of a proposed order, and who obtains a ballot and with such ballot expresses the producer's approval or disapproval of the proposed order, shall notify the commissioner as to the name of the cooperative of which the producer is a member, and the commissioner shall remove such producer's name from the list certified by such cooperative.

(4) In order to ensure that all milk producers are informed regarding a proposed order, the commissioner shall notify all milk producers that an order is being considered, and that each producer may register the producer's approval or disapproval with the commissioner either directly or through the producer's cooperative.

(5) The commissioner may appoint a referendum advisory committee to assist and advise the commissioner in the conduct of the referendum.

Such committee shall review referendum procedures and the tabulation of results and shall advise the commissioner of its findings. The final certification of the referendum results shall be made by the commissioner. The committee shall consist of not less than three members, none of whom shall be persons directly affected by the promotion order being voted upon. Two members shall be representatives of general farm organizations which are not directly affected by the order being voted upon. The members of the committee shall not receive a salary but shall be entitled to actual and reasonable expenses incurred in the performance of their duties.

(6) The commissioner may, and upon written petition of not less than ten per centum of the producers in the area, either as individuals or through cooperative representation shall, call a hearing to amend or terminate such order, and any such amendment or termination shall be effective only upon approval of fifty-one per centum of the producers of milk for the area regulated participating in a referendum vote as provided pursuant to this paragraph.

(c) The commissioner shall administer and enforce any such dairy promotion order while it is in effect, for the purpose of:

(i) Encouraging the consumption of milk and dairy products by acquainting consumers and others with the advantages and economy of using more of such products.

(ii) Protecting the health and welfare of consumers by assuring an adequate supply of milk and dairy products.

(iii) Providing for research programs designed to develop new and improved dairy products.

(iv) Providing for research programs designed to acquaint consumers and the public generally with the effects of the use of milk and dairy products on the health of such consumers.

(d) Carrying out, in other ways, the declared policy and intent of this section.

4. Provisions of dairy promotion orders. Any dairy promotion order or orders may contain, among others, any or all of the following:

(a) Provision for levying an assessment against all producers subject to the regulation for the purpose of carrying out the provisions of such order and to pay the cost of administering and enforcing such order. In

order to collect any such assessments, provision shall be made for each milk dealer who receives milk from producers to deduct the amount of assessment from moneys otherwise due to producers for the milk so delivered. The rate of such assessment shall not exceed two per cent per hundredweight of the gross value of the producer's milk, and there may be credited against any such assessment the amounts per hundredweight otherwise paid by any producer covered by the order by voluntary contribution or otherwise pursuant to any other federal or state milk market order for any similar research promotion or program. Notwithstanding the provisions of paragraph (b) of subdivision three of this section, the commissioner, upon written petition of no less than twenty-five per cent of producers in the area, either as individuals or through cooperative representation, may call a hearing for the sole purpose of establishing a new rate of assessment hereunder and may submit a proposed change in the rate of assessment to the producers for acceptance or rejection without otherwise affecting the order. The producers in the area may vote on the proposed rate either as individuals or through cooperative representation. Notwithstanding the foregoing provisions of this paragraph and of paragraph (b) of subdivision three of this section, or the provisions of any order promulgated pursuant to this section, the rate of assessment, for any period during which a dairy products promotion and research order established pursuant to the federal dairy and tobacco adjustment act of 1983 is in effect, shall not be less than an amount equal to the maximum credit which producers participating in this state's dairy products promotion or nutrition education programs may receive pursuant to subdivision (g) of section 113 of such federal act.

(b) Provision for payments to organizations engaged in campaigns by advertisements or otherwise, including participation in similar regional or national plans or campaigns to promote the increased consumption of milk and dairy products, to acquaint the public with the dietary advantages of milk and dairy products and with the economy of their inclusion in the diet and to command, for milk and dairy products, consumer attention consistent with their importance and value.

(c) Provision for payments to institutions or organizations engaged in research leading to the development of new or improved dairy products or research with respect to the value of milk and dairy products in the

human diet.

(d) Provision for requiring records to be kept and reports to be filed by milk dealers with respect to milk received from producers and with respect to assessments on the milk of such producers.

(e) Provision for the auditing of the records of such milk dealers for the purpose of verifying payment of producer assessments.

(f) Provision for an advisory board as hereinafter indicated.

(g) Such other provisions as may be necessary to effectuate the declared policies of this section.

5. Matters to be considered. In carrying out the provisions of this section and particularly in determining whether or not a dairy promotion order shall be issued, the commissioner shall take into consideration, among others, facts available to them with respect to the following:

(a) The total production of milk in the area and the proportion of such milk being utilized in fluid form and in other products;

(b) The prices being received for milk by producers in the area;

(c) The level of consumption per capita for fluid milk and of other dairy products;

(d) The purchasing power of consumers; and

(e) Other products which compete with milk and dairy products and prices of such products.

6. Interstate orders for compacts. The commissioner is authorized to confer and cooperate with the legally constituted authorities of other states and of the United States with respect to the issuance and operation of joint and concurrent dairy promotion orders or other activities tending to carry out the declared intent of this section. The commissioner may join with such other authorities in conducting joint investigations, holding joint hearings, and issuing joint or concurrent order or orders complementary to those of the federal government and shall have the authority to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent, or supplementary orders.

7. Prior assessments. Prior to the effective date of any dairy promotion order as provided in this section, the commissioner may

require that cooperatives which have petitioned for such an order and who have approved of the issuance of such an order, to deposit with the commissioner such amounts as the commissioner may deem necessary to defray the expense of administering and enforcing such order until such time as the assessments as herein before provided are adequate for that purpose. Such funds shall be received, deposited, and disbursed by the commissioner in the same manner as other funds received pursuant to this section and the commissioner shall reimburse those who paid these prior assessments from other funds received pursuant to this section.

8. Status of funds. Any moneys collected under any market order issued pursuant to this section shall not be deemed to be state funds and shall be deposited in a bank or other depository in this state, approved by the commissioner and the state comptroller, allocated to each dairy promotion order under which they were collected, and shall be disbursed by the commissioner only for the necessary expenses incurred by the commissioner with respect to each separate order, all in accordance with the rules and regulations of the commissioner. All such expenses shall be audited by the state comptroller at least annually and within thirty days after the completion thereof the state comptroller shall give a copy thereof to the commissioner. Any moneys remaining in such fund allocable to a particular order, after the termination of such order and not required by the commissioner to defray the expenses of operating such order, may in the discretion of the commissioner be refunded on a pro-rata basis to all persons from whom assessments therefor were collected; provided, however, that if the commissioner finds that the amounts so refundable are so small as to make impracticable the computation and refunding of such moneys, the commissioner may use such moneys to defray the expenses incurred by them in the promulgation, issuance, administration or enforcement of any other similar dairy promotion order or in the absence of any other such dairy promotion order, the commissioner may pay such moneys to any organization or institution as provided in paragraph (b) or (c) of subdivision four of this section.

9. Budget. The commissioner shall prepare a budget for the administration and operating costs and expenses including advertising

and sales promotion when required in any dairy promotion order executed hereunder and to provide for the collection of such necessary fees or assessments to defray costs and expenses, in no case to exceed two percent per hundredweight of the gross value of milk marketed by producers in the area covered by the order.

10. Advisory board. (a) Any dairy promotion order issued pursuant to this section shall provide for the establishment of an advisory board to advise and assist the commissioner in the administration of such order. This board shall consist of not less than five members and shall be appointed by the commissioner from nominations submitted by producers marketing milk in the area to which the order applies. Nominating procedure, qualification, representation, and size of the advisory board shall be prescribed in the order for which such board was appointed.

(b) No member of an advisory board shall receive a salary but shall be entitled to reimbursement of the member's actual and reasonable expenses incurred while performing such member's duties as authorized herein.

(c) The duties and responsibilities of the advisory board shall be prescribed by the commissioner, and the commissioner may specifically delegate to the advisory board, by inclusion in the dairy promotion order, all or any of the following duties and responsibilities:

(i) The recommendation to the commissioner of administrative rules and regulations relating to the order.

(ii) Recommending to the commissioner such amendments to the order as seems advisable.

(iii) The preparation and submission to the commissioner of an estimated budget required for the proper operation of the order.

(iv) Recommending to the commissioner methods for assessing producers and methods for collecting the necessary funds.

(v) Assisting the commissioner in the collection and assembly of information and data necessary for the proper administration of the order.

(vi) The performance of such other duties in connection with the order as the commissioner shall designate.

11. Rules and regulations enforcement. (a) The commissioner may, with the advice and assistance of the advisory board, make and issue such

rules and regulations as may be necessary to effectuate the provisions and intent of this section and to enforce the provisions of any dairy promotion order, all of which shall have the force and effect of law.

(b) The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this section, or any rule or regulation, or dairy promotion order committed to the commissioner's administration, and in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application shall be made to the supreme court in any district or county provided in the civil practice law or rules, or to the supreme court in the third judicial district.

ARTICLE 21-B
DRY MILK POWDER CONTROL

Section 258-bb. Definitions.
258-cc. Prohibitions.
258-dd. Registration.
258-ee. Records.
258-ff. Reports.
258-gg. Rules and regulations.
258-hh. Entry, inspection and investigation.
258-ii. Violations.

§ 258-bb. Definitions. As used in this article unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of agriculture and markets.

2. "Person" means any person, firm, corporation, co-partnership, association, co-operative corporation or unincorporated co-operative association.

§ 258-cc. Prohibitions. 1. It shall be unlawful for any person to sell or distribute in the state of New York, other than exclusively at retail, any dry milk powder originating from any area outside the continental United States including Alaska and Hawaii without first having registered with the commissioner.

2. It shall be unlawful for any person to sell or distribute in the state of New York any dry milk powder originating from any area outside the continental United States including Alaska and Hawaii that has not been designated by the commissioner as being rinderpest and foot-and-mouth disease free.

3. It shall be unlawful for any person to sell or distribute in the state of New York any dry milk powder originating from any area outside the continental United States including Alaska and Hawaii unless the labelling of each package clearly discloses the country from which the powder has been imported and the country in which the powder was manufactured.

§ 258-dd. Registration. Any person who sells, offers or exposes for sale, or has or possesses for sale other than exclusively at retail, any dry milk powder originating from any area outside the continental United States including Alaska and Hawaii, shall, not later than the first day of January of each year, register with the commissioner upon a form prescribed by the commissioner. The registration form shall state such facts concerning registrant's circumstances and the nature of the business to be conducted as in the opinion of the commissioner are necessary for the administration of this article. The registration period shall be for twelve months.

§ 258-ee. Records. The commissioner may require persons who sell or distribute, other than exclusively at retail, dry milk powder originating from any area outside the continental United States including Alaska and Hawaii to keep the following records:

1. A record of all dry milk powder received, detailed as to location, and as to names and addresses of suppliers.

2. A record of all dry milk powder sold classified as to location and market outlet and size and style of container, with prices and amounts received therefor.

3. A record of quantities and prices of dry milk powder sold.

4. Such other records and information as the commissioner may deem necessary for the proper enforcement of this article.

§ 258-ff. Reports. Each person who sells or distributes, other than exclusively at retail, dry milk powder originating from any area outside the continental United States including Alaska and Hawaii shall, from time to time, as required by rule or order of the commissioner, make and file a verified report on forms prescribed by the commissioner of all matters on account of which a record is required to be kept, together with such other information or facts as the commissioner may deem pertinent and material within the scope of the purpose and intent of this article.

§ 258-gg. Rules and regulations. The commissioner shall be authorized, after inquiry and public hearing, to promulgate and adopt rules and regulations to supplement and give full effect to the provisions of this article.

§ 258-hh. Entry, inspection and investigation. Any person designated by the commissioner shall have access to and may enter at all reasonable hours all places where foreign imported dry milk powder is being packaged or stored for sale or distribution in the state of New York, or where the books, papers, records or documents relating to such transactions are kept and shall have power to inspect and copy the same,

and may administer oaths and take testimony for the purpose of ascertaining facts which in the judgment of the commissioner are necessary to administer this article.

§ 258-ii. Violations. In addition to any civil penalties provided for in this chapter the commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this article and any rules and orders promulgated by the commissioner to carry out the provisions of this article and in addition may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

Whenever the commissioner or his duly authorized representative shall find distributed, offered or exposed for sale within this state, a dry milk powder which has originated from any area outside the continental United States including Alaska and Hawaii that has not been designated in accordance with section two hundred fifty-eight-cc as being disease free or which otherwise is unfit or unsafe for use, and its condemnation is required to protect the public health, he may, in accordance with the procedures set forth in section two hundred two-b of this chapter, seize or quarantine and destroy or denature such product so that it cannot thereafter be used.

ARTICLE 21-C
NORTHEAST INTERSTATE DAIRY COMPACT

Section 258-kk. Northeast interstate dairy compact.
258-ll. New York delegation to compact commission.
258-mm. Compact order violations.
258-nn. New York delegation; limitation on voting.

§ 258-kk. Northeast interstate dairy compact. The northeast

interstate dairy compact as set forth in this article is hereby adopted and entered into with all jurisdictions joining therein. The compact is as follows:

NORTHEAST INTERSTATE DAIRY COMPACT

ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY
§ 1. Statement of purpose, findings and declaration of policy.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION
§ 2. Definitions.
§ 3. Rules of construction.

ARTICLE III. COMMISSION ESTABLISHED
§ 4. Commission established.
§ 5. Voting requirements.
§ 6. Administration and management.
§ 7. Rulemaking power.

ARTICLE IV. POWERS OF THE COMMISSION
§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.
§ 9. Equitable farm prices.
§ 10. Optional provisions for pricing order.

ARTICLE V. RULEMAKING PROCEDURE
§ 11. Rulemaking procedure.
§ 12. Findings and referendum.
§ 13. Producer referendum.
§ 14. Termination of over-order price or marketing order.

ARTICLE VI. ENFORCEMENT
§ 15. Records, reports, access to premises.
§ 16. Subpoena, hearings and judicial review.
§ 17. Enforcement with respect to handlers.

ARTICLE VII. FINANCE
§ 18. Finance of start-up and regular costs.

§ 19. Audit and accounts.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL
§ 20. Entry into force; additional members.
§ 21. Withdrawal from compact.
§ 22. Severability.
§ 23. Reservation of rights.
ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY
§ 1. Statement of purpose, findings and declaration of policy.

The purpose of this compact is to recognize by constitutional prerequisite the interstate character of the northeast dairy industry and to form an interstate commission for the northeast region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is the paramount agricultural activity of the northeast. Dairy farms, and associated suppliers, marketers, processors and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential to the region's rural communities and character. The farms preserve open spaces, sculpt the landscape and provide the land base for a diversity of recreational pursuits. In defining the rural character of our communities and landscape, dairy farms also provide a major draw for our tourist industries.

By entering into this compact, the participating states affirm that their ability to regulate the price which northeast dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the northeast dairy

industry, with all the associated benefits.

Recent, dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the northeast dairy region. Historically, individual state regulatory action has been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices for dairy products, without preempting the power of states to regulate milk prices above the minimum levels so established. Based on this authority, each state in the region has individually attempted to implement at least one regulatory program in response to the current dairy industry crisis.

In today's regional dairy marketplace, cooperative, rather than individual state action may address more effectively the market disarray. Under our constitutional system, properly authorized, states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of congress, under the compact clause of the constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the order system.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

§ 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Commission" means the commission established by this compact.

(b) "Compact" means this interstate compact.

(c) "Region" means the territorial limits of the states which are or become parties to this compact.

(d) "Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

(e) "Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(f) "Pool plant" means any milk plant located in a regulated area.

(g) "Partially regulated plant" means a milk plant not located in a regulated area but having class I distribution within such area, or receipts from producers located in such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(h) "Compact over-order price" means a minimum price required to be paid to producers for class I milk established by the commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

(i) "Commission marketing order" means regulations adopted by the commission pursuant to sections nine and ten of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

(j) "Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

(k) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subdivision (b) of section three of this compact.

(l) "State dairy regulation" means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§ 3. Rules of construction. (a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in section one of this compact. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED

§ 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than

three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission. Each state delegation shall be entitled to one vote in the conduct of the commission's affairs.

§ 5. Voting requirements.

All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of the commission's by-laws, shall be by majority vote of the delegations present. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission's business.

§ 6. Administration and management.

(a) The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and, together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its by-laws an executive committee composed of one member elected by each delegation.

(b) The commission shall adopt by-laws for the conduct of its business by a two-thirds vote, and shall have the power by the same vote to amend and rescind these by-laws. The commission shall publish its by-laws in convenient form with the appropriate agency or officer in each of the participating states. The by-laws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as

provided by the laws of those states.

(c) The commission shall file an annual report with the secretary of agriculture of the United States, and with each of the participating states by submitting copies to the governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

(1) to sue and be sued in any state or federal court;

(2) to have a seal and alter the same at pleasure;

(3) to acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) to borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of section eighteen of this compact;

(5) to appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications; and

(6) to create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

§ 7. Rulemaking power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. POWERS OF THE COMMISSION

§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The commission is hereby empowered to:

(a) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(b) Prepare and transmit to the participating states model dairy laws and regulations dealing with the inspection of farms and plants, sanitary codes, labels for dairy products and their imitations, standards for dairy products, license standards, producer security programs, and fair trade laws.

(c) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(d) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposiums or conferences designed to improve industry relations, or a better understanding of problems.

(e) Prepare and release periodic reports on activities and results of the commission's efforts to the participating states.

(f) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(g) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk.

(h) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

§ 9. Equitable farm prices.

(a) The powers granted in this section and section ten of this compact shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall

authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to class I milk. Such over-order price shall not exceed one dollar and fifty cents per gallon. Beginning in nineteen hundred ninety, and using that year as a base, the foregoing one dollar and fifty cents per gallon maximum shall be adjusted annually by the rate of change in the consumer price index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and

interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.

(g) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(a) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(b) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers.

(c) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for class I milk.

(d) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

(e) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of

producers delivering milk to the same handler of uniform prices for all milk delivered by them.

(1) With respect to regulations establishing a compact over-order price, the commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(2) With respect to any commission marketing order, as defined in subdivision (i) of section two of this compact, which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(f) Provisions requiring persons who bring class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the class I price established by the compact over-order price or commission marketing order.

(g) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(h) Provisions requiring that the account of any person regulated under a compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(i) Provisions requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subdivision (a) of section eighteen of this compact.

(j) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(k) Other provisions and requirements as the commission may find are

necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULEMAKING PROCEDURE

§ 11. Rulemaking procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subdivision (f) of section nine of this compact, or amendment thereof, as provided in article IV of this compact, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. Sec. 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

§ 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. Sec. 553(c)), the commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under article IV of this compact.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing

minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen of this compact.

§ 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subdivision (f) of section nine of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the act of congress of February eighteen, nineteen hundred twenty-two, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in paragraph one of this subdivision and subject to the provisions of paragraphs two, three, four and five of this subdivision:

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior

written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to insure that all milk producers are informed regarding a proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the commission either directly or through his or her cooperative.

§ 14. Termination of over-order price or marketing order.

(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. Sec. 553).

ARTICLE VI. ENFORCEMENT

§ 15. Records, reports, access to premises.

(a) The commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his or her milk business and for that purpose, the commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (2) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall upon conviction be subject to a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States attorney.

§ 16. Subpoena, hearings and judicial review.

(a) The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with

the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within thirty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the commission from obtaining relief pursuant to section seventeen of this compact. Any proceedings brought pursuant to section seventeen of this compact (except where brought by way of counterclaim in proceedings instituted pursuant to this section) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

§ 17. Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the commission in any state or federal court of competent jurisdiction; or

(2) With the agreement of the appropriate state agency of a participating state, by referral to the state agency for enforcement by judicial or administrative remedy.

(c) With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE

§ 18. Finance of start up and regular costs.

(a) To provide for its start-up costs, the commission may borrow money pursuant to its general power under paragraph four of subdivision (d) of section six of this compact. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed one-tenth of one percent of the applicable federal market order blend price per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses.

(b) The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

§ 19. Audit and accounts.

(a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(b) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia and when the consent of congress has been obtained. This compact shall also be open to states which are contiguous to any of the named states and open to states which are contiguous to participating states.

§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact.

Congress reserves the right to amend or rescind this interstate compact at any time.

§ 23. Reservation of rights.

(a) In general. The right to alter, amend, or repeal this compact is expressly reserved.

(b) Compensation requirement. When an over-order price is in effect, the commission established in this compact shall compensate the commodity credit corporation before the end of the fiscal year for the cost of any increased commodity credit corporation dairy purchases that result from projected increased fluid milk production for that fiscal year within the compact region in excess of the national average rate of increase.

§ 258-ll. New York delegation to compact commission. (a) The New York delegation to the northeast interstate compact commission shall consist of five persons, at least one of whom shall be a dairy farmer who is engaged in the production of milk at the time of appointment or reappointment and one of whom shall be representative of consumers' interests. One member shall be appointed by the governor, one by the temporary president of the senate, one by the minority leader of the senate, one by the speaker of the assembly and one by the minority leader of the assembly. Members shall serve for a term of three years, except that the members first appointed by the temporary president of the senate and the speaker of the assembly shall serve for a term of two years and the members first appointed by the minority leader of the senate and the minority leader of the assembly shall serve for a term of one year.

(b) The members of the delegation shall receive compensation for their

services of three hundred dollars per diem.

(c) The department and any other agency of the state shall, when called upon, provide the members with cooperation, information and staff support.

§ 258-mm. Compact order violations. Any violation of the provisions of regulations adopted pursuant to the northeast interstate dairy compact establishing an over-order price, a commission marketing order, or any other regulations, shall constitute a violation of this chapter. Any such violation shall be subject to the civil penalties prescribed by section thirty-nine of this chapter. In addition, all the administrative and judicial sanctions and remedies prescribed for a violation of article twenty-one of this chapter shall apply to any such violation.

§ 258-nn. New York delegation; limitation on voting. The New York delegation to the northeast interstate dairy compact commission, or any member thereof, shall not vote to include all or part of New York state as part of a regulated area, as that term is defined in subdivision (e) of section two of article two of the northeast interstate dairy compact set forth in section two hundred fifty-eight-kk of this article, if the compact over-order price regulation or commission marketing order for such regulated area would establish a price for class I milk in all or part of New York state which is in excess of the highest price for class I milk in the New York-New Jersey marketing area at any time up to the effective date of this section, as calculated by the market administrator in the New York-New Jersey milk marketing area, adjusted annually by the rate of change in the consumer price index as reported by the bureau of labor statistics of the United States department of labor.

ARTICLE 22

FARMERS' MARKETS

Section 259. Legislative findings.
260. Definitions.

261. Powers and duties of department.
262. State aid for farmers' markets.
263. Quinquennial report.

§ 259. Legislative findings. The legislature hereby finds and declares that farmers' markets provide a vital and highly effective marketing mechanism for thousands of New York farmers, improve the access of consumers and wholesalers to New York farm products, and contribute to the economic revitalization of the areas in which the markets are located. The legislature further declares that farmers' markets provide consumers with access to a wide range of high quality, nutritious, farm fresh and processed New York state agricultural and food products; facilitate expanded wholesale distribution of New York state farm products to retail stores, restaurants, institutions and other wholesale food buyers; provide new and expanded farm and city jobs in agricultural production, marketing, and sales, and in market facilities development and operation; promote consumer awareness of New York state agriculture and agricultural products; and foster economic and social interaction between urban and rural residents of the state.

It is therefore the intent of the legislature and the purpose of this article to encourage farmers' markets in the state by providing state assistance to municipalities and public and private agencies interested in developing new markets or expanding or reconstructing existing farm market operations.

§ 260. Definitions. As used in this article:

1. "Farmers' market" shall mean any building, structure or place, the property of a municipal corporation or under lease to or in possession of a public or private agency, individual or business used or intended to be used by two or more producers for the direct sale of a diversity of farm and food products, as defined in subdivision four of this section, from producers to consumers and food buyers. Such market may also include facilities for the packing, shipping, first-instance

processing or storage of farm and food products, and shall include all equipment used or intended to be used in connection with such facilities. Such market may also include other businesses which reasonably serve the public or make the market more convenient, efficient, profitable or successful, including, but not limited to, food service, baking, and non-food retailing.

2. "Public market" shall mean any building, structure or place, operated on a not-for-profit basis in the public interest for the buying, selling or keeping for sale of farm and food products at retail and/or wholesale, and may include a farmers' market.

3. "Producer" shall mean any person or persons who grow, produce, or cause to be grown or produced any farm or food products in New York state.

4. "Farm and food product" shall mean any agricultural, horticultural, forest, or other product of the soil or water, including but not limited to, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, flowers, firewood and Christmas trees.

5. "First-instance processing" shall mean the washing, grading and packaging of farm and food products in connection with a farmers' market.

6. "Storage" shall mean a facility or equipment with a refrigerated, controlled atmosphere, or other enclosed unit used for the purpose of long-term storage of farm and food products in connection with a farmers' market.

7. "Public or private agency" shall mean any agency of federal, state or local government, regional market authority, public benefit corporation, not-for-profit corporation, cooperative corporation or educational institution.

8. "Rural area" shall mean a town having a population density of less than one hundred fifty persons per square mile or a county having a population of two hundred thousand or less as reflected in the latest federal census.

9. "Food desert" shall mean an area with limited access to affordable and nutritious food, particularly such an area that is composed of predominately lower-income neighborhoods and communities.

§ 261. Powers and duties of department. The department shall:

1. perform necessary activities to encourage the development and improvement of farmers' markets throughout New York state;

2. provide technical assistance to any public or private agency for the planning, financing or development of a farmers' market, which market may include facilities for first-instance processing, shipping, storage, and direct sales of farm and food products on a retail or wholesale basis;

3. provide grants, from amounts appropriated, for state assistance to farmers' markets, as provided under section two hundred sixty-two of this article;

4. collect, compile and publish economic information on farmers' markets in the state;

5. establish working relationships with interested individuals and organizations and cooperative extensions for the purposes of this article; and

6. compile listings of available funding resources for the development and/or improvement of farmers' markets within the state. The department shall periodically advise municipal corporations, regional market authorities, public benefit corporations, not-for-profit corporations

and agricultural cooperatives organized pursuant to the cooperative corporations law as to the availability of such information and shall provide such listings upon request.

§ 262. State aid for farmers' markets. 1. There is hereby created within the department a program of grants for the purpose of providing state assistance for farmer's markets. In administering such program, the commissioner, to the extent feasible, shall ensure an equitable distribution of awards to rural areas and other areas of the state. State assistance provided pursuant to this section may be awarded for:

(a) the construction, reconstruction, improvement, expansion or rehabilitation of farmers' markets. Grants provided pursuant to this paragraph shall not exceed the lesser of fifty percent of project cost or fifty thousand dollars per project in any fiscal year.

(b) the purpose of providing promotional support for farmer's markets. Grants provided pursuant to this paragraph shall not exceed the lesser of fifty percent of project cost or seven thousand five hundred dollars per applicant in any fiscal year.

(c) equipment costs associated with improving farmers' market functions, including but not limited to expanding access to electronic benefit transfer technology for farmers' markets and other non-traditional food access points in food deserts in the state.

2. Any municipal corporation, regional market authority, public benefit corporation, not-for-profit corporation or agricultural cooperative organized pursuant to the cooperative corporations law, may submit an application for state assistance for the construction, reconstruction, improvement, expansion or rehabilitation of a farmers' market under their control including assistance for engineering or architectural designs for new or reconstructed facilities, and for providing promotional support for farmers' markets.

3. The commissioner may approve or disapprove any application made pursuant to this section, and shall consider the following in his decision:

a. the relative impact of the proposed farmers' market project on the economy of the area to be served;

b. the anticipated level of municipal and local participation in the project;

c. the extent to which New York farmers would benefit, through the direct sale of farm and food products;

d. the geographic distribution of monies appropriated for state assistance for farmers' markets; and

e. the anticipated quantity of non-farm jobs which would be created and retained due to the proposed project.

4. In administering the provisions of this section, the commissioner:

a. may in the name of the state, contract to make, within the limitations of appropriations available therefor, state grants representing the state share of the costs of projects approved and to be undertaken pursuant to this section;

b. shall examine vouchers for the payment of assistance pursuant to an approved contract and shall forward approved vouchers to the state comptroller. All such payments shall be paid on the audit and warrant of the state comptroller; and

c. may perform such other and further acts and promulgate such rules and regulations as may be necessary, proper or desirable to carry out the provisions of this section.

§ 263. Quinquennial report. 1. The commissioner shall quinquennially report to the governor and the legislature on or before January first, two thousand seven and on or before January first of each fifth year thereafter on the status of the state farmers' markets program, as provided under this article. Such report shall include:

(a) the number and nature of proposals made to the department for state assistance;

(b) the number, nature and geographic location of approved farmers' markets development or improvement projects, and the amounts of each award made thereto;

(c) an assessment of the effectiveness of existing farmers' markets to facilitate New York producers to direct market their farm and food products to retail and wholesale consumers; and

(d) any recommendations for program improvement.

2. Between report due dates, the commissioner shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the governor and the legislature between such report due dates.

ARTICLE 23

DIRECT MARKETING

Section 281. Declaration of legislative findings and intent.
282. Definitions.
283. Powers and duties of the commissioner.
284. Establishment of statewide direct marketing activities.
284-a. Establishment of farm trails, apple trails and cuisine trails.

§ 281. Declaration of legislative findings and intent. The legislature hereby finds that inflation has caused higher prices in all phases of farm and food production and farm and food products distribution; and that the demand, by consumers within the state, for increasing supplies of wholesome, fresh and nutritious farm and food products provides a significant opportunity for the development of alternative marketing structures for food grown within the state by which such products may be supplied directly to the consuming public. In addition, increasing the supply of wholesome, fresh, locally produced fruits and vegetables can help to encourage the consumption of such produce in a manner that helps to combat the increasing incidence of adult and childhood obesity.

Reducing the incidence of obesity can help to improve the overall health of the general public, help to reduce the cost of providing health care and reduce the state's costs of providing such care.

The legislature finds also that encouraging direct sales from farms and other agricultural producers to consumers and other buyers can provide producers with a substantially increased income over that which is currently obtainable through the conventional wholesale marketing system.

It is therefore the intent of the legislature and the purpose of this article to encourage expanded production of farm and food products through providing increased opportunities for farm and food product producers within the state to wholesale and retail their products directly to consumers on a state, regional and local basis; to encourage purchasing opportunities which will lower food costs to consumers; to increase the share of the consumer's food dollar retained by the producers of farm and food products; to make farm and food products more readily available to residents of the state; and to encourage and facilitate the purchase and use of farm and food products produced within the state by public and private institutions and agencies.

§ 282. Definitions. As used in this article:

1. "Direct marketing" means the sale of farm and food products directly from producers to consumers and food buyers.

2. "Farm and food product" means any agricultural, horticultural, forest, or other product of the soil or water that has been grown, harvested, or produced wholly within the state of New York. Such products shall include but not be limited to: fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, fruit juice, ornamental or vegetable plants, nursery products, flowers, firewood, fermented agricultural products, and Christmas trees.

3. "Producer" means any person who grows, produces, or causes to be grown or produced any farm and food products in New York state. This term shall also include members of the producer's family and the producer's employees.

4. "Farmers' market" means any building, structure or place, the property of a municipal corporation or under lease to or in possession of a public or private agency, used or intended to be used by two or more producers for the direct sale of farm and food products from producers to consumers and food buyers. Such market may also include facilities for the packing, shipping, first-instance processing or storage of farm and food products, and shall include all equipment used or intended to be used in connection with such facilities. Such market may also include other businesses which reasonably serve the public or make the market more convenient, efficient, profitable or successful, including, but not limited to, food service, baking, and non-food retailing.

5. "Public or private agencies" means any department, division, bureau, or program of the federal or state government, or local governments, public benefit corporations, private non-profit organizations, or educational institutions.

§ 283. Powers and duties of the commissioner. The commissioner shall have the powers and duties to:

1. Develop and implement programs designed to facilitate direct marketing.

2. Encourage direct marketing through the cooperative selling and buying of farm products or production supplies.

3. Provide technical or educational assistance to producers of farm products seeking new or improved methods of direct marketing of such products.

4. Provide assistance to wholesale buyers and retail stores seeking to purchase farm and food products directly from producers.

5. Provide assistance to consumer or non-profit organizations, public or private agencies, hospitals and other health care facilities seeking to purchase or facilitate the purchase of farm products directly from producers.

6. Publicize and encourage participation by producers and consumers in direct marketing programs.

7. Encourage the direct marketing of food and farm products to public and private agencies within the state.

8. Encourage the development of direct marketing programs within areas of the state which are identified as having poor consumer access to reasonably priced and high quality farm products.

8-a. Encourage the development of direct marketing programs, within areas of the state designated by the department of health as having a high incidence of childhood obesity and to increase the consumption of fresh fruits and vegetables to help curb the incidence of childhood obesity.

9. Conduct conferences, seminars or workshops designed to promote the direct marketing of farm products within the state.

10. Contract, where necessary, and cooperate with other federal, state and local governmental, private non-profit agencies, and other private business organizations for the development, design and implementation of any activities authorized hereunder.

11. Establish a statewide advisory council which shall provide information to and advise the commissioner, as prescribed by him, on policy, planning and programs.

12. Undertake any other activities which he deems necessary to accomplish the purposes of this article.

13. Promulgate rules and regulations necessary to supplement and give full force and effect to the provisions of this article.

§ 284. Establishment of statewide direct marketing activities. The department shall conduct statewide direct marketing activities which shall include, but not be limited to, the following:

1. Communications and promotion of direct marketing activities, to include, where appropriate, cooperation with the cooperative extension service in the area of education.

2. Development of institutional direct marketing programs to increase the purchase of New York state farm and food products in coordination with the office of general services and the department of education.

3. Development of a technical assistance program for initiating, improving, and expanding direct marketing activities and developing new forms of direct marketing.

4. Development of guidelines for direct marketing operations that will assist individual producers in reducing costs and improve their financial returns and help assure consumers of high quality food.

5. Assistance to retail food stores in purchasing directly from New York state food producers.

6. Assistance to direct marketing organizations in areas identified as having poor consumer access to high quality and reasonably priced food and farm products.

7. Assistance to producers or consumers to initiate or improve retail and wholesale farmers' markets.

8. (a) Submission of a quinquennial report to the legislature, the first of which shall be submitted in the year two thousand six, which shall include an evaluation of the regional and institutional effect of direct marketing activities during the previous five years.

(b) Between report due dates, the department shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the legislature between such report due dates.

9. Establish the Hudson valley agricultural center to serve as a marketing, promotional, informational and cultural center for the Hudson river valley agricultural region and greenway and to promote the production of fruits (including juices, jellies, and preserves made therefrom), wine, cider, vegetables, and other agricultural products.

§ 284-a. Establishment of farm trails, apple trails and cuisine trails. 1. Marketing activities and designation of trails. The department shall conduct statewide and regional marketing activities which shall include, but not be limited to, the designation of farm trails, apple trails, and cuisine trails.

2. Definitions. For the purposes of this section:

(a) "farm trail" shall mean an association of producers that are in close proximity to each other, that sell in a cooperative manner a complementary variety of farm and food products, and that utilize a map, other directional devices, or highway signs to market products and direct patrons to their respective farms.

(b) "apple trail" shall mean an association of producers that are in close proximity to each other, that sell in a cooperative manner a wide variety of fresh apples or other fresh fruits or processed apple or other fruit products, and that utilize a map, other directional devices, or highway signs to market their products and direct patrons to their respective farms.

(c) "cuisine trail" shall mean an association of producers, that may include a combination of producers, food or agricultural product processors and retailers including, but not limited to, restaurants,

that are in close proximity to each other, and that sell in a cooperative manner a complementary variety of unusual, unique, gourmet or hard to find fresh farm and food products and foods prepared primarily with such products for on or off premises consumption, including but not limited to, herbs, meats, vegetables, salad materials, wines or other alcoholic beverages and/or non-alcoholic beverages, cut flowers, mushrooms, or fruits. Such trails may utilize a map, other directional devices, or highway signs to market their products and direct patrons to their places of business.

3. Designation of trails. (a) The department shall designate farm, apple, and cuisine trails to promote greater agricultural marketing and promotional opportunities for agricultural producers located in the areas of such trails.

(b) Designations shall take into consideration geographic proximity and alignment, thematic consistency, geographic or historical consistency, density, economic feasibility, and the cooperation of agricultural producers on the trails to be designated. The department shall designate no more than fifteen farm trails, fifteen apple trails, and twenty-five cuisine trails. Criteria for developing and approving such trails shall include:

(i) that the length of such trail, excluding laterals, is no longer than seventy-five miles,

(ii) containing a sufficient number of producers to cost-effectively attract patrons to such trail association's participating members,

(iii) incorporating considerations that maximize patronage of such trail,

(iv) ensuring that proposed trail routes do not conflict with existing scenic byways designated pursuant to section three hundred forty-nine-dd of the highway law or wine trails designated pursuant to section three hundred forty-three-k of the highway law,

(v) ensuring that trail designations are neither redundant nor cover themes or subjects or have names that have already been used by trails designated by the New York state scenic byways program or designated as a wine trail pursuant to section three hundred forty-three-k of the highway law,

(vi) ensuring that the trail route is designed and laid out so that it

is relatively simple and easy to follow for patrons and contains few branches or laterals that dead end at one association member's business, and

(vii) upon consulting with the commissioner of transportation, trail designations that may support, augment, or reinforce the themes or subjects already covered by the existing scenic byways system or wine trails designated pursuant to the highway law.

(c) In making designations, the department shall consult with:

(i) the New York State Farmers Direct Marketing Association, the advisory council on agriculture, and the New York State scenic byways advisory board; and

(ii) the commissioner of transportation. The commissioner of transportation shall cooperate with the department in carrying out the provisions of this section. The commissioner of transportation, upon receipt of a one time five hundred dollar application fee, is authorized to permit the installation and maintenance of signs on the state highway system for trails designated pursuant to this section. Such funds received by the commissioner of transportation pursuant to this subdivision shall be deposited pursuant to section eighty-nine-b of the state finance law. However, to avoid confusion and to limit any possible disruption of commerce, the trail designations called for pursuant to this section shall be of a ceremonial nature and the official names of such highway shall not be changed as a result of such designations. Signage for trails designated pursuant to this section may include "farm trail", "apple trail", "cuisine trail" or any other descriptive language, approved by the department, in consultation with the department of transportation, used to promote the marketing of such trail products.

(d) Once approved, trail route designations may not be altered for a minimum period of time of eighteen months; provided, however, that additional participating members may be incorporated into already existing designated trail routes. The department may review the designation of any trail established pursuant to this section and review such trail's effectiveness in attracting patrons or tourists, increasing patronage of association member businesses, and expanding the marketing capabilities of all trail members. The department, upon periodically reviewing designated trails, may make suggestions to alter the route,

adopt revisions to the business management practices of such trail association, or remove the designation of any such trail authorized by this section.

4. Application for designation. (a) Any association of producers as described in this section, upon payment of an application fee of two hundred fifty dollars and completion of an application form, may obtain from the department designation as a farm, apple, or cuisine trail, or any other descriptive language approved by the department, in consultation with the department of transportation, used to promote the marketing of such trail products. Such funds received by the department pursuant to this subdivision shall be deposited in the general fund. All applicants must satisfy the designation criteria stated in subdivision three of this section.

(b) The department, in approving any trail application and installation of highway signage, if such signage is requested by the applicant, shall consult with and satisfy all reasonable motor vehicle safety concerns specified by the commissioner of transportation to ensure that the trail designation, its route, or proposed signage does not impede vehicular traffic or diminish motorists' safety on the state highway system. The design of all highway signs must conform with all uniform traffic control device regulations and must be approved by the commissioner of transportation.

5. Application for federal monies. The department may apply for and accept federal monies that may be available to support such a program or funds from any other source to support this program. Upon approval of the commissioner of transportation, trails designated pursuant to this section may be eligible for and accept any federal highway aid or funds that may be available to support such program.

ARTICLE 24
Promotion of Agriculture and Domestic Arts; Agricultural Societies

Section 286. Appropriation and apportionment of moneys for the promotion of agriculture and domestic arts.

286-a. Construction of certain terms of lease of lands used for fair purposes.
287. Supervision of agricultural fairs and expositions.
288. Gambling; obscene shows; state police enforcement.
290. Association of farmers; powers of.

§ 286. Appropriation and apportionment of moneys for the promotion of agriculture and domestic arts. 1. There shall be appropriated annually for the department of agriculture and markets an amount of money sufficient to pay and satisfy the reimbursement moneys herein specified and which money shall be disbursed by the commissioner on behalf of the state for the promotion of agriculture and domestic arts, to duly incorporated agricultural or horticultural corporations as defined in section fourteen hundred nine of the not-for-profit corporation law, the county extension service association in the county of Orange, the American institute in the city of New York, the Goshen Historic Track, Inc., the Genesee Valley Breeders' Association, Inc. and county extension service associations in proportion to the actual premiums paid during the previous year including premiums paid for trials or tests of speed and endurance of harness horses.

2. Eligibility. (a) To qualify for premium reimbursement under this section, agricultural and horticultural corporations, the county extension service association in the county of Orange, the American institute in the city of New York, the Goshen Historic Track, Inc. and the Genesee Valley Breeders' Association, Inc. must have held, with the approval of the commissioner, an annual fair or exposition for the promotion of agriculture and domestic arts during the previous calendar year, paid at least two thousand five hundred dollars in actual premiums and filed an annual report as required in paragraph (c) of this subdivision.

(b) To qualify for premium reimbursement under this section a county extension service association must have held, with the approval of the commissioner, a fair or exposition for the promotion of agriculture and domestic arts during the previous calendar year open to all youths in that county up to age twenty-one. Except for the county extension

service association in the county of Orange, a county extension service association may not receive reimbursement for a fair or exposition in a county where an agricultural or horticultural corporation or the American institute in the city of New York has held such a fair or exposition during the past two years. A county extension service association must have paid at least five hundred dollars in actual premiums and filed an annual report as required in paragraph (c) of this subdivision.

(c) All organizations eligible to receive moneys appropriated by the state pursuant to this section shall file with the Department an annual report on or before the fifteenth day of December. The report shall list all premiums awarded during the calendar year and the exhibits for which the premiums were awarded.

3. Reimbursement amounts. (a) Each organization eligible for premium reimbursement pursuant to paragraph (a) of subdivision two of this section shall receive seven thousand two hundred dollars or the amount actually paid out in premiums, whichever is less. Each organization that has paid out more than seven thousand two hundred dollars shall also be eligible to receive an additional reimbursement equal to the premiums paid in its youth department, not to exceed one thousand five hundred dollars.

(b) Each eligible cooperative extension association shall receive five thousand dollars or the amount actually paid out in premiums, whichever is less.

(c) After reimbursements have been allocated pursuant to paragraphs (a) and (b) of this subdivision, the remaining appropriation, if any, shall be distributed in equal shares to the agricultural or horticultural corporations, the county extension service association in the county of Orange, the American institute in the city of New York, the Goshen Historic Track, Inc. and the Genesee Valley Breeders' Association, Inc. if they have not been fully reimbursed as a result of the allocations set forth above. The American institute in the city of New York, if eligible, shall receive two shares of the pro-rated amount.

(d) In no event shall any agricultural or horticultural corporation, the county extension service association in the county of Orange, the American institute in the city of New York, the Goshen Historic Track,

Inc. or the Genesee Valley Breeders' Association, Inc. receive more than the amount actually paid out in premiums or twelve thousand dollars, whichever is less.

4. Any organization that shall fail or neglect to hold an annual fair or exposition and file its annual report for two consecutive years, shall forfeit any privileges or money to which it may otherwise be entitled pursuant to the provisions of this article. In computing such period of two consecutive years, no year shall be counted in which such failure was deemed by the commissioner to be attributable to a cause or condition with respect to which the organization or its directors or officers had no control, or for any other reason which the commissioner deems justified.

5. For the purposes of this article, Rockland County Future, Inc. shall be eligible for premium reimbursement, as provided in paragraph (a) of subdivision three of this section so long as such organization has held, with the approval of the commissioner, an annual fair or exposition for the promotion of agriculture and domestic arts in conjunction with a county extension service association during the previous calendar year; paid at least five thousand dollars in actual premiums; and filed an annual report as required in paragraph (c) of subdivision two of this section.

§ 286-a. Construction of certain terms of lease of lands used for fair purposes. The inability of any agricultural society entitled to receive moneys from the state under section two hundred eighty-six of this chapter, to hold its annual fair or exposition on lands leased to it for that purpose which is occasioned by the use of such lands, for military or war purposes, during either of the years nineteen hundred forty-two, nineteen hundred forty-three and nineteen hundred forty-four, shall not be deemed to be a failure to hold such fair or exposition contemplated by the parties to, or within the meaning of the terms of any contract, agreement or lease therefor, executed prior thereto, which provides for the termination of such contract, agreement or lease upon the failure of such agricultural society to hold its annual fair or exposition and no

action or proceeding for the termination of such a contract, agreement or lease shall be maintained for failure of such agricultural society or institute to hold its annual fair or exposition, where such failure is occasioned by the use of such lands, building or property for military or war purposes.

§ 287. Supervision of agricultural fairs and expositions. The commissioner, after consultation with the dean of the State College of Agriculture at Cornell University, shall have power to establish and promulgate from time to time standards for the conduct of such fairs and expositions in respect to premium lists, exhibits, judging and other educational and agricultural activities. No disbursement shall be made to any agricultural society or to said institute if the last preceding fair or exposition of such society or said institute shall not have been of a standard worthy, in the opinion of the commissioner, of state aid, based upon its contribution to the promotion of agriculture and domestic arts.

§ 288. Gambling; obscene shows; state police enforcement. No immoral, lewd, obscene or indecent show or exhibition, and no gambling device or devices, instrument or contrivance in the operation of which bets are laid or wagers made, wheel of fortune, or game of chance, shall be permitted upon the grounds during the annual meeting, fair or exposition of any county agricultural society or town or other agricultural society, and it shall be the duty of the state police to enforce this prohibition. This prohibition shall not be construed to prohibit horse racing, tests or trials of skill, or raffles as defined in article nine-A of the general municipal law.

§ 290. Association of farmers; powers of. Any association of farmers, residing in any neighborhood, town or county in this state, now, or hereafter to be organized, and acting under a constitution and by-laws adopted by themselves for their guidance, which shall be filed in the clerk's office of such town or county and which are not inconsistent

with the laws of this state, is hereby authorized to lease and maintain grounds and structures for the exhibition and sale of the products of their farms or their skill, and for the instruction and recreation of its members and visitors. Any such association shall have authority to let, for rent, locations on their leased grounds to exhibitions, entertainments, shopmen and persons wishing to furnish suitable refreshments for victualing members and visitors or for storage of personal property when property is available for such activity; to license peddlers to sell on their grounds articles of merchandise, not forbidden to be sold by any law of this state without license from the state; and in the name of such association and upon the action and direction of its officers, to sue for and collect the stipulated sums of such rentals and licenses, and to enforce the observance of its rules and regulations by the several members of its association. And such association is hereby empowered to issue certificates of indebtedness in amounts of five dollars each, providing that the whole amount shall not exceed the sum of one thousand dollars, which they may sell at a price not below the par value thereof, for the purpose of raising money for the erection of buildings, or for such other improvements as may be deemed necessary by a majority of the members of such association.

ARTICLE 25
MARKETING OF AGRICULTURAL PRODUCTS

Section 291. Legislative declaration.
292. Definitions.
293. Powers and duties of the commissioner.
294. Rules and regulations; enforcement.

§ 291. Legislative declaration. It is hereby declared that the marketing of agricultural commodities and aquatic products in this state, in excess of reasonable and normal market demands therefor; disorderly marketing of such commodities; improper preparation for market and lack of uniform grading and classification of agricultural commodities and aquatic products; unfair methods of competition in the marketing of such commodities and the inability of individual producers

to develop new and larger markets for agricultural commodities and aquatic products, result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate food supplies for the people of this and other states. These conditions vitally concern the health, safety, and general welfare of the people of this state. It is therefore declared the legislative purpose and the policy of this state:

1. To enable agricultural producers and aquatic producers of this state, with the aid of the state, more effectively to correlate the marketing of their agricultural commodities and aquatic products with market demands therefor.

2. To establish orderly, efficient, and equitable marketing of agricultural commodities and aquatic products.

3. To provide for uniform grading and proper preparation of agricultural commodities and aquatic products for market.

4. To provide methods and means for the development of new and larger markets for agricultural commodities and aquatic products produced in New York.

5. To eliminate or reduce the economic waste in the marketing of agricultural commodities and aquatic products.

6. To eliminate unjust impairment of the purchasing power of aquatic producers and the agricultural producers of this state.

7. To aid agricultural and aquatic producers in maintaining an income at an adequate and equitable level.

§ 292. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Agricultural commodity" means any and all agricultural, horticultural, vineyard products, corn for grain, oats, soybeans, barley, wheat, poultry or poultry products, bees, maple sap and pure maple products produced therefrom, Christmas trees, livestock, including swine, and honey, sold in the state either in their natural state or as processed by the producer thereof but does not include milk, timber or timber products, other than Christmas trees, all hay, rye and legumes except for soybeans.

2. "Aquaculture" means the culture, cultivation and harvest of aquatic plants and animals.

3. "Aquatic products" means any food or fiber products obtained through the practice of aquaculture, including mariculture; or by harvest from the sea when such products are cultured or landed in New York state. Such products include but are not limited to fish, shellfish, seaweed, or other water-based plant life.

4. "Producer" means any person engaged within this state in the business of producing, or causing to be produced for any market, any agricultural commodity or aquatic product.

5. "Handler" means any person engaged in the operation of packing, grading, selling, offering for sale, or marketing any marketable agricultural commodities or aquatic products, who as owner, agent or otherwise ships or causes an agricultural commodity to be shipped.

6. "Processor" means any person engaged within this state in processing, or in the operation of receiving, grading, packing, canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or in any other way preserving or changing the form of an agricultural product or aquatic product for the purpose of marketing such commodity but shall not include a person engaged in manufacturing from an agricultural commodity or aquatic product another and different product.

7. "Distributor" means any person engaged within this state, in

selling, offering for sale, marketing or distributing an agricultural commodity or aquatic product which they have purchased or acquired from a producer or other person or which they are marketing on behalf of a producer or other person, whether as owner, agent, employee, broker or otherwise, but shall not include a retailer, except such retailer who purchases or acquires from, or handles on behalf of any producer or other person, an agricultural commodity or aquatic product subject to regulation by the marketing agreement or order covering such commodity.

8. "Marketing agreement" means an agreement entered into, with the approval of the commissioner, by producers with distributors, processors and handlers regulating the preparation, sale and handling of agricultural commodities or aquatic products.

9. "Marketing order" means an order issued by the commissioner pursuant to this article, prescribing rules and regulations governing the marketing for processing, the distributing, the sale of, or the handling in any manner of any agricultural commodity or aquatic product sold in this state during any specified period or periods.

§ 293. Powers and duties of the commissioner. 1. In order to effectuate the declared policy of this article, the commissioner may, after due notice and opportunity for hearing, approve marketing agreements, which marketing agreements shall thereupon be binding upon the signatories thereto exclusively.

2. The commissioner may make and issue marketing orders, after due notice and opportunity for hearing, subject to:

(a) Approval of not less than sixty-six and two-thirds per centum of the producers participating in a referendum in the area affected, or

(b) Approval of not less than sixty-five per centum of the producers participating in a referendum vote, in the area affected, and having marketed not less than fifty-one per centum of the total quantity of the commodity which was marketed in the next preceding marketing season by all producers that voted in the referendum, or

(c) Approval of not less than fifty-one per centum of the producers

participating in a referendum vote, in the area affected, and having marketed not less than sixty-five per centum of the total quantity of the commodity which was marketed in the next preceding marketing season by all producers that voted in the referendum.

3. The commissioner may and upon written petition duly signed by twenty-five per centum of the producers in the area shall, amend or terminate such order after due notice and opportunity for hearing, but subject to the approval of not less than fifty per centum of such producers participating in a referendum vote.

4. The commissioner shall administer and enforce any marketing order, while it is in effect, to:

(a) Encourage and maintain stable prices received by producers for such agricultural commodity and aquatic product at a level which is consistent with the provisions and aims of this article.

(b) Prevent the unreasonable or unnecessary waste of land or water-based wealth.

(c) Protect the interests of consumers of such commodity, by exercising the powers of this article to such extent as is necessary to effectuate the purposes of this article.

(d) Prepare a budget for the administration and operating costs and expenses including advertising and sales promotion when required in any marketing agreement or order executed hereunder and to provide for the collection of such necessary fees to defray such costs and expenses, in no case to exceed five percent of the gross dollar volume of sales or dollar volume of purchases or amounts handled, to be collected from each person engaged in the production, processing, distributing or the handling of any marketable agricultural commodity and aquatic product produced or landed in this state and directly affected by any marketing order issued pursuant to this article for such commodity.

(e) Confer and cooperate with the legally constituted authorities of other states and the United States.

5. Any marketing agreement or order issued by the commissioner pursuant to this article may contain any or all of the following:

(a) Provisions for determining the existence and extent of the surplus

of any agricultural commodity, or of any grade, size, or quality thereof, and providing for the regulation and disposition of such surplus.

(b) Provisions for limiting the total quantity of any agricultural product, or of any grade or grades, size or sizes, or quality or portions or combinations thereof, which may be marketed during any specified period or periods. Such total quantity of any such commodity so regulated shall not be less than the quantity which the commissioner shall find is reasonably necessary to supply the market demand of consumers for such commodity.

(c) Provisions regulating the period, or periods, during which any agricultural commodity, or any grade or grades, size or sizes or quality or portions or combinations of such commodity, may be marketed.

(d) Provisions for the establishment of uniform grading, standards, and inspection of any agricultural commodity delivered by producers or other persons to handlers, processors, distributors or others engaging in the handling thereof, and for the establishment of grading or standards of quality, condition, size, maturity or pack for any agricultural commodity, and the inspection and grading of such commodity in accordance with such grading or standards so established; and for provisions that no producer, handler, processor or distributor of any agricultural commodity for which grading or standards are so established may, except as otherwise provided in such marketing agreement or order, sell, offer for sale, process, distribute or otherwise handle any such commodity whether produced within or without this state, not meeting and complying with such established grading or standards. For the purposes of this article, the federal-state inspection service shall perform all inspections made necessary by such provisions.

(e) Provisions for the establishment of research programs designed to benefit a specified commodity or New York agriculture in general.

(f) Such other provisions as may be necessary to effectuate the declared policies of this article.

(g) Provisions to establish marketing promotion and research programs for aquatic products which may include paragraphs (a) through (f) of this subdivision.

6. The commissioner may temporarily suspend the operation of an

effective marketing order for a continuing period of no longer than one growing and marketing season, if the purposes of this article are deemed unnecessary during such season.

7. In carrying out the purposes of this article, the commissioner shall take into consideration any and all facts available to them with respect to the following economic factors:

(a) The quantity of such agricultural commodity available for distribution.

(b) The quantity of such agricultural commodity normally required by consumers.

(c) The cost of producing such agricultural commodity.

(d) The purchasing power of consumers.

(e) The level of prices of commodities, services, and articles which the farmers commonly buy.

(f) The level of prices of other commodities which compete with or are utilized as substitutes for such agricultural commodity.

8. The execution of such marketing agreements shall in no manner affect the issuance, administration or enforcement of any marketing order provided for in this article. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The commissioner, in their discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in this article.

9. Prior to the issuance, amendment or termination of any marketing order, the commissioner may require the applicants for such issuance, amendment, or termination to deposit with them such amount as they may deem necessary to defray the expenses of preparing and making effective amending or terminating a marketing order. Such funds shall be received, deposited, and disbursed by the commissioner in the same manner as other fees received by the commissioner under this article and, in the event the application for adoption, amendment or termination of a marketing order is approved in a referendum, the commissioner shall reimburse any

such applicant in the amount of any such deposit from any unexpended monies collected under the marketing order affected by such referendum.

10. Any moneys collected by the commissioner pursuant to this article shall not be deemed state funds and shall be deposited in a bank or other depository in this state, approved by the commissioner, allocated to each marketing order under which they are collected, and shall be disbursed by the commissioner only for the necessary expenses incurred by the commissioner with respect to each such separate marketing order, all in accordance with the rules and regulations of the commissioner. All such expenditures shall be audited by the state comptroller at least annually and within thirty days after the completion thereof the state comptroller shall give a copy thereof to the commissioner. Any moneys remaining in such fund allocable to any particular commodity affected by a marketing order may, in the discretion of the commissioner, be refunded at the close of any marketing season upon a pro-rata basis to all persons from whom assessments therefor were collected or, whenever the commissioner finds that such moneys may be necessary to defray the cost of operating such marketing order in a succeeding marketing season, they may carry over all or any portion of such moneys into the next such succeeding season. Upon the termination by the commissioner of any marketing order, all moneys remaining and not required by the commissioner to defray the expenses of operating such marketing order, shall be refunded by the commissioner upon a pro-rata basis to all persons from whom assessments therefor were collected; provided, however, that if the commissioner finds that the amounts so refundable are so small as to make impracticable the computation and refunding of such refunds, the commissioner may use such moneys to defray the expenses incurred by the commissioner in the formulation, issuance, administration or enforcement of any subsequent marketing order for such commodity.

11. Advisory board. (a) Any marketing order issued pursuant to this article shall provide for the establishment of an advisory board, to consist of not less than five members nor more than nine members, to advise the commissioner in the administration of such marketing order in accordance with its terms and provisions. The members of such board

shall be appointed by the commissioner from nominations received from the commodity group for which the marketing order is established. Nominating procedure, qualification, representation, and size of the advisory board shall be prescribed in each marketing order for which such board is appointed. Each advisory board shall be composed of such producers and handlers or processors as are directly affected by the marketing order in such proportion of representation as the order shall prescribe. The commissioner may appoint one person who is neither a producer nor processor nor other handler to represent the department of agriculture and markets or the public generally.

(b) No member of an advisory board shall receive a salary, but each shall be entitled to reimbursement for the member's actual expenses incurred while engaged in performing the member's duties herein authorized.

(c) The duties and responsibilities of each advisory board shall be prescribed by the commissioner, and they may specifically delegate to the advisory board, by inclusion in the marketing order, all or any of the following duties and responsibilities:

(i) The recommendation to the commissioner of administrative rules and regulations relating to the marketing order.

(ii) Recommending to the commissioner such amendments to the marketing order as seem advisable.

(iii) The preparation and submission to the commissioner of the estimated budget required or the proper operation of the marketing order.

(iv) Recommending to the commissioner methods for assessing members of the industry and methods for collecting the necessary funds.

(v) Assisting the commissioner in the collection and assembling of information and data necessary to the proper administration of the order.

(vi) The performance of such other duties in connection with the marketing order as the commissioner shall designate.

§ 294. Rules and regulations; enforcement. 1. The commissioner may make and promulgate such rules and regulations as may be necessary to effectuate the provisions and intent of this article and to enforce the

provision of any marketing agreement or order, all of which shall have the force and effect of law.

2. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this article, or any rule or regulation, marketing agreement or order, committed to the commissioner's administration, and in addition to any other remedy under article three of this chapter or otherwise may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove 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 in the civil practice law and rules, or to the supreme court in the third judicial district.

ARTICLE 25-A
FOOD AND AGRICULTURE INDUSTRY DEVELOPMENT

Section 296. Legislative findings and intent.
297. Food and agriculture industry development; program created.

§ 296. Legislative findings and intent. Agriculture, a leading industry in the state, is the foundation upon which hundreds of thousands of jobs are based. Agriculture related employment is found not only in the production of crops and other basic foods, but also in the processing, distribution and sale thereof. Rapid changes taking place in the food and agriculture industry require new approaches in the research, development, production, processing and distribution of agricultural products which capitalize on the state's unique resources and strategic location near significant markets. Failure to keep pace with such changes would be detrimental to this major state industry and to the supply of quality food for the public. It is essential that those engaged in agriculture and related businesses be offered encouragement and incentives to keep pace with the rapid changes. It is the intent of the legislature to provide matching grants for projects that will promote such strategic business undertakings as are necessary to assure

the continued prominence of agriculture as a leading industry in the state and of the state as a supplier of quality foods.

§ 297. Food and agriculture industry development; program created. 1. Creation. There is hereby created within the department a food and agriculture industry development program.

2. Purpose. The purpose of the food and agriculture industry development program shall be to share the cost of implementing innovative and low risk approaches to the research, development, production, processing and distribution of agricultural products and quality foods that capitalize on the state's unique resources and strategic location near significant markets. With an emphasis on programmatic results, such program shall be designed to favor projects which will have an economic benefit to the state's economy and food supply in the near term, and which will have a lasting effect and long-term economic value to business development and job creation.

3. Powers of the commissioner. The commissioner is hereby authorized to issue requests for proposals to implement the food and agriculture industry development program; to award project grants within the limits of any appropriations therefor, provided that grant recipients match awards with at least equal amounts of funds in the form of cash, in-kind services or other resources; and to contract for services with eligible applicants to carry out such program.

4. Eligible projects. Projects involving new product development; alternative production, processing, distribution and marketing technologies; introduction of high technologies; or organizational methods that further development of the food and agriculture industry in the state shall be eligible for grant awards pursuant to the food and agriculture industry development program. Also eligible shall be projects involving farm woodland or fresh water aquatic products produced in either natural or man-made water bodies or in natural or man-made controlled structures. Projects that include public-private partnership investments, and with a strong potential for near-term

commercial application and long-term economic value to the state and localities, shall be given priority.

5. Targeted projects. The commissioner may set-aside up to twenty-five percent of any moneys appropriated for the purposes of the food and agriculture industry development program for projects that exhibit special regional or state-wide significance for food and agriculture industry development and that meet the project eligibility requirements established pursuant to this article.

6. Eligible applicants. Public and private agencies and organizations, business and industry, educational institutions, local governments and individuals shall be eligible to submit proposals for funding pursuant to this article.

7. Grant awards. Project grants for contractual services that further development of the state's food and agriculture industry as described in this article shall be awarded on a competitive basis through a request for proposal process. Such grants shall be awarded for worthwhile projects throughout the state, to the extent practicable, so that broad geographic representation is achieved. At least one solicitation for project proposals shall be held within each fiscal year in which appropriations are made for the food and agriculture industry development program. Grant awards for an individual project shall not exceed sixty thousand dollars within a single state fiscal year.

8. Request for proposal guidelines. The commissioner shall, in consultation with the advisory council on agriculture, develop rules and regulations for proposal submission pursuant to this article, including but not limited to: project eligibility and selection process; project proposal format; eligible costs; project implementation; and reporting.

9. Advice of advisory council on agriculture. The commissioner shall seek the recommendations and advice of the advisory council on agriculture regarding the development and promulgation of the request for proposal rules and regulations and the submission of biennial reports for the food and agriculture industry development program.

10. Technology transfer. The commissioner, in consultation with the empire state development corporation, the Cornell cooperative extension service and food and agriculture industry representatives, shall share technological innovations developed as a result of the food and agriculture industry development program with the food and agriculture industry.

11. Preparation and distribution of reports. The commissioner shall submit a biennial report to the governor and legislature describing the progress of the food and agriculture industry development program. The first report shall be submitted on or before September first, two thousand one.

ARTICLE 25-AA

AGRICULTURAL DISTRICTS

Section 300. Declaration of legislative findings and intent.
301. Definitions.
302. County agricultural and farmland protection board.
303. Agricultural districts; creation.
303-a. Agricultural districts; review.
303-b. Agricultural districts; inclusion of viable agricultural land.
303-c. Consolidation of agricultural districts.
304-a. Agricultural assessment values.
304-b. Agricultural district data reporting.
305. Agricultural districts; effects.
305-a. Coordination of local planning and land use decision-making with the agricultural districts program.
305-b. Agricultural data statement.
305-c. Review of proposed rules and regulations of state agencies affecting the agricultural industry.
306. Agricultural lands outside of districts; agricultural assessments.
307. Promulgation of rules and regulations.

308. Right to farm.
308-a. Fees and expenses in certain private nuisance actions.
309. Advisory council on agriculture.
309-a. Young farmer advisory board on agriculture.
310. Disclosure.

§ 300. Declaration of legislative findings and intent. It is hereby found and declared that many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

§ 301. Definitions. When used in this article:

1. "Agricultural assessment value" means the value per acre assigned

to land for assessment purposes determined pursuant to the capitalized value of production procedure prescribed by section three hundred four-a of this article.

2. "Crops, livestock and livestock products" shall include but not be limited to the following:

a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

b. Fruits, including apples, peaches, grapes, cherries, berries, and tree nuts.

c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.

d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.

f. Maple sap.

g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

h. Aquaculture products, including fish, fish products, water plants and shellfish.

i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this

paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

k. Actively managed log-grown woodland mushrooms.

l. Industrial hemp as defined in section five hundred five of this chapter.

m. Cannabis when cultivated in accordance with the cannabis law.

3. "Farm woodland" means land used for the production of woodland products intended for sale, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.

4. "Land used in agricultural production" means not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation or a commercial equine operation with annual gross receipts of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:

a. Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.

a-1. Land used by a not-for-profit institution for the purposes of agricultural research that is intended to improve the quality or quantity of crops, livestock or livestock products. Such land shall qualify for an agricultural assessment upon application made pursuant to paragraph (a) of subdivision one of section three hundred five of this

article, except that no minimum gross sales value shall be required.

b. Land of not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment.

c. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment. Such land shall include land used for agricultural amusements which are produced from crops grown or produced on the farm, provided that such crops are harvested and marketed in the same manner as other crops produced on such farm. Such agricultural amusements shall include, but not be limited to, so-called "corn mazes" or "hay bale mazes".

d. Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.

e. Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities and such land shall qualify for agricultural assessment upon application made pursuant to paragraph a of subdivision one of section three hundred five of this article, except that no minimum gross sales value shall be required.

f. Land of not less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or

livestock products of an average gross sales value of ten thousand dollars or more, or land of less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more.

g. Land under a structure within which crops, livestock or livestock products are produced, provided that the sales of such crops, livestock or livestock products meet the gross sales requirements of paragraph f of this subdivision.

h. Land that is owned or rented by a farm operation in its first or second year of agricultural production, or, in the case of a commercial horse boarding operation in its first or second year of operation, that consists of (1) not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more; or (2) less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of fifty thousand dollars or more; or (3) land situated under a structure within which crops, livestock or livestock products are produced, provided that such crops, livestock or livestock products have an annual gross sales value of (i) ten thousand dollars or more, if the farm operation uses seven or more acres in agricultural production, or (ii) fifty thousand dollars or more, if the farm operation uses less than seven acres in agricultural production; or (4) not less than seven acres used as a single operation to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.

i. Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

j. Land of not less than seven acres used as a single operation for

the production and sale of Christmas trees when such land is used solely for the purpose of planting Christmas trees that will be made available for sale, whether dug for transplanting or cut from the stump and when such land is owned or rented by a newly established farm operation in its first, second, third, fourth or fifth year of agricultural production.

k. Land used to support an apiary products operation which is owned by the operation and consists of (i) not less than seven acres nor more than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more or (ii) less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more. The land used to support an apiary products operation shall include, but not be limited to, the land under a structure within which apiary products are produced, harvested and stored for sale; and a buffer area maintained by the operation between the operation and adjacent landowners. Notwithstanding any other provision of this subdivision, rented land associated with an apiary products operation is not eligible for an agricultural assessment based on this paragraph.

l. Land that is owned or rented by a farm operation in its first or second year of agricultural production or in the case of a commercial equine operation, in its first or second year of operation, that consists of not less than seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing.

m. Land used in silvopasturing shall be limited to up to ten fenced

acres per large livestock, including cattle, horses and camelids, and up to five fenced acres per small livestock, such as sheep, hogs, goats and poultry. For the purposes of this subdivision, "silvopasturing" shall mean the intentional combination of trees, forages and livestock managed as a single integrated practice for the collective benefit of each, including the planting of appropriate grasses and legume forages among trees for sound grazing and livestock husbandry.

n. Land of not less than seven acres used as a single operation for the production for sale of hops when such land is used solely for the purpose of planting a new hopyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

o. Land of not less than seven acres used as a single operation for the production for sale of tree nuts when such land is used solely for the purpose of planting a new tree nut orchard and when such land is also owned or rented by a newly established farm operation in its first, second, third, fourth, fifth or sixth year of agricultural production.

5. "Oil, gas or wind exploration, development or extraction activities" means the installation and use of fixtures and equipment which are necessary for the exploration, development or extraction of oil, natural gas or wind energy, including access roads, drilling apparatus, pumping facilities, pipelines, and wind turbines.

6. "Unique and irreplaceable agricultural land" means land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties.

7. "Viable agricultural land" means land highly suitable for a farm operation as defined in this section.

8. "Conversion" means an outward or affirmative act changing the use of agricultural land and shall not mean the nonuse or idling of such land.

9. "Gross sales" means the proceeds from the sale of:

a. Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;

b. Woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;

c. Honey, royal jelly, bee pollen, propolis and beeswax produced by bees in hives located on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation;

d. Maple syrup processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation;

e. Or payments received by reason of land set aside pursuant to paragraph e of subdivision four of this section;

f. Or payments received by thoroughbred breeders pursuant to section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law; and

g. Compost, mulch or other organic biomass crops as defined in subdivision sixteen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually.

11. "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section, "compost, mulch or other biomass crops" as defined in subdivision seventeen of this section and "commercial equine operation"

as defined in subdivision eighteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

12. "Agricultural data statement" means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law is proposed, as provided in section three hundred five-b of this article.

13. "Commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.

14. "Timber operation" means the on-farm production, management, harvesting, processing and marketing of timber grown on the farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

15. "Agricultural tourism" means activities, including the production of maple sap and pure maple products made therefrom, conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.

16. "Apiary products operation" means an agricultural enterprise, consisting of land owned by the operation, upon which bee hives are located and maintained for the purpose of producing, harvesting and storing apiary products for sale.

17. "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

18. "Commercial equine operation" means an agricultural enterprise, consisting of at least seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the

production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, an agricultural enterprise that is proposed or in its first or second year of operation may qualify as a commercial equine operation if it consists of at least seven acres and stables at least ten horses, regardless of ownership, by the end of the first year of operation.

§ 302. County agricultural and farmland protection board. 1. (a) A county legislative body may establish a county agricultural and farmland protection board which shall consist of eleven members, at least four of whom shall be active farmers. At least one member of such board shall represent agribusiness and one member may represent an organization dedicated to agricultural land preservation. These six members of the board shall reside within the county which the respective board serves. The members of the board shall also include the chairperson of the county soil and water conservation district's board of directors or an employee of the county soil and water conservation district designated by the chairperson, a member of the county legislative body, a county cooperative extension agent, the county planning director and the county director of real property tax services. The chairperson shall be chosen by majority vote. Such board shall be established in the event no such board exists at the time of receipt by the county legislative body of a petition for the creation or review of an agricultural district pursuant to section three hundred three of this article, or at the time of receipt by the county of a notice of intent filing pursuant to subdivision four of section three hundred five of this article. The members of such board shall be appointed by the chairperson of the county legislative body, who shall solicit nominations from farm membership organizations except for the chairperson of the county soil and water conservation district's board of directors or his or her designee, the county planning director and director of real property tax services, who shall serve ex officio. The members shall serve without salary, but the county legislative body may entitle each such member to

reimbursement for actual and necessary expenses incurred in the performance of official duties.

(b) After the board has been established, the chairperson of the county legislative body shall appoint to it two qualified persons for terms of two years each, two qualified persons for terms of three years each and two qualified persons for a term of four years. Thereafter, the appointment of each member shall be for a term of four years. Appointment of a member of the county legislative body shall be for a term coterminous with the member's term of office. Appointment of the county planning director and county director of real property tax services shall be coterminous with their tenure in such office. The appointment of the chairperson of the county soil and water conservation district's board of directors shall be for a term coterminous with his or her designation as chairperson of the county soil and water conservation district's board of directors. Any member of the board may be reappointed for a succeeding term on such board without limitations as to the number of terms the member may serve.

(c) The county agricultural and farmland protection board shall advise the county legislative body and work with the county planning board in relation to the proposed establishment, modification, continuation or termination of any agricultural district. The board shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area and the relation of farming in such area to the county as a whole. The board may review notice of intent filings pursuant to subdivision four of section three hundred five of this article and make findings and recommendations pursuant to that section as to the effect and reasonableness of proposed actions involving the advance of public funds or acquisitions of farmland in agricultural districts by governmental entities. The board shall also assess and approve county agricultural and farmland protection plans.

(d) A county agricultural and farmland protection board may request the commissioner of agriculture and markets to review any state agency rules and regulations which the board identifies as affecting the agricultural activities within an existing or proposed agricultural district. Upon receipt of any such request, the commissioner of agriculture and markets shall, if the necessary funds are available,

submit in writing to the board (i) notice of changes in such rules and regulations which he or she deems necessary, (ii) a copy of correspondence with another agency if such rules and regulations are outside his or her jurisdiction, including such rules and regulations being reviewed, and his or her recommendations for modification, or (iii) his or her reasons for determining that existing rules and regulations be continued without modification.

(e) The county agricultural and farmland protection board shall notify the commissioner and the commissioner of the department of environmental conservation of any attempts to propose the siting of solid waste management facilities upon farmland within an agricultural district.

2. Upon the request of one or more owners of land used in agricultural production the board may review the land classification for such land established by the department of agriculture and markets, consulting with the district soil and water conservation office, and the county cooperative extension service office. After such review, the board may recommend revisions to the classification of specific land areas based on local soil, land and climatic conditions to the department of agriculture and markets.

§ 303. Agricultural districts; creation. 1. Any owner or owners of land may submit a proposal to the county legislative body for the creation of an agricultural district within such county, provided that such owner or owners own at least two hundred fifty acres of the land proposed to be included in the district. Such proposal shall be submitted in such manner and form as may be prescribed by the commissioner, shall include a description of the proposed district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries, and the tax map identification numbers for every parcel in the proposed district. The proposal shall include a review period of eight years.

2. Upon the receipt of such a proposal, the county legislative body:

a. shall thereupon provide notice of such proposal by publishing a

notice in a newspaper having general circulation within the proposed district and by posting a notice on the home page of the county's website; posting such notice in five conspicuous places within the proposed district; and providing such notice in writing by first class mail to those municipalities whose territory encompasses the proposed district. The notice shall contain the following information:

(1) a statement that a proposal for an agricultural district has been filed with the county legislative body pursuant to this article;

(2) a statement that the proposal will be on file open to public inspection in the county clerk's office;

(3) a statement that any county landowner or municipality whose territory encompasses the proposed district may propose a modification of the proposed district in such form and manner as may be prescribed by the commissioner;

(4) a statement that the proposed modification must be filed with the county clerk and the clerk of the county legislature within thirty days of the publication and posting and mailing of such notice; and

(5) a statement that at the termination of the thirty day period, the proposal and proposed modifications will be submitted to the county agricultural and farmland protection board and that thereafter a public hearing will be held on the proposal, proposed modifications, and recommendations of the county agricultural and farmland protection board;

b. shall receive any proposals for modifications of such proposal which may be submitted by proponents of the district, any county landowners or municipalities within thirty days of the publication and posting and mailing of such notice;

c. shall, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county agricultural and farmland protection board, which shall, after consultation with the county planning board, within forty-five days report to the county legislative body its recommendations concerning the proposal and proposed modifications; and

d. shall hold a public hearing in the following manner:

(1) The hearing shall be held at a place within the proposed district or otherwise readily accessible to the proposed district;

(2) The notice shall contain the following information:

(a) a statement of the time, date and place of the public hearing;

(b) a description of the proposed district, any proposed additions and any recommendations of the county agricultural and farmland protection board; and

(c) a statement that the public hearing will be held concerning:

(i) the original proposal;

(ii) any written amendments proposed during the thirty day review period; and

(iii) any recommendations proposed by the county agricultural and farmland protection board;

(3) The notice shall be published in a newspaper having a general circulation within the proposed district and posted on the home page of the county's website and shall be given in writing by first class mail to those municipalities whose territory encompasses the proposed district and any proposed modifications, owners of real property within such a proposed district or any proposed modifications who are listed on the most recent assessment roll, the commissioner and the advisory council on agriculture.

3. The following factors shall be considered by the county agricultural and farmland protection board and identified as issues for comment at the public hearing:

a. the viability of active farming within the proposed district and in areas adjacent thereto;

b. the presence of any viable farm lands within the proposed district and adjacent thereto that are not now in active farming;

c. the nature and extent of land uses other than active farming within the proposed district and adjacent thereto;

d. county developmental patterns and needs; and

e. any other matters which the county legislative body deems to be relevant.

In judging viability, any relevant agricultural viability maps prepared by the commissioner shall be considered, as well as soil, climate, topography, other natural factors, markets for farm products, the extent and nature of farm improvements, the present status of farming, anticipated trends in agricultural economic conditions and technology, and such other factors as may be relevant.

4. The county legislative body, after receiving the report and recommendations, including any recommendations of the county planning board, of the county agricultural and farmland protection board and after such public hearing, may adopt as a plan the proposal or any modification of the proposal it deems appropriate or may act to reject the proposal.

5. All plans that are adopted shall include: (a) a review period of eight years; (b) only whole tax parcels in the proposed district; and (c) to the extent feasible, include adjacent viable farm lands, and exclude, to the extent feasible, nonviable farm land and non-farm land.

6. Upon the adoption of a plan, the county legislative body shall submit it to the commissioner. Adopted plans shall be submitted within one year after receipt of a complete proposal as described in subdivision one of this section. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for submission once for up to six additional months.

7. The commissioner shall have sixty days after receipt of the plan within which to certify to the county legislative body whether the plan is eligible for districting, whether the area to be districted consists predominantly of viable agricultural land, and whether the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state. The commissioner shall submit a copy of such plan to the advisory council on agriculture.

8. If the commissioner certifies the plan of the proposed district pursuant to subdivision seven of this section, the district shall be created immediately upon certification.

9. Upon the creation of an agricultural district, the description thereof, which shall include tax map identification numbers for all parcels within the district, plus a map delineating the exterior boundaries of the district in relation to tax parcel boundaries, shall be filed by the county legislative body with the county clerk, the county director of real property tax services, and the commissioner. The commissioner, on petition of the county legislative body, may, for good cause shown, approve the correction of any errors in materials filed pursuant to a district creation at any time subsequent to the creation of any agricultural district.

§ 303-a. Agricultural districts; review. 1. The county legislative body shall review any district created under section three hundred three of this article eight years after the date of its creation and at the end of every eight year period thereafter.

2. In conducting a district review the county legislative body shall:

a. provide notice of such district review by publishing a notice in a newspaper having general circulation within the district and by posting a notice on the home page of the county's website; posting such notice in at least five conspicuous places within the district; and providing such notice in writing by first class mail to those municipalities whose territory encompasses the district. The notice shall identify the municipalities in which the district is found and the district's total area; indicate that a map of the district will be on file and open to public inspection in the office of the county clerk and such other places as the legislative body deems appropriate; and notify municipalities and land owners within the district that they may propose a modification of the district by filing such proposal with the clerk of the county legislature within thirty days of the publication and posting

and mailing of such notice;

b. direct the county agricultural and farmland protection board to prepare a report within forty-five days concerning the following:

(1) the nature and status of farming and farm resources within such district, including the total number of acres of land and the total number of acres of land in farm operations in the district;

(2) the extent to which the district has achieved its original objectives;

(3) the extent to which county and local comprehensive plans, policies and objectives are consistent with and support the district;

(4) the degree of coordination between local laws, ordinances, rules and regulations that apply to farm operations in such district and their influence on farming; and

(5) recommendations to continue, terminate or modify such district.

c. hold a public hearing in the following manner:

(1) the hearing shall be held at a place within the district or otherwise readily accessible to the proposed district;

(2) a notice of public hearing shall be published in a newspaper having a general circulation within the district and posted on the home page of the county's website and shall be given in writing by first class mail to those municipalities whose territories encompass the district and any proposed modifications to the district; to persons, as listed on the most recent assessment roll, whose land is the subject of a proposed modification; and to the commissioner;

(3) the notice of hearing shall contain the following information:

(a) a statement of the time, date and place of the public hearing; and

(b) a description of the district, any proposed modifications and any recommendations of the county agricultural and farmland protection board.

3. a. The county legislative body, after receiving the report and recommendation of the county agricultural and farmland protection board, and after public hearing, shall make a finding whether the district should be continued, terminated or modified. If the county legislative body finds that the district should be terminated, it may do so at the

end of such eight year period by filing a notice of termination with the county clerk and the commissioner.

b. The county legislative body may adopt any modification of the district review plan it deems appropriate.

c. If the county legislative body finds that the district should be continued or modified, it shall submit the district review plan to the commissioner. The district review plan shall include a description of the district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries; the tax map identification numbers for every parcel in the district; a copy of the report of the county agricultural and farmland protection board required by paragraph b of subdivision two of this section; and a copy of the testimony given at the public hearing required by paragraph c of subdivision two of this section or a copy of the minutes of such hearing.

4. The county legislative body shall complete the review process described in this section by either terminating, continuing, or modifying the district on or before the district's anniversary date. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for a district review once for up to six additional months. If the county legislative body does not act, or if a modification of a district is rejected by the county legislative body, the district shall continue as originally constituted, unless the commissioner, after consultation with the advisory council on agriculture, terminates such district, by filing a notice thereof with the county clerk, because the area in the district is no longer predominantly viable agricultural land.

5. Plan review, certification, correction of any errors and filing shall be conducted in the same manner prescribed for district creation in section three hundred three of this article.

§ 303-b. Agricultural districts; inclusion of viable agricultural

land. 1. The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period. Such request shall identify the agricultural district into which the land is proposed to be included, describe such land, and include the tax map identification number and relevant portion of the tax map for each parcel of land to be included.

2. Upon the termination of such thirty-day period, if any requests are submitted, the county legislative body shall:

a. refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land" as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district; and

b. publish a notice of public hearing in accordance with subdivision three of this section.

3. The county legislative body shall hold a public hearing upon giving notice in the following manner:

a. The notice of public hearing shall contain a statement that one or more requests for inclusion of predominantly viable agricultural land within a certified agricultural district have been filed with the county legislative body pursuant to this section; identify the land, generally, proposed to be included; indicate the time, date and place of the public hearing, which shall occur after receipt of the report of the county agricultural and farmland protection board; and include a statement that the hearing shall be held to consider the request or requests and recommendations of the county agricultural and farmland protection

board.

b. The notice shall be published in a newspaper having a general circulation within the county and shall be given in writing directly to those municipalities whose territory encompasses the lands which are proposed to be included in an agricultural district and to the commissioner.

4. After the public hearing, the county legislative body shall adopt or reject the inclusion of the land requested to be included within an existing certified agricultural district. Such action shall be taken no later than one hundred twenty days from the termination of the thirty day period described in subdivision one of this section. Any land to be added shall consist of whole tax parcels only. Upon the adoption of a resolution to include predominantly viable agricultural land, in whole or in part, within an existing certified agricultural district, the county legislative body shall submit the resolution, together with the report of the county agricultural and farmland protection board and the tax map identification numbers and tax maps for each parcel of land to be included in an agricultural district to the commissioner.

5. Within thirty days after receipt of a resolution to include land within a district, the commissioner shall certify to the county legislative body whether the inclusion of predominantly viable agricultural land as proposed is feasible and shall serve the public interest by assisting in maintaining a viable agricultural industry within the district or districts.

6. If the commissioner certifies that the proposed inclusion of predominantly viable agricultural land within a district is feasible and in the public interest, the land shall become part of the district immediately upon such certification.

§ 303-c. Consolidation of agricultural districts. Existing agricultural districts may be consolidated with an existing district undergoing review pursuant to and in the same manner prescribed for

district review in section three hundred three-a of this article. The notice of public hearing required by subdivision two of section three hundred three-a of this article shall be given in writing by first class mail to those municipalities whose territories encompass the districts proposed to be consolidated; and to all persons, as listed on the most recent assessment roll, whose land is the subject of a proposed consolidation. In addition to the information required by subdivision two of section three hundred three-a of this article, the notice of hearing shall identify the district into which the existing district or districts will be consolidated and the new anniversary date for the consolidated district.

§ 304-a. Agricultural assessment values. 1. Agricultural assessment values shall be calculated and certified annually in accordance with the provisions of this section.

2. a. The commissioner of agriculture and markets shall establish and maintain an agricultural land classification system based upon soil productivity and capability. The agricultural land classification system shall distinguish between mineral and organic soils. There shall be ten primary groups of mineral soils and such other subgroups as the commissioner determines necessary to represent high-lime and low-lime content. There shall be four groups of organic soils.

b. The land classification system shall be promulgated by rule by the commissioner following a review of comments and recommendations of the advisory council on agriculture and after a public hearing. In making any revisions to the land classification system the commissioner may, in his or her discretion, conduct a public hearing. The commissioner shall foster participation by county agricultural and farmland protection boards, district soil and water conservation committees, and the cooperative extension service and consult with other state agencies, appropriate federal agencies, municipalities, the New York state college of agriculture and life sciences at Cornell university and farm organizations.

c. The commissioner shall certify to the commissioner of taxation and finance the soil list developed in accordance with the land classification system and any revisions thereto.

d. The commissioner shall prepare such materials as may be needed for the utilization of the land classification system and provide assistance to landowners and local officials in its use.

3. a. The commissioner of taxation and finance shall annually calculate a single agricultural assessment value for each of the mineral and organic soil groups which shall be applied uniformly throughout the state. A base agricultural assessment value shall be separately calculated for mineral and organic soil groups in accordance with the procedure set forth in subdivision four of this section and shall be assigned as the agricultural assessment value of the highest grade mineral and organic soil group.

b. The agricultural assessment values for the remaining mineral soil groups shall be the product of the base agricultural assessment value and a percentage, derived from the productivity measurements determined for each soil and related soil group in conjunction with the land classification system, as follows:

Mineral Soil Group	Percentage of Base Agricultural Assessment Value
1A	100
1B	89
2A	89
2B	79
3A	79
3B	68
4A	68
4B	58
5A	58
5B	47
6A	47
6B	37

7	37
8	26
9	16
10	5

c. The agricultural assessment values for the remaining organic soil groups shall be the product of the base agricultural assessment value and a percentage, as follows:

Organic Soil Group	Percentage of Base Agricultural Assessment Value
A	100
B	65
C	55
D	35

d. The agricultural assessment value for organic soil group A shall be two times the base agricultural assessment value calculated for mineral soil group 1A.

e. The agricultural assessment value for farm woodland shall be the same as that calculated for mineral soil group seven.

f. Where trees or vines used for the production of fruit are located on land used in agricultural production, the value of such trees and vines, and the value of all posts, wires and trellises used for the production of fruit, shall be considered to be part of the agricultural assessment value of such land.

g. The agricultural assessment value for land and waters used in aquacultural enterprises shall be the same as that calculated for mineral soil group 1A.

4. a. The base agricultural assessment value shall be the average capitalized value of production per acre for the eight year period ending in the second year preceding the year for which the agricultural assessment values are certified. The capitalized value of production per

acre shall be calculated by dividing the product of the value of production per acre and the percentage of net profit by a capitalization rate of ten percent, representing an assumed investment return rate of eight percent and an assumed real property tax rate of two percent.

b. The value of production per acre shall be the value of production divided by the number of acres harvested in New York state.

c. The percentage of net profit shall be adjusted net farm income divided by realized gross farm income.

(i) Adjusted net farm income shall be the sum of net farm income, taxes on farm real estate and the amount of mortgage interest debt attributable to farmland, less a management charge of one percent of realized gross farm income plus seven percent of adjusted production expenses.

(ii) The amount of mortgage interest debt attributable to farmland shall be the product of the interest on mortgage debt and the percentage of farm real estate value attributable to land.

(iii) The percentage of farm real estate value attributable to land shall be the difference between farm real estate value and farm structure value divided by farm real estate value.

(iv) Adjusted production expenses shall be production expenses, less the sum of the taxes on farm real estate and the interest on mortgage debt.

d. The following data, required for calculations pursuant to this subdivision, shall be as published by the United States department of agriculture for all farming in New York state:

(i) Farm real estate value shall be the total value of farmland and buildings, including improvements.

(ii) Farm structure value shall be the total value of farm buildings, including improvements.

(iii) Interest on mortgage debt shall be the total interest paid on farm real estate debt.

(iv) Net farm income shall be realized gross income less production expenses, as adjusted for change in inventory.

(v) Production expenses shall be the total cost of production.

(vi) Realized gross income shall be the total of cash receipts from farm marketings, government payments, nonmoney income and other farm income.

(vii) Taxes on farm real estate shall be the total real property taxes on farmland and buildings, including improvements.

(viii) Number of acres harvested including all reported crops.

(ix) Value of production shall be the total estimated value of all reported crops.

e. In the event that the data required for calculation pursuant to this subdivision is not published by the United States department of agriculture or is incomplete, such required data shall be obtained from the New York state department of agriculture and markets.

f. Upon completion of each annual calculation of agricultural assessment values, the commissioner of taxation and finance shall publish an annual report, which shall include a schedule of values, citations to data sources and presentation of all calculations.

The commissioner of taxation and finance shall thereupon certify the schedule of agricultural assessment values and shall transmit a schedule of such certified values to each assessor. Beginning in the year two thousand six and every five years thereafter, the commissioner of taxation and finance shall transmit copies of such annual reports for the five years previous to such transmittal, to the governor and legislature, the advisory council on agriculture, and other appropriate state agencies and interested parties.

g. Notwithstanding any other provision of this section to the contrary, in no event shall the change in the base agricultural assessment value for any given year exceed two percent of the base agricultural assessment value of the preceding year.

5. a. In carrying out their responsibilities under this section, the commissioner of taxation and finance and the commissioner shall keep the advisory council on agriculture fully apprised on matters relating to its duties and responsibilities.

b. In doing so, the commissioner of taxation and finance and the commissioner shall provide, in a timely manner, any materials needed by the advisory council on agriculture to carry out its responsibilities under this section.

§ 304-b. Agricultural district data reporting. 1. The commissioner shall file a written report with the governor and the legislature on January first, two thousand eight and biennially thereafter, covering each prior period of two years, concerning the status of the agricultural districts program. Such report shall include, but not be limited to, the total number of agricultural districts, the total number of acres in agricultural districts, a list of the counties that have established county agricultural and farmland protection plans, and a summary of the agricultural protection grants program.

2. Between report due dates, the commissioner shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the governor and the legislature between such report due dates.

§ 305. Agricultural districts; effects. 1. Agricultural assessments. a. Any owner of land used in agricultural production within an agricultural district shall be eligible for an agricultural assessment pursuant to this section. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products produced on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant. Such assessment shall be granted only upon an annual application by the owner of such land on a form prescribed by the commissioner of taxation and finance; provided, however, that after the initial grant of agricultural assessment the annual application shall be on a form prescribed by the commissioner of taxation and finance and

shall consist of only a certification by the landowner that the landowner continues to meet the eligibility requirements for receiving an agricultural assessment and seeks an agricultural assessment for the same acreage that initially received an agricultural assessment. The landowner shall maintain records documenting such eligibility which shall be provided to the assessor upon request. The landowner must apply for agricultural assessment for any change in acreage, whether land is added or removed, after the initial grant of agricultural assessment. Any new owner of the land who wishes to receive an agricultural assessment shall make an initial application for such assessment. Such applications shall be on a form prescribed by the commissioner of taxation and finance. The applicant shall furnish to the assessor such information as the commissioner of taxation and finance shall require, including classification information prepared for the applicant's land or water bodies used in agricultural production by the soil and water conservation district office within the county, and information demonstrating the eligibility for agricultural assessment of any land used in conjunction with rented land as specified in paragraph b of subdivision four of section three hundred one of this article. Such application shall be filed with the assessor of the assessing unit on or before the appropriate taxable status date; provided, however, that (i) in the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law; or (ii) an application for such an assessment may be filed with the assessor of the assessing unit after the appropriate taxable status date but not later than the last date on which a petition with respect to complaints of assessment may be filed, where failure to file a timely application resulted from: (a) a death of the applicant's spouse, child, parent, brother or sister, (b) an illness of the applicant or of the applicant's spouse, child, parent, brother or sister, which actually prevents the applicant from filing on a timely basis, as certified by a licensed physician, or (c) the occurrence of a natural disaster, including, but not limited to, a flood, or the destruction of such applicant's residence, barn or other farm building by wind, fire or flood. If the assessor is satisfied that the applicant

is entitled to an agricultural assessment, the assessor shall approve the application and the land shall be assessed pursuant to this section. Not less than ten days prior to the date for hearing complaints in relation to assessments, the assessor shall mail to each applicant, who has included with the application at least one self-addressed, pre-paid envelope, a notice of the approval or denial of the application. Such notice shall be on a form prescribed by the commissioner of taxation and finance which shall indicate the manner in which the total assessed value is apportioned among the various portions of the property subject to agricultural assessment and those other portions of the property not eligible for agricultural assessment as determined for the tentative assessment roll and the latest final assessment roll. Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.

b. That portion of the value of land utilized for agricultural production within an agricultural district which represents an excess above the agricultural assessment as determined in accordance with this subdivision shall not be subject to real property taxation. Such excess amount if any shall be entered on the assessment roll in the manner prescribed by the commissioner of taxation and finance.

c. (i) The assessor shall utilize the agricultural assessment values per acre certified pursuant to section three hundred four-a of this article in determining the amount of the assessment of lands eligible for agricultural assessments by multiplying those values by the number of acres of land utilized for agricultural production and adjusting such result by application of the latest state equalization rate or a special equalization rate as may be established and certified by the commissioner of taxation and finance for the purpose of computing the agricultural assessment pursuant to this paragraph. This resulting amount shall be the agricultural assessment for such lands.

(ii) Where the latest state equalization rate exceeds one hundred, or where a special equalization rate which would otherwise be established for the purposes of this section would exceed one hundred, a special equalization rate of one hundred shall be established and certified by

the commissioner for the purpose of this section.

(iii) Where a special equalization rate has been established and certified by the commissioner for the purposes of this paragraph, the assessor is directed and authorized to recompute the agricultural assessment on the assessment roll by applying such special equalization rate instead of the latest state equalization rate, and to make the appropriate corrections on the assessment roll, subject to the provisions of title two of article twelve of the real property tax law.

d. (i) If land within an agricultural district which received an agricultural assessment is converted parcels, as described on the assessment roll which include land so converted shall be subject to payments equalling five times the taxes saved in the last year in which the land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years. The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the excess amount of assessed valuation of such land over its agricultural assessment as set forth on the last assessment roll which indicates such an excess. If only a portion of a parcel as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll for which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than five years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.

(ii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the

landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of one thousand dollars in addition to any payments owed.

(iii) (a) An assessor who determines that there is liability for payments and any penalties assessed pursuant to subparagraph (ii) of this paragraph shall notify the landowner by mail of such liability at least ten days prior to the date for hearing complaints in relation to assessments. Such notice shall indicate the property to which payments apply and describe how the payments shall be determined. Failure to provide such notice shall not affect the levy, collection or enforcement or payment of payments.

(b) Liability for payments shall be subject to administrative and judicial review as provided by law for review of assessments.

(iv) If such land or any portion thereof is converted to a use other than for agricultural production by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If the land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land within an agricultural district and eligible for an agricultural assessment shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

(v) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the commissioner of taxation and finance on a form prescribed by the commissioner.

(vi) The assessing unit, by majority vote of the governing body, may impose a minimum payment amount, not to exceed five hundred dollars.

(vii) The purchase of land in fee by the city of New York for

watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment shall be due under this section.

e. Notwithstanding any inconsistent general, special or local law to the contrary, if a natural disaster, act of God, or continued adverse weather conditions shall destroy the agricultural production and such fact is certified by the cooperative extension service and, as a result, such production does not produce an average gross sales value of ten thousand dollars or more, the owner may nevertheless qualify for an agricultural assessment provided the owner shall substantiate in such manner as prescribed by the commissioner of taxation and finance that the agricultural production initiated on such land would have produced an average gross sales value of ten thousand dollars or more but for the natural disaster, act of God or continued adverse weather conditions.

3. Policy of state agencies. It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

4. Limitation on the exercise of eminent domain and other public acquisitions, and on the advance of public funds. a. Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of one acre or that the total acquisition within the district would be in excess of ten acres, or which intends to construct, or advance a grant, loan, interest subsidy or other funds within a district to construct, dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures, shall use all

practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district. The adverse agricultural impacts to be minimized or avoided shall include impacts revealed in the notice of intent process described in this subdivision.

b. The agency, corporation or government proposing the action shall also, at least sixty-five days prior to such acquisition, construction or advance of public funds, file a notice of intent with the commissioner and the county agricultural and farmland protection board. Such notice shall include a detailed agricultural impact statement setting forth the following:

(i) a detailed description of the proposed action and its agricultural setting;

(ii) the agricultural impact of the proposed action including short-term and long-term effects;

(iii) any adverse agricultural effects which cannot be avoided should the proposed action be implemented;

(iv) alternatives to the proposed action;

(v) any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed action should it be implemented;

(vi) mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district;

(vii) any aspects of the proposed action which would encourage non-farm development, where applicable and appropriate; and

(viii) such other information as the commissioner may require.

The commissioner shall promptly determine whether the notice is complete or incomplete. If the commissioner does not issue such determination within thirty days, the notice shall be deemed complete. If the notice is determined to be incomplete, the commissioner shall notify the party proposing the action in writing of the reasons for that

determination. Any new submission shall commence a new period for department review for purposes of determining completeness.

c. The provisions of paragraph b of this subdivision shall not apply and shall be deemed waived by the owner of the land to be acquired where such owner signs a document to such effect and provides a copy to the commissioner.

d. Upon notice from the commissioner that he or she has accepted a notice as complete, the county agricultural and farmland protection board may, within thirty days, review the proposed action and its effects on farm operations and agricultural resources within the district, and report its findings and recommendations to the commissioner and to the party proposing the action in the case of actions proposed by a state agency or public benefit corporation, and additionally to the county legislature in the case of actions proposed by local government agencies.

e. Upon receipt and acceptance of a notice, the commissioner shall thereupon forward a copy of such notice to the commissioner of environmental conservation and the advisory council on agriculture. The commissioner, in consultation with the commissioner of environmental conservation and the advisory council on agriculture, within forty-five days of the acceptance of a notice, shall review the proposed action and make an initial determination whether such action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within the district, or state environmental plans, policies and objectives.

If the commissioner so determines, he or she may (i) issue an order within the forty-five day period directing the state agency, public benefit corporation or local government not to take such action for an additional period of sixty days immediately following such forty-five day period; and (ii) review the proposed action to determine whether any reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact on agriculture in order to sustain a viable farm enterprise or enterprises within the district.

The commissioner may hold a public hearing concerning such proposed action at a place within the district or otherwise easily accessible to the district upon notice in a newspaper having a general circulation within the district and posted on the home page of the department's website, and individual notice, in writing by first class mail, to the municipalities whose territories encompass the district, the commissioner of environmental conservation, the advisory council on agriculture and the state agency, public benefit corporation or local government proposing to take such action. On or before the conclusion of such additional sixty day period, the commissioner shall report his or her findings to the agency, corporation or government proposing to take such action, to any public agency having the power of review of or approval of such action, and, in a manner conducive to the wide dissemination of such findings, to the public. If the commissioner concludes that a reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact of the proposed action, he or she shall propose that such alternative or alternatives be accepted. If the agency, corporation or government proposing the action accepts the commissioner's proposal, then the requirements of the notice of intent filing shall be deemed fulfilled. If the agency, corporation or government rejects the commissioner's proposal, then it shall provide the commissioner with reasons for rejecting such proposal and a detailed comparison between its proposed action and the commissioner's alternative or alternatives.

f. At least ten days before commencing an action which has been the subject of a notice of intent filing, the agency, corporation or government shall certify to the commissioner that it has made an explicit finding that the requirements of this subdivision have been met, and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the notice of intent process will be minimized or avoided. Such certification shall set forth the reasons in support of the finding.

g. The commissioner may request the attorney general to bring an

action to enjoin any such agency, corporation or government from violating any of the provisions of this subdivision.

h. Notwithstanding any other provision of law to the contrary, no solid waste management facility shall be sited on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of this article. Nothing contained herein, however, shall be deemed to prohibit siting when:

(i) The owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or

(ii) The applicant for a permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased for the project; or

(iii) The commissioner in concurrence with the commissioner of environmental conservation has determined that any such agricultural land to be taken, constitutes less than five percent of the project site.

For purposes of this paragraph, "solid waste management facility" shall have the same meaning as provided in title seven of article twenty-seven of the environmental conservation law, but shall not include solid waste transfer stations or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date an initial determination is made, pursuant to article eight of the environmental conservation law, as to whether an environmental impact statement needs to be prepared for the proposed project.

i. This subdivision shall not apply to any emergency project which is immediately necessary for the protection of life or property or to any project or proceeding to which the department is or has been a statutory party.

j. The commissioner may bring an action to enforce any mitigation measures proposed by a public benefit corporation or a local government, and accepted by the commissioner, pursuant to a notice of intent filing, to minimize or avoid adverse agricultural impacts from the proposed action.

5. Limitation on power to impose benefit assessments, special ad valorem levies or other rates or fees in certain improvement districts or benefit areas. Within improvement districts or areas deemed benefited by municipal improvements including, but not limited to, improvements for sewer, water, lighting, non-farm drainage, solid waste disposal, including those solid waste management facilities established pursuant to section two hundred twenty-six-b of the county law, or other landfill operations, no benefit assessments, special ad valorem levies or other rates or fees charged for such improvements may be imposed on land used primarily for agricultural production within an agricultural district on any basis, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land, nor on any farm structure located in an agricultural district unless such structure benefits directly from the service of such improvement district or benefited area; provided, however, that if such benefit assessments, ad valorem levies or other rates or fees were imposed prior to the formation of the agricultural district, then such benefit assessments, ad valorem levies or other rates or fees shall continue to be imposed on such land or farm structure.

6. Use of assessment for certain purposes. The governing body of a fire, fire protection, or ambulance district for which a benefit assessment or a special ad valorem levy is made, may adopt a resolution to provide that the assessment determined pursuant to subdivision one of this section for such property shall be used for the benefit assessment or special ad valorem levy of such fire, fire protection, or ambulance district.

7. Notwithstanding any provision of law to the contrary, that portion of the value of land which is used solely for the purpose of replanting

or crop expansion as part of an orchard, vineyard, or hopyard shall be exempt from real property taxation for a period of six successive years following the date of such replanting or crop expansion beginning on the first eligible taxable status date following such replanting or expansion provided the following conditions are met:

a. the land used for crop expansion or replanting must be a part of an existing orchard, vineyard, or hopyard which is located on land used in agricultural production within an agricultural district or such land must be part of an existing orchard, vineyard, or hopyard which is eligible for an agricultural assessment pursuant to this section or section three hundred six of this article where the owner of such land has filed an annual application for an agricultural assessment;

b. the land eligible for such real property tax exemption shall not in any one year exceed twenty percent of the total acreage of such orchard, vineyard, or hopyard which is located on land used in agricultural production within an agricultural district or twenty percent of the total acreage of such orchard, vineyard, or hopyard eligible for an agricultural assessment pursuant to this section and section three hundred six of this article where the owner of such land has filed an annual application for an agricultural assessment;

c. the land eligible for such real property tax exemption must be maintained as land used in agricultural production as part of such orchard, vineyard, or hopyard for each year such exemption is granted; and

d. when the land used for the purpose of replanting or crop expansion as part of an orchard, vineyard, or hopyard is located within an area which has been declared by the governor to be a disaster emergency in a year in which such tax exemption is sought and in a year in which such land meets all other eligibility requirements for such tax exemption set forth in this subdivision, the maximum twenty percent total acreage restriction set forth in paragraph b of this subdivision may be exceeded for such year and for any remaining successive years, provided, however, that the land eligible for such real property tax exemption shall not

exceed the total acreage damaged or destroyed by such disaster in such year or the total acreage which remains damaged or destroyed in any remaining successive year. The total acreage for which such exemption is sought pursuant to this paragraph shall be subject to verification by the commissioner or his designee.

In administering this subdivision, the portion of the value of land eligible for such real property tax exemption shall be determined based on the average per acre assessment of all agricultural land of the specific tax parcel as reported in a form approved by the commissioner of taxation and finance.

§ 305-a. Coordination of local planning and land use decision-making with the agricultural districts program. 1. Policy of local governments. a. Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

b. Upon the request of any municipality, farm owner or operator, or a person or entity performing agricultural practices on behalf of a farm owner or operator, the commissioner shall render an opinion to the appropriate local government officials, as to whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to agricultural practices and to the appropriate local land use enforcement officials administering local land use regulations, ordinances, or local laws or reviewing a permit pertaining to agricultural practices.

c. The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.

§ 305-b. Agricultural data statement. 1. Submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by a planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board, zoning board of appeals, town board, or village board of trustees shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

2. Notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, town board, or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. The notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the project. The cost of mailing the notice shall be borne by the applicant.

3. Content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

§ 305-c. Review of proposed rules and regulations of state agencies affecting the agricultural industry. Upon request of the state advisory council on agriculture, or upon his or her own initiative, the commissioner may review and comment upon a proposed rule or regulation by another state agency which may have an adverse impact on agriculture and farm operations in this state, and file such comment with the proposing agency and the administrative regulations review commission. Each comment shall be in sufficient detail to advise the proposing agency of the adverse impact on agriculture and farm operations and the recommended modifications. The commissioner shall prepare a status report of any actions taken in accordance with this section and include it in the department's annual report.

§ 306. Agricultural lands outside of districts; agricultural assessments. 1. Any owner of land used in agricultural production outside of an agricultural district shall be eligible for an agricultural assessment as provided herein. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant.

Such assessment shall be granted pursuant to paragraphs a, b and f of subdivision one of section three hundred five of this article as if such land were in an agricultural district, provided the landowner annually submits to the assessor an application for an agricultural assessment on or before the taxable status date. In the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law. Nothing therein shall be construed to limit an applicant's discretion to withhold from such application any land, or portion thereof, contained

within a single operation.

2. a. (i) If land which received an agricultural assessment pursuant to this section is converted at any time within eight years from the time an agricultural assessment was last received, such conversion shall subject the land so converted to payments in compensation for the prior benefits of agricultural assessments. The amount of the payments shall be equal to five times the taxes saved in the last year in which land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years.

(ii) The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the amount of assessed valuation of such land in excess of the agricultural assessment of such land as set forth on the last assessment roll which indicates such an excess. If only a portion of such land as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll on which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be levied in the same manner as other taxes, by or on behalf of each taxing jurisdiction on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than eight years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.

(iii) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of one

thousand dollars in addition to any payments owed.

b. (i) An assessor who determines that there is liability for payments and any penalties pursuant to subparagraph (ii) of this paragraph shall notify the landowner of such liability at least ten days prior to the day for hearing of complaints in relation to assessments. Such notice shall specify the area subject to payments and shall describe how such payments shall be determined. Failure to provide such notice shall not affect the levy, collection, or enforcement of payments.

(ii) Liability for payments shall be subject to administrative and judicial review as provided by law for the review of assessments.

(iii) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the commissioner of taxation and finance on a form prescribed by the commissioner.

(iv) The assessing unit, by majority vote of the government body, may impose a minimum payment amount, not to exceed five hundred dollars.

c. If such land or any portion thereof is converted by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land outside an agricultural district and eligible for an agricultural assessment pursuant to this section shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

d. The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be

a conversion of parcels and no payment for the prior benefits of agricultural assessments shall be due under this section.

3. Upon the inclusion of such agricultural lands in an agricultural district formed pursuant to section three hundred three, the provisions of section three hundred five shall be controlling.

4. A payment levied pursuant to subparagraph (i) of paragraph a of subdivision two of this section shall be a lien on the entire parcel containing the converted land, notwithstanding that less than the entire parcel was converted.

5. Use of assessment for certain purposes. The governing body of a water, lighting, sewer, sanitation, fire, fire protection, or ambulance district for whose benefit a special assessment or a special ad valorem levy is imposed, may adopt a resolution to provide that the assessments determined pursuant to subdivision one of this section for property within the district shall be used for the special assessment or special ad valorem levy of such special district.

§ 307. Promulgation of rules and regulations. The commissioner of taxation and finance and the commissioner are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem necessary to effectuate the purposes of this article. Where a document or any other paper or information is required, by such rules and regulations, or by any provision of this article, to be filed with, or by, a county clerk or any other local official, such clerk or other local official may file such document, paper, or information as he or she deems proper, but shall also file or record it in any manner directed by the commissioner of taxation and finance, by rule or regulation. In promulgating such a rule or regulation, such commissioner shall consider, among any other relevant factors, the need for security of land titles, the requirement that purchasers of land know of all potential tax and penalty liabilities, and the desirability that the searching of titles not be further complicated by the establishment of new sets of record books.

§ 308. Right to farm. 1. a. The commissioner shall, in consultation with the state advisory council on agriculture, issue opinions upon request from any person as to whether particular agricultural practices are sound.

b. Sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of activities which entail practices the commissioner may consider include, but are not limited to, operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; agricultural tourism; "timber operation," as defined in subdivision fourteen of section three hundred one of this article and construction and use of farm structures. The commissioner shall consult appropriate state agencies and any guidelines recommended by the advisory council on agriculture. The commissioner may consult as appropriate, the New York state college of agriculture and life sciences and the U.S.D.A. natural resources conservation service, and provide such information, after the issuance of a formal opinion, to the municipality in which the agricultural practice being evaluated is located. The commissioner shall also consider whether the agricultural practices are conducted by a farm owner or operator as part of his or her participation in the AEM program as set forth in article eleven-A of this chapter. Such practices shall be evaluated on a case-by-case basis.

2. Upon the issuance of an opinion pursuant to this section, the commissioner shall publish a notice in a newspaper having a general circulation in the area surrounding the practice and notice shall be given in writing to the owner of the property on which the practice is conducted and any adjoining property owners. The opinion of the commissioner shall be final, unless within thirty days after publication of the notice a person affected thereby institutes a proceeding to review the opinion in the manner provided by article seventy-eight of the civil practice law and rules.

3. Notwithstanding any other provisions of law, on any land in an agricultural district created pursuant to section three hundred three or land used in agricultural production subject to an agricultural assessment pursuant to section three hundred six of this article, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the commissioner. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

4. The commissioner, in consultation with the state advisory council on agriculture, shall issue an opinion within thirty days upon request from any person as to whether particular land uses are agricultural in nature. Such land use decisions shall be evaluated on a case-by-case basis.

5. The commissioner shall develop and make available to prospective grantors and purchasers of real property located partially or wholly within any agricultural district in this state and to the general public, practical information related to the right to farm as set forth in this article including, but not limited to right to farm disclosure requirements established pursuant to section three hundred ten of this article and section three hundred thirty-three-c of the real property law.

§ 308-a. Fees and expenses in certain private nuisance actions. 1. Definitions. For purposes of this section:

a. "Action" means any civil action brought by a person in which a private nuisance is alleged to be due to an agricultural practice on any land in an agricultural district or subject to agricultural assessments pursuant to section three hundred three or three hundred six of this article, respectively.

b. "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees, including fees for work performed by law students or paralegals under the supervision of an attorney, incurred in connection with the defense of any cause of action for private nuisance which is alleged as part of a civil action brought by a person.

c. "Final judgment" means a judgment that is final and not appealable, and settlement.

d. "Prevailing party" means a defendant in a civil action brought by a person, in which a private nuisance is alleged to be due to an agricultural practice, where the defendant prevails in whole or in substantial part on the private nuisance cause of action.

2. Fees and other expenses in certain private nuisance actions. a. When awarded. In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three-a of the civil practice law and rules, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the plaintiff, fees and other expenses incurred by such party in connection with the defense of any cause of action for private nuisance alleged to be due to an agricultural practice, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued by the commissioner under section three hundred eight of this article, prior to the start of any trial of the action or settlement of such action, unless the court finds that the position of the plaintiff was substantially justified or that special circumstances make an award unjust. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished, except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings.

b. Application for fees. A party seeking an award of fees and other

expenses shall, within thirty days of final judgment in the action, submit to the court an application which sets forth (i) the facts supporting the claim that the party is a prevailing party and is eligible to receive an award under this section, (ii) the amount sought, and (iii) an itemized statement from every attorney or expert witness for which fees or expenses are sought stating the actual time expended and the rate at which such fees and other expenses are claimed.

3. Interest. If the plaintiff appeals an award made pursuant to this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award. Such interest shall run from the date of the award through the day before the date of the affirmance.

4. Applicability. a. Nothing contained in this section shall be construed to alter or modify the provisions of the civil practice law and rules where applicable to actions other than actions as defined by this section.

b. Nothing contained in this section shall affect or preclude the right of any party to recover fees or other expenses authorized by common law or by any other statute, law or rule.

§ 309. Advisory council on agriculture. 1. There shall be established within the department the advisory council on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate. The department of agriculture and markets shall provide necessary secretariat and support services to the council.

2. The advisory council on agriculture shall consist of eleven members appointed by the governor with the advice and consent of the senate, selected for their experience and expertise related to areas of council responsibility. At least five members of the council shall be operators of a commercial farm enterprise and at least two members shall be representatives of local governments. The balance of the council shall

be comprised of representatives of business or institutions related to agriculture. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, three shall serve for a term of one year, three shall serve for a term of two years, and three shall serve for a term of three years. Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses. The members of the council shall elect a chairman.

3. The duties and responsibilities of the advisory council on agriculture as they pertain to agricultural districts shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner in regard to:

a. the establishment of agricultural districts;

b. the eight year review of agricultural districts; and

c. the establishment of and any revision to the land classification system used in connection with the determination of agricultural assessment values.

The commissioner may delegate to the council such additional duties and responsibilities as he deems necessary.

4. The duties and responsibilities of the advisory council on agriculture shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner of taxation and finance in regard to the establishment of agricultural assessment values.

5. The advisory council on agriculture shall advise the commissioner and other state agency heads on state government plans, policies and programs affecting farming and the agricultural industry of this state. Concerned state agencies shall be encouraged to establish a working relationship with the council and shall fully cooperate with the council in any requests it shall make.

6. The advisory council on agriculture may ask other individuals to attend its meetings or work with it on an occasional or regular basis provided, however, that it shall invite participation by the chairman of the state soil and water conservation committee and the dean of the New York state college of agriculture and life sciences at Cornell university. The advisory council on agriculture shall set the time and place of its meetings, and shall hold at least one meeting per year.

7. The advisory council on agriculture shall file a written report to the governor and the legislature by April first each year concerning its activities during the previous year and its program expectations for the succeeding year.

8. The advisory council on agriculture shall advise the commissioner in regards to whether particular land uses are agricultural in nature.

9. a. The advisory council on agriculture shall advise the commissioner in establishing procedures for making annual awards recognizing New York farms, agricultural, food, and animal or plant fiber textile businesses, and institutions that are successful in producing, processing, marketing, and/or promoting New York farm, food, and animal or plant fiber textile products. The commissioner shall coordinate with the commissioner of economic development to determine which department shall make awards in categories that may be similar to those listed in subdivision eighteen-c of section one hundred of the economic development law. These awards shall be given in recognition of exceptional performance and support for New York agriculture by persons, firms and organizations that are principally located within the state of New York and engaged in the operation of New York state farms, businesses and institutions.

b. The council may annually nominate and forward such nominations for awards to the commissioner for the commissioner's consideration in the following categories:

(i) innovative and unique farm products developed for food, beverages, animal or plant fiber textiles, or horticulture;

(ii) agri-tourism;

(iii) foods or beverages processed or manufactured from New York farm products;

(iv) retail food stores;

(v) restaurants and other food service businesses;

(vi) education, health care and residential institutions including, but not limited to, food service in schools, colleges, hospitals, nursing homes, day care and senior centers; and

(vii) animal or plant fiber textiles processed or manufactured from animal and plant fibers grown or produced predominantly in New York state.

c. The council may also recommend to the commissioner nominations for awards given pursuant to subdivision eighteen-c of section one hundred of the economic development law.

d. The commissioner may designate award winners from these nominees at his or her discretion. Current members of the advisory board and their businesses are not eligible as nominees.

§ 309-a. Beginning farmer advisory board on agriculture. 1. There shall be established within the department the beginning farmer advisory board on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate.

2. The beginning farmer advisory board on agriculture shall consist of twenty-five members selected for their experience and expertise related to areas of board responsibility and comprised of diverse members of the agriculture industry, including the commissioner, or the commissioner's designee, with the remaining members selected as follows:

(a) The commissioner shall appoint the following eleven board members:

(1) one representative from the empire state development corporation;

(2) one officer of the Future Farmers of America (FFA);

(3) one representative from the department of labor;

(4) one urban farmer;

(5) one representative from the New York Farm Bureau;

(6) one participant from the Cornell small farms program;

(7) one representative from the United States department of agriculture;

(8) one organic farmer;

(9) one veteran farmer;

(10) one representative from the Young Farmers coalition;

(11) one member of a group identified in the most recent United States department of agriculture census of agriculture that is currently underrepresented in farm ownership; and

(b) The remaining thirteen board members shall be from entry level farmers or novice farmers, agriculture service providers, financial and legal service providers to farm operators, Cornell Cooperative Extension representatives, advocacy organization representatives, academics, agricultural leaders, and/or others who can contribute to the work of the advisory board on issues, including, among others: access to land and capital, grants, business planning, farm processes and government programs selected as follows: seven appointed by the commissioner; two appointed by the temporary president of the senate; two appointed by the speaker of the assembly; one appointed by the minority leader of the senate; and one appointed by the minority leader of the assembly.

(c) Each member shall:

(1) be interested in the preservation and development of agriculture and preservation of the agricultural way of life in New York;

(2) be actively involved in farming, agricultural activities, agricultural research and/or providing services to the agricultural community in the state;

(3) be a resident of the state; and

(4) be appointed for a term of three years and may serve until their successors are chosen; provided, however, that of the members first appointed, eight shall serve for a term of one year, eight shall serve for a term of two years and nine shall serve for a term of three years.

(d) Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses.

(e) The members of the board shall meet twice a year.

(f) The commissioner, or the commissioner's designee, shall chair the

board and the department shall provide the necessary secretariat and support services to the board.

3. The duties and responsibilities of the beginning farmer advisory board on agriculture shall include, but not be limited to:

(a) communicating to the public, the federal government, and the state government the importance of beginning farmers to agriculture in the state;

(b) identifying issues relating to beginning farmers in the state and provide timely advice to the commissioner, the governor and the relevant state agencies, with regard to the promotion of agriculture as a career path and the economic development of beginning farmers;

(c) producing a biennial report and provide such report to the governor, the temporary president of the senate and the speaker of the assembly on or before the end of each calendar year. Such report shall identify and prioritize policy issues which affect beginning farmers; and

(d) establishing committees, as necessary, to develop projects relating to the aspects of life for beginning farmers in the state.

§ 310. Disclosure. 1. When any purchase and sale contract is presented for the sale, purchase, or exchange of real property located partially or wholly within an agricultural district established pursuant to the provisions of this article, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following:

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain

circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law."

1-a. Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.

2. Receipt of such disclosure notice shall be recorded on a property transfer report form prescribed by the commissioner of taxation and finance as provided for in section three hundred thirty-three of the real property law.

ARTICLE 25-AAA
AGRICULTURAL AND FARMLAND PROTECTION PROGRAMS

Section 321. Statement of legislative findings and intent.
322. Definitions.
323. State agricultural and farmland protection program.
324. County agricultural and farmland protection plans.
324-a. Municipal agricultural and farmland protection plans.
325. Agricultural protection.
325-a. State assistance payments to not-for-profit conservation organizations.
326. Promulgation of rules and regulations.

§ 321. Statement of legislative findings and intent. It is hereby found and declared that agricultural lands are irreplaceable state assets. In an effort to maintain the economic viability, and environmental and landscape preservation values associated with agriculture, the state must explore ways to sustain the state's valuable farm economy and to protect farm operations and the land base associated with it. External pressures on farm stability such as population growth in non-metropolitan areas, lack of access to affordable farmland, and public infrastructure development pose a significant threat to farm

operations, yet are the pressures over which farmers have the least control. Local initiatives in agricultural protection policy, facilitated by the agricultural districts program established in article twenty-five-AA of this chapter, have proved effective as a basic step in addressing these pressures. In an effort to encourage further development of agricultural and farmland protection programs, and to recognize both the crucial role that local government plays in developing these strategies, plus the state constitutional directive to the legislature to provide for the protection of agricultural lands, it is therefore declared the policy of the state to promote local initiatives for agricultural and farmland protection.

§ 322. Definitions. When used in this article:

1. "Agricultural and farmland protection" means the preservation, conservation, management or improvement of lands which are part of viable farming operations, for the purpose of encouraging such lands to remain in agricultural production. Such preservation efforts include the use of farmland protection conservation easements and purchase of development rights.

2. "Plan" means the county and municipal agricultural and farmland protection plan as provided for in this article.

3. "Program" means the state agricultural and farmland protection program created pursuant to the provisions of this article.

4. "Not-for-profit conservation organization" means an organization as defined in subdivision two of section 49-0303 of the environmental conservation law.

5. "Soil and water conservation district" means an entity as defined in subdivision one of section three of the soil and water conservation districts law.

6. "Farmer-purchaser farmland protection agreement" means preemptive

purchase rights or other provisions that are part of or linked to a farmland protection conservation easement providing the easement holder the preferential right to purchase protected farmland at its agricultural use value in the event the landowner intends to sell such farmland to a purchaser who does not intend to maintain the land in commercial agricultural production and who does not have the requisite farming experience and farming income to demonstrate, in a manner acceptable to the department, a good faith plan to maintain the land in commercial agricultural production. The purpose of such provisions is to ensure that farmer-purchasers who would maintain protected farmland in commercial agricultural production can afford such farmland that might otherwise be sold at a higher price to other purchasers.

7. "Agricultural use value" means the fair market value of a property that is restricted by an easement to its productive commercial agricultural use value rather than the highest and/or best potential use value for residential or other non-agricultural purposes.

§ 323. State agricultural and farmland protection program. The commissioner shall initiate and maintain a state agricultural and farmland protection program to provide financial and technical assistance, within funds available, to counties, municipalities, soil and water conservation districts, and not-for-profit conservation organizations for their agricultural and farmland protection efforts. Activities to be conducted by the commissioner shall include, but not be limited to:

1. developing guidelines for the creation by counties and municipalities of agricultural and farmland protection plans;

2. providing technical assistance to county agricultural and farmland protection boards, as established in article twenty-five-AA of this chapter, and municipalities;

3. administering state assistance payments to county agricultural and farmland protection boards, municipalities and soil and water

conservation districts;

4. disseminating information to county and municipal governments, soil and water conservation districts, owners of agricultural lands and other agricultural interests about the state agricultural and farmland protection program established pursuant to this article;

5. administering state assistance payments to not-for-profit conservation organizations; and

6. reporting biennially to the governor and the legislature regarding the activities of the commissioner, the types of technical assistance rendered to county agricultural and farmland protection boards, municipalities, soil and water conservation districts and not-for-profit conservation organizations, and the need to protect the state's agricultural economy and land resources.

§ 324. County agricultural and farmland protection plans. 1. County agricultural and farmland protection boards may develop plans, in cooperation with the local soil and water conservation district and soil conservation service, which shall include, but not be limited to:

(a) the location of any land or areas proposed to be protected;

(b) an analysis of the following factors concerning any areas and lands proposed to be protected:

(i) value to the agricultural economy of the county;

(ii) open space value;

(iii) consequences of possible conversion; and

(iv) level of conversion pressure on the lands or areas proposed to be protected; and

(c) a description of the activities, programs and strategies, including efforts to support the successful transfer of agricultural land from existing owners to new owners and operators, especially new and beginning farmers, intended to be used by the county to promote continued agricultural use, which may include but not be limited to revisions to the county's comprehensive plan pursuant to section two hundred thirty-nine-d or two hundred thirty-nine-i of the general

municipal law.

2. The county agricultural and farmland protection board shall conduct at least one public hearing for public input regarding such agricultural and farmland protection plan, and shall thereafter submit such plan to the county legislative body for its approval.

3. The county agricultural protection plan must be submitted by the county to the commissioner for approval.

§ 324-a. Municipal agricultural and farmland protection plans. 1. Municipalities may develop agricultural and farmland protection plans, in cooperation with cooperative extension and other organizations, including local farmers. These plans shall include, but not be limited to:

(a) the location of any land or areas proposed to be protected;

(b) an analysis of the following factors concerning any areas and lands proposed to be protected:

(i) value to the agricultural economy of the municipality;

(ii) open space value;

(iii) consequences of possible conversion; and

(iv) level of conversion pressure on the lands or areas proposed to be protected; and

(c) a description of activities, programs and strategies, including efforts to support the successful transfer of agricultural land from existing owners to new owners and operators, especially new and beginning farmers, intended to be used by the municipality to promote continued agricultural use, which may include but not be limited to revisions to the municipality's comprehensive plan pursuant to section two hundred seventy-two-a of the town law or section 7-722 of the village law as appropriate.

2. The municipality shall conduct at least one public hearing for public input regarding such agricultural and farmland protection plan, and shall thereafter submit such plan to the municipal legislative body and the county agricultural farmland protection board for approval.

3. The municipal agricultural and farmland protection plan must be submitted by the municipality to the commissioner for approval.

§ 325. Agricultural protection. 1. Subject to the availability of funds, a program is hereby established to finance through state assistance payments the state share of the costs of locally-led agricultural and farmland protection activities. State assistance payments for planning activities shall not exceed fifty thousand dollars to each county agricultural and farmland protection board or one hundred thousand dollars to two such boards applying jointly, and shall not exceed fifty percent of the cost of preparing an agricultural and farmland protection plan. State assistance payments for planning activities shall not exceed twenty-five thousand dollars to each municipality other than a county or fifty thousand dollars to two such municipalities applying jointly, and shall not exceed seventy-five percent of the cost of preparing an agricultural and farmland protection plan. A county which has an approved farmland protection plan may after one hundred twenty months from the date of such approval by the commissioner apply for additional state assistance payments for planning activities related to the updating of their current plan or development of a new farmland protection plan. Such additional state assistance payments shall not exceed fifty thousand dollars to each county agricultural and farmland protection board or one hundred thousand dollars to two such boards applying jointly, and shall not exceed fifty percent of the cost of preparing an agricultural and farmland protection plan. State assistance payments for implementation of approved agricultural and farmland protection plans may fund up to seventy-five percent of the cost of implementing the county plan or portion of the plan for which state assistance payments are requested. State assistance payments to such counties shall not exceed seventy-five percent of the cost of implementing the local plan or portion of the plan for which state assistance has been requested. Such maximum shall be increased by a percentage equal to the percentage of the total eligible costs for such specified projects that are contributed by the owner of the agricultural land for which the project is being funded, provided,

however, that in no event shall the total of such state assistance payments exceed eighty-seven and one-half percent of such eligible costs for any specified project.

2. (a) A county agricultural and farmland protection board, two such boards acting jointly, a municipality or two such municipalities acting jointly shall make application to the commissioner in such manner as the commissioner may prescribe. Application for state assistance payments for planning activities may be made at any time after the county agricultural and farmland protection board has formed and has elected a chairperson. A county agricultural and farmland protection board may make application for state assistance payments for plan implementation at any time after the commissioner has approved a county agricultural and farmland protection plan pursuant to section three hundred twenty-four of this article. Application made jointly by two county agricultural and farmland protection boards may be made after such agricultural and farmland protection plan is approved by each county pursuant to the provisions of section three hundred twenty-four of this article. State assistance payments to such counties shall not exceed seventy-five percent of the cost of implementing the county agricultural and farmland protection plan or portion of the plan for which state assistance has been requested. The commissioner may require such information or additional planning as he or she deems necessary to evaluate such a request for state assistance.

(b) Within a county, a municipality which has in place a local farmland protection plan may apply and shall be eligible for agricultural protection state assistance payments to implement its plan, or a portion of its plan, provided the proposed project is endorsed for funding by the agricultural and farmland protection board for the county in which the municipality is located and that any plan developed on or after January first, two thousand six complies with section three hundred twenty-four-a of this article. State assistance payments to such municipalities shall not exceed seventy-five percent of the cost of implementing the local plan or portion of the plan for which state assistance has been requested. Such maximum shall be increased by a percentage equal to the percentage of the total eligible costs for such specified projects that are contributed by the owner of the agricultural

land for which the project is being funded; provided, however, that in no event shall the total of such state assistance payments exceed eighty-seven and one-half percent of such eligible costs for any specified project. The commissioner may require such information or additional planning as he or she deems necessary to evaluate such a request for state assistance.

(c) A soil and water conservation district may apply and shall be eligible for agricultural protection state assistance payments to implement a county or municipal agricultural and farmland protection plan approved by the commissioner provided that the proposed project is endorsed for funding by the county agricultural and farmland protection board for the county in which the proposed project is located. A soil and water conservation district, two such soil and water conservation districts acting jointly, a soil and water conservation district and a municipality acting jointly, or a soil and water conservation district and a not-for-profit conservation organization acting jointly shall make application to the commissioner in such manner as the commissioner may prescribe. The proposed project must also be endorsed for funding by the municipality in which the proposed project is located if the soil and water conservation district is seeking agricultural protection state assistance payments to implement an approved municipal agricultural and farmland protection plan. State assistance payments to such soil and water conservation districts shall not exceed seventy-five percent of the cost of implementing the local plan or portion of the plan for which state assistance has been requested. Such maximum shall be increased by a percentage equal to the percentage of the total eligible costs for such specified projects that are contributed by the owner of the agricultural land for which the project is being funded; provided, however, that in no event shall the total of such state assistance payments exceed eighty-seven and one-half percent of such eligible costs for any specified project. The commissioner may require such information or additional planning as he or she deems necessary to evaluate such a request for state assistance.

(d) A not-for-profit conservation organization may apply and shall be eligible for agricultural protection state assistance payments to implement a county or municipal agricultural and farmland protection plan approved by the commissioner provided that the proposed project is

endorsed for funding by the county agricultural and farmland protection board for the county in which the proposed project is located. The proposed project must also be endorsed for funding by the municipality in which the proposed project is located if the not-for-profit conservation organization is seeking agricultural protection state assistance payments to implement an approved municipal agricultural and farmland protection plan. State assistance payments to such not-for-profit organizations shall not exceed seventy-five percent of the cost of implementing the local plan or portion of the plan for which state assistance has been requested. Such maximum shall be increased by a percentage equal to the percentage of the total eligible costs for such specified projects that are contributed by the owner of the agricultural land for which the project is being funded; provided, however, that in no event shall the total of such state assistance payments exceed eighty-seven and one-half percent of such eligible costs for any specified project. The commissioner may require such information or additional planning as he or she deems necessary to evaluate such a request for state assistance.

(e) In evaluating applications for funding, the commissioner shall give priority to projects intended to preserve viable agricultural land as defined in section three hundred one of this chapter; that are in areas facing significant development pressure; and that serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics.

(f) In evaluating applications for funding, the commissioner shall consider whether future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered.

(g) In evaluating applications for funding, projects for protecting agricultural land that include farmer-purchaser farmland protection agreements are eligible for state assistance payments.

3. Upon receipt of a request for state assistance, the commissioner shall review the request, consult with the advisory council on agriculture and, within ninety days from the receipt of a complete application, shall make a determination as to whether or not such

projects shall receive state assistance.

§ 325-a. State assistance payments to not-for-profit conservation organizations. 1. Subject to the availability of funds, a program is hereby established for the purpose of awarding state assistance to not-for-profit conservation organizations for activities that will assist counties and municipalities with their agricultural and farmland protection efforts. To be eligible, an organization shall have at least one active farmer on their board of directors at the time of application or shall provide for the appointment of a farmer to such board of directors in a manner approved by the commissioner.

2. Awards of state assistance payments shall be made on a competitive basis through a request for proposal process which shall set forth the standards for the selection process, the required proposal format, the costs which are eligible for funding, reporting requirements, and such other provisions as the commissioner may deem necessary, proper or desirable to achieve the purposes of this section. Applications for state assistance payments must be endorsed by the agricultural and farmland protection board for the county or counties in which the funded activities would be implemented.

3. In evaluating applications, the commissioner shall give priority to activities that will assist counties and municipalities with their agricultural and farmland protection efforts by disseminating information and providing technical assistance to county and municipal governments, owners of agricultural lands and other agricultural interests.

4. Upon receipt of an application for state assistance, the commissioner shall review the request, consult with the advisory council on agriculture and, within ninety days from the receipt of a complete application, make a determination as to whether or not the application will be funded.

5. State assistance payments awarded to an applicant shall be used in

a manner which does not in any way unreasonably restrict or regulate farm operations in contravention of the purposes of article twenty-five-AA of this chapter.

6. State assistance payments awarded pursuant to this section shall not exceed fifty thousand dollars to any applicant in any fiscal year, and shall not exceed five hundred thousand dollars to all applicants in any fiscal year.

§ 326. Promulgation of rules and regulations. The commissioner is empowered to promulgate such rules and regulations and to prescribe such forms as he or she deems necessary to effectuate the purposes of this article.

ARTICLE 25-AAAA
FARMLAND VIABILITY PROGRAM

Section 327. Legislative intent.
328. Definitions.
329. Farmland viability program.
330. Matching grant program.

§ 327. Legislative intent. The legislature hereby finds, determines and declares that the New York agriculture industry has a substantial impact on the overall economic health and well-being of the state. Furthermore, state farms preserve approximately 7.7 million acres of open space as working landscapes, thus contributing to the overall quality of the state's environment. Preserving farmland as a working agricultural landscape provides open space benefits for all residents of the state, and maintains the land as a natural habitat for animals. Properly managed farmland has been demonstrated to be the best environmental usage of land for watershed protection, so it is in the best interest of the state to maintain agricultural land. The legislature hereby declares that in order to ensure the continued economic viability of the agricultural industry, and to preserve the

environmental benefits of agricultural land use, the department shall create a farmland viability program.

§ 328. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Program" shall mean the farmland viability program.

2. "Agricultural product" shall mean any agricultural or aquacultural product of the soil or water, including but not limited to fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, and fruit juice.

3. "Value added" shall mean the increase in the fair market value of an agricultural product resulting from the processing of such product.

4. "Applicant" shall mean any individual, partnership, association, cooperative, corporation or limited liability company that manages a farm operation as defined in section three hundred one of this chapter, or county agricultural and farmland protection board with an approved agricultural protection plan, or an agricultural cooperative as defined in section one hundred eleven of the cooperative corporations law, applying for financial assistance under the provisions of this article.

§ 329. Farmland viability program. The commissioner shall initiate and maintain a state farmland viability program within the department which is intended to improve the profitability and efficiency of participating farms. The program shall provide technical and financial assistance in the form of matching grants to applicants for projects which contribute to overall farm profitability and sound environmental management.

1. The commissioner may award grants, within available funding, for the following purposes:

a. to a county agricultural and farmland protection board for the implementation of any component of its approved agricultural protection plan which addresses improved farm profitability;

b. to an applicant, other than a county agricultural and farmland protection board, for the development of a farmland viability plan or a portion of such a plan, which shall assess overall farm profitability and identify potential strategies for improved farm profitability such as farm expansion, value added production, diversification, environmental management, or marketing and promotional activities, and

c. to an applicant, other than a county agricultural and farmland protection board, for the implementation of any component of its farmland viability plan which has been approved by the commissioner.

2. The commissioner shall consult with the college of agriculture and life sciences at Cornell university and the state advisory council on agriculture to identify and coordinate available resources for the farmland viability program.

§ 330. Matching grant program. 1. Subject to the availability of funds, a matching grant program is hereby established to effectuate the purposes of the program. Grants to applicants, other than a county agricultural and farmland protection board, shall not exceed seventy-five percent of the costs of preparing or implementing a farmland viability plan or portion thereof. Grants to county agricultural and farmland protection boards for implementation of an approved agricultural protection plan shall not exceed fifty percent of the cost of implementing such plan or portion thereof.

2. Project grants shall be awarded on a competitive basis through a request for proposal process which shall set forth the standards for the selection process, the required project proposal format, costs eligible for funding, project implementation, reporting requirements, and such other provisions as the commissioner may deem necessary or beneficial in

implementing the program.

ARTICLE 25-B

ABANDONED ANIMALS

Section 331. Abandonment of certain animals.
332. Disposition.

§ 331. Abandonment of certain animals. An animal is deemed to be abandoned when it is placed in the custody of a veterinarian, veterinary hospital, boarding kennel owner or operator, stable owner or operator, or any other person for treatment, board, or care and:

1. Having been placed in such custody for a specified period of time the animal is not removed at the end of such specified period and a notice to remove the animal within ten days thereafter has been given to the person who placed the animal in such custody, by means of registered letter mailed to the last known address of such person, or:

2. Having been placed in such custody for an unspecified period of time the animal is not removed within twenty days after notice to remove the animal has been given to the person who placed the animal in such custody, by means of a registered letter mailed to the last known address of such person.

3. The giving of notice as prescribed in this section shall be deemed a waiver of any lien on the animal for the treatment, board or care of the animal but shall not relieve the owner of the animal removed of his contractual liability for such treatment, board or care furnished.

§ 332. Disposition. Any person having in his or her care, custody, or control any abandoned animal, as defined in section three hundred thirty-one of this article, may deliver such animal to any duly incorporated society for the prevention of cruelty to animals or any duly incorporated humane society having facilities for the care and

eventual disposition of such animals, or, in the case of dogs, cats and other small animals, to any pound maintained by or under contract or agreement with any county, city, town, or village within which such animal was abandoned. The person with whom the animal was abandoned shall, however, on the day of divesting himself or herself of possession thereof, notify the person who had placed such animal in his or her custody of the name and address of the animal society or pound to which the animal has been delivered, such notice to be by registered letter mailed to the last known address of the person intended to be so notified. If an animal is not claimed by its owner within five days after being so delivered to such duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or pound, such animal may at any time thereafter be placed for adoption in a suitable home or euthanized in accordance with the provisions of section three hundred seventy-four of this chapter. In no event, however, shall the use of a decompression chamber or decompression device of any kind be used for the purpose of destroying or disposing of such animal.

Article 25-C
FARM EMPLOYER OVERTIME CREDIT PROGRAM

Section 333. Short title.
334. Definitions.
335. Tax credit; overtime expense certification.

§ 333. Short title. This article shall be known and may be cited as the "farm employer overtime credit program."

§ 334. Definitions. For the purposes of this article:

1. "Commissioner" shall mean the commissioner of agriculture and markets.

2. "Department" shall mean the department of agriculture and markets.

3. "Eligible farm employee" shall mean an individual who meets the definition of a "farm laborer" under section two of the labor law who is employed in New York state by (a) a farm employer or (b) a qualified professional employer organization.

4. "Eligible overtime" shall mean the aggregate number of hours of work performed during the calendar year by an eligible farm employee that in any calendar week exceeds the overtime work threshold set by the commissioner of labor pursuant to the recommendation of the farm laborers wage board, provided that work performed in such calendar week in excess of sixty hours shall not be included.

5. "Farm employer" shall mean a corporation (including a New York S corporation), a sole proprietorship, a limited liability company or a partnership whose principal business is farming activity.

6. "Farming activity" shall include, but not be limited to, the cultivation of crops, operation, or management of a farm for gain or profit, including the operation or management of livestock, dairy, poultry, aquaculture, fruit, fur-bearing animal, field crop, horticultural specialty, and vegetable farms.

7. "Overtime expense" shall mean the product of (a) the eligible overtime hours worked during the calendar year by the eligible farm employee and (b) the overtime rate paid to the eligible farm employee less such eligible farm employee's regular rate of pay.

8. "Qualified farm employer" shall mean a farm employer that:

(a) primarily engaged in farming activity during the calendar year;

(b) utilized eligible farm employees in its farming activity during the calendar year; and

(c) directly, or indirectly through a qualified professional employer organization, paid eligible overtime to eligible farm employees during the calendar year.

9. "Qualified professional employer organization" shall mean an entity

who provides remuneration to or otherwise employs eligible farm employees on behalf of a farm employer.

§ 335. Tax credit; overtime expense certification. 1. A qualified farm employer who is issued an overtime expense certificate by the department may be allowed a credit pursuant to section forty-two-a of the tax law equal to one hundred eighteen percent of the aggregate amount of overtime expenses certified by the department pursuant to this section. A qualified farm employer who is issued a preliminary overtime expense certificate may be eligible to receive an advance payment of such tax credit pursuant to subdivision (e) of section forty-two-a of the tax law.

2. Certificate application and approval process. A farm employer must submit a complete application as prescribed by the commissioner by the first of February after the end of the calendar year. As part of the application, each farm employer shall provide evidence in the form and manner prescribed by the commissioner sufficient to establish that it is a qualified farm employer and to determine the overtime expense per eligible farm employee paid by such qualified farm employer during the preceding calendar year. If, after reviewing a farm employer's completed application, the department determines that the farm employer is a qualified farm employer, the department may issue to such qualified farm employer an overtime expense certificate for each year that the eligibility criteria are satisfied that specifies (a) the total number of eligible farm employees who were paid eligible overtime by the qualified farm employer; (b) the aggregate amount of overtime expense paid by the qualified farm employer; and (c) the calendar year in which such overtime expense was paid.

3. Preliminary overtime expense certificate. A farm employer who intends to request an advance payment of the tax credit pursuant to subdivision (e) of section forty-two-a of the tax law must submit a complete application as prescribed by the commissioner by September thirtieth of the calendar year. As part of the application, each farm employer shall provide evidence in the form and manner prescribed by the

commissioner sufficient to establish that it is a qualified farm employer and to determine the overtime expense per eligible farm employee paid by such qualified farm employer from January first through July thirty-first of such calendar year. If, after reviewing a farm employer's completed application, the department determines that the farm employer is a qualified farm employer, the department may issue to such qualified farm employer a preliminary overtime expense certificate that specifies (a) the total number of eligible farm employees who were paid eligible overtime by the qualified farm employer from January first through July thirty-first of such calendar year; and (b) the aggregate amount of overtime expense paid by the qualified farm employer during such period.

ARTICLE 26

ANIMALS

Section 350. Definitions.
351. Prohibition of animal fighting.
353. Overdriving, torturing and injuring animals; failing to provide proper sustenance.
353-a. Aggravated cruelty to animals.
353-b. Appropriate shelter for dogs left outdoors.
353-c. Electrocution of fur-bearing animals prohibited.
353-d. Confinement of companion animals in vehicles: extreme temperatures.
353-e. Companion animal grooming facilities; prohibited practices.
353-f. Companion animal piercing and tattooing prohibited.
354. Sale of baby chicks and baby rabbits.
355. Abandonment of animals.
356. Failure to provide proper food and drink to impounded animal.
357. Selling or offering to sell or exposing diseased animal.
358. Selling disabled Equidae.
358-a. Live animals as prizes prohibited.
359. Carrying animal in a cruel manner.
359-a. Transportation of horses.

360. Poisoning or attempting to poison animals.
361. Interference with or injury to certain domestic animals.
362. Throwing substance injurious to animals in public place.
363. Unauthorized possession of dogs presumptive evidence of larceny.
364. Running horses on highway.
365. Clipping or cutting the ears of dogs.
366. Companion animal stealing.
366-a. Removing, seizing or transporting dogs for research purposes.
367. Leaving state to avoid provisions of this article.
368. Operating upon tails of horses unlawful.
369. Interference with officers.
370. Protection of the public from attack by wild animals and reptiles.
371. Powers of peace officers.
372. Issuance of warrants upon complaint.
373. Seizure of animals lost, strayed, homeless, abandoned or improperly confined or kept.
374. Humane destruction or other disposition of animals lost, strayed, homeless, abandoned or improperly confined or kept.
375. Officer may take possession of animals or implements used in fights among animals.
376. Disposition of animals or implements used in fights among animals.
377. Disposal of dead animals.
377-a. Spaying and neutering of dogs and cats.
378. Unlawful tampering with animal research.
379. Prohibition of the selling of fur, hair, skin or flesh of a dog or cat.
380. Use of elephants in entertainment acts.
380*2. Examination of seized animals or animals taken possession of.
381. Prohibition of the declawing of cats.
382. Prohibition of the slaughter of race horses and race horse breeding stock.

384. Special provisions related to the importation of dogs and cats into the state for sale, resale or adoption.
385. Prohibition of slaughtering horses for human or animal consumption.
386. Requirements for live auctions.

§ 350. Definitions. 1. "Animal," as used in this article, includes every living creature except a human being;

2. "Torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.

3. "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog or cat, seized or surrendered.

4. "Farm animal", as used in this article, means any ungulate, poultry, species of cattle, sheep, swine, goats, llamas, horses or fur-bearing animals, as defined in section 11-1907 of the environmental conservation law, which are raised for commercial or subsistence purposes. Fur-bearing animal shall not include dogs or cats.

5. "Companion animal" or "pet" means any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. "Pet" or "companion animal" shall not include a "farm animal" as defined in this section.

§ 351. Prohibition of animal fighting. 1. For purposes of this section, the term "animal fighting" shall mean any fight between cocks or other birds, or between dogs, bulls, bears or any other animals, or between any such animal and a person or persons, except in exhibitions of a kind commonly featured at rodeos.

2. Any person who engages in any of the following conduct is guilty of a felony punishable by imprisonment for a period not to exceed four years, or by a fine not to exceed twenty-five thousand dollars, or by both such fine and imprisonment:

(a) For amusement or gain, causes any animal to engage in animal fighting; or

(b) Trains any animal under circumstances evincing an intent that such animal engage in animal fighting for amusement or gain; or

(c) Breeds, sells or offers for sale any animal under circumstances evincing an intent that such animal engage in animal fighting; or

(d) Permits any act described in paragraph (a), (b) or (c) of this subdivision to occur on premises under his control; or

(e) Owns, possesses or keeps any animal trained to engage in animal fighting on premises where an exhibition of animal fighting is being conducted under circumstances evincing an intent that such animal engage in animal fighting.

3. (a) Any person who engages in conduct specified in paragraph (b) of this subdivision is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed fifteen thousand dollars, or by both such fine and imprisonment.

(b) The owning, possessing or keeping of any animal under circumstances evincing an intent that such animal engage in animal fighting.

4. (a) Any person who engages in conduct specified in paragraph (b) hereof is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment.

(b) The knowing presence as a spectator having paid an admission fee or having made a wager at any place where an exhibition of animal fighting is being conducted.

5. (a) Any person who engages in the conduct specified in paragraph (b) of this subdivision is guilty of a class B misdemeanor punishable by imprisonment for a period not to exceed three months, or by a fine not to exceed five hundred dollars, or by both such fine and imprisonment.

Any person who engages in the conduct specified in paragraph (b) of this subdivision after having been convicted within the previous five years of a violation of this subdivision or subdivision four of this section is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment.

(b) The knowing presence as a spectator at any place where an exhibition of animal fighting is being conducted.

6. (a) Any person who intentionally owns, possesses, sells, transfers or manufactures animal fighting paraphernalia with the intent to engage in or otherwise promote or facilitate animal fighting as defined in subdivision one of this section is guilty of a class B misdemeanor punishable by imprisonment for a period of up to ninety days, or by a fine not to exceed five hundred dollars, or by both such fine and imprisonment. Any person who engages in the conduct specified in this subdivision after having been convicted within the previous five years of a violation of this subdivision is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment.

(b) For purposes of this section, animal fighting paraphernalia shall mean equipment, products, or materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning or furtherance of animal fighting. Animal fighting paraphernalia includes the following:

(i) A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;

(ii) A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing places;

(iv) A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

(v) A fighting pit, which means a walled area, or otherwise defined area, designed to contain an animal fight;

(vi) Any other instrument commonly used in the furtherance of pitting an animal against another animal.

§ 353. Overdriving, torturing and injuring animals; failure to provide proper sustenance. A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a class A misdemeanor and for purposes of paragraph (b) of subdivision one of section 160.10 of the criminal procedure law, shall be treated as a misdemeanor defined in the penal law.

Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations, involving the use of living animals, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health. The state commissioner of health shall prescribe the rules under which such approvals shall be granted, including therein standards regarding the care and treatment of any such animals. Such rules shall be published and copies thereof conspicuously posted in each such laboratory or institution. The state commissioner of health or his duly authorized representative shall have the power to inspect such laboratories or institutions to insure compliance with such rules and standards. Each such approval may be revoked at any time for failure to comply with such rules and in any case the approval shall be limited to a period not exceeding one year.

§ 353-a. Aggravated cruelty to animals. 1. A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, "aggravated cruelty" shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.

2. Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, as provided in article eleven of the environmental conservation law, the dispatch of rabid or diseased animals, as provided in article twenty-one of the public health law, or the dispatch of animals posing a threat to human safety or other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by the commissioner of health pursuant to section three hundred fifty-three of this article.

3. Aggravated cruelty to animals is a felony. A defendant convicted of this offense shall be sentenced pursuant to paragraph (b) of subdivision one of section 55.10 of the penal law provided, however, that any term of imprisonment imposed for violation of this section shall be a definite sentence, which may not exceed two years.

§ 353-b. Appropriate shelter for dogs left outdoors. 1. For purposes of this section:

(a) "Physical condition" shall include any special medical needs of a dog due to disease, illness, injury, age or breed about which the owner or person with custody or control of the dog should reasonably be aware.

(b) "Inclement weather" shall mean weather conditions that are likely to adversely affect the health or safety of the dog, including but not limited to rain, sleet, ice, snow, wind, or extreme heat and cold.

(c) "Dogs that are left outdoors" shall mean dogs that are outdoors in inclement weather without ready access to, or the ability to enter, a

house, apartment building, office building, or any other permanent structure that complies with the standards enumerated in paragraph (b) of subdivision three of this section.

2. (a) Any person who owns or has custody or control of a dog that is left outdoors shall provide it with shelter appropriate to its breed, physical condition and the climate. Any person who knowingly violates the provisions of this section shall be guilty of a violation, punishable by a fine of not less than fifty dollars nor more than one hundred dollars for a first offense, and a fine of not less than one hundred dollars nor more than two hundred fifty dollars for a second and subsequent offenses. Beginning seventy-two hours after a charge of violating this section, each day that a defendant fails to correct the deficiencies in the dog shelter for a dog that he or she owns or that is in his or her custody or control and that is left outdoors, so as to bring it into compliance with the provisions of this section shall constitute a separate offense.

(b) The court may, in its discretion, reduce the amount of any fine imposed for a violation of this section by the amount which the defendant proves he or she has spent providing a dog shelter or repairing an existing dog shelter so that it complies with the requirements of this section. Nothing in this paragraph shall prevent the seizure of a dog for a violation of this section pursuant to the authority granted in this article.

3. Minimum standards for determining whether shelter is appropriate to a dog's breed, physical condition and the climate shall include:

(a) For dogs that are restrained in any manner outdoors, shade by natural or artificial means to protect the dog from direct sunlight at all times when exposure to sunlight is likely to threaten the health of the dog.

(b) For all dogs that are left outdoors in inclement weather, a housing facility, which must: (1) have a waterproof roof; (2) be structurally sound with insulation appropriate to local climatic conditions and sufficient to protect the dog from inclement weather; (3) be constructed to allow each dog adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn

around and lie down with its limbs outstretched; and (4) allow for effective removal of excretions, other waste material; dirt and trash. The housing facility and the area immediately surrounding it shall be regularly cleaned to maintain a healthy and sanitary environment and to minimize health hazards.

4. Inadequate shelter may be indicated by the appearance of the housing facility itself, including but not limited to, size, structural soundness, evidence of crowding within the housing facility, healthful environment in the area immediately surrounding such facility, or by the appearance or physical condition of the dog.

5. Upon a finding of any violation of this section, any dog or dogs seized pursuant to the provisions of this article that have not been voluntarily surrendered by the owner or custodian or forfeited pursuant to court order shall be returned to the owner or custodian only upon proof that appropriate shelter as required by this section is being provided.

6. Nothing in this section shall be construed to affect any protections afforded to dogs or other animals under any other provisions of this article.

§ 353-c. Electrocution of fur-bearing animals prohibited. 1. Notwithstanding any other provision of law, no person shall intentionally kill, or stun to facilitate the killing of, a fur-bearing animal by means of an electrical current. For the purpose of this section, "fur-bearing animal" means arctic fox, red fox, silver fox, chinchilla, mink, pine marten, muskrat, and those fur-bearing animals included within the provisions of section 11-1907 of the environmental conservation law.

2. A violation of subdivision one of this section is a class A misdemeanor.

§ 353-d. Confinement of companion animals in vehicles: extreme temperatures. 1. A person shall not confine a companion animal in a motor vehicle in extreme heat or cold without proper ventilation or other protection from such extreme temperatures where such confinement places the companion animal in imminent danger of death or serious physical injury due to exposure to such extreme heat or cold.

2. Where the operator of such a vehicle cannot be promptly located, a police officer, peace officer, peace officer acting as an agent of a duly incorporated humane society, emergency medical services personnel, paid firefighter, or volunteer firefighter who in the performance of such volunteer firefighter's duties are directed to respond to a call for assistance for such animal may take necessary steps to remove the animal or animals from the vehicle.

3. Police officers, peace officers, peace officers acting as agents of a duly incorporated humane society, emergency medical services personnel, paid firefighters, or volunteer firefighters who in the performance of such volunteer firefighters' duties or emergency medical services personnel are directed to respond to a call for assistance for such animal removing an animal or animals from a vehicle pursuant to this section shall place a written notice on or in the vehicle, bearing the name of the officer or agent, and the department or agency and address and other contact information, if available, where the animal or animals will be taken.

4. An animal or animals removed from a vehicle pursuant to this section shall, after receipt of any necessary emergency veterinary treatment, be delivered to the duly incorporated humane society or society for the prevention of cruelty to animals, or designated agent thereof, in the jurisdiction where the animal or animals were seized.

5. Any person who knowingly violates the provisions of subdivision one of this section shall be guilty of a violation, punishable by a fine of not less than fifty dollars nor more than one hundred dollars for a first offense, and a fine of not less than one hundred dollars nor more than two hundred and fifty dollars for a second and subsequent offenses.

6. Officers, emergency medical services personnel and firefighters shall not be held criminally or civilly liable for actions taken reasonably and in good faith in carrying out the provisions of this section.

7. Nothing contained in this section shall be construed to affect any other protections afforded to companion animals under any other provisions of this article.

§ 353-e. Companion animal grooming facilities; prohibited practices. 1. As used in this section:

(a) "Cage and box dryer" means a product that is attached to or near a cage or box for the purpose of drying or aiding in the drying of a companion animal contained in a cage or box, and which is capable of functioning without a person manually holding a dryer.

(b) "Companion animal grooming facility" means an establishment where a companion animal may be bathed, brushed, clipped or styled for a fee.

2. No person shall use a cage or box dryer which contains a heating element with the heating element turned on for the purpose of drying or aiding in the drying of a companion animal.

3. Any violation of this section shall be punishable by a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for each violation.

4. Nothing contained in this section shall limit or abrogate any claim or cause of action any person may have under common law or by statute. The provisions of this section shall be in addition to any such common law and statutory remedies.

§ 353-f. Companion animal piercing and tattooing prohibited. 1. No person shall pierce or cause to have pierced a companion animal unless such piercing provides a medical benefit to the companion animal. Such

piercing shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian. Nothing in this section shall be construed to apply to ear tags on rabbits and cavies.

2. No person shall tattoo or cause to have tattooed a companion animal unless such tattoo:

(a) is done in conjunction with a medical procedure for the benefit of the companion animal and to indicate that such medical procedure has been done, provided that such tattoo is not for design purposes; or

(b) is done for the purpose of identification of the companion animal and not for design purposes, and such tattoo includes only such numbers and/or letters allotted by a corporation that, in the regular course of its business, maintains an animal tattoo identification registry.

3. For the purposes of this section, "tattoo" shall mean a mark on the body made with indelible ink or pigments injected beneath the outer layer of the skin.

4. Tattooing done in conjunction with a medical procedure for the benefit of a companion animal that indicates that such medical procedure has been done shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian.

5. Any person who knowingly violates the provisions of this section shall be guilty of a violation punishable pursuant to the penal law.

§ 354. Sale of baby chicks and baby rabbits. 1. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits unless such person provides proper brooder facilities where appropriate for the care of such baby chicks, ducklings or other fowl or baby rabbits during the time they are in the possession of such person. For the purposes of this section, a baby rabbit shall be a rabbit of less than two months of age.

2. No person shall sell, offer for sale, barter or display living baby chicks, ducklings or other fowl or baby rabbits which have been dyed,

colored or otherwise treated so as to impart to them an artificial color.

2-a. No provision of subdivision two shall be interpreted or applied to prevent or restrict teachers and qualified instructors of youth under the guidance and supervision of the New York state cooperative extension service from using eggs for non-profit educational purposes or from observing fowl hatched from such eggs for non-profit educational purposes.

3. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits under two months of age in any quantity less than six.

4. A violation of the provisions of this section is a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

§ 355. Abandonment of animals. A person being the owner or possessor, or having charge or custody of an animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows such animal, if it become disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

§ 356. Failure to provide proper food and drink to impounded animal. A person who, having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both. In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive

hours, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined, and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

§ 357. Selling or offering to sell or exposing diseased animal. A person who wilfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars or by both.

§ 358. Selling disabled Equidae. It shall be unlawful for any person holding an auctioneer's license knowingly to receive or offer for sale or to sell at public auction, other than at a sheriff's or judicial sale under a court order, any Equidae which by reason of debility, disease or lameness, or for any other cause, could not be worked in this state without violating the law against cruelty to animals. A violation of this section shall be a misdemeanor punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

§ 358-a. Live animals as prizes prohibited. 1. For the purposes of this section "livestock" shall mean any domesticated sheep, goat, horse, cattle or swine.

2. No person shall give or offer to give away as a prize, or exchange or offer to exchange for nominal consideration, any live animal other than purebred livestock or fish in any game, drawing, contest, sweepstakes or other promotion, except when any live animal is given away by individuals or organizations operating in conjunction with a cooperative extension education program or agricultural vocational program sanctioned by the state education department.

3. The commissioner shall promulgate rules and regulations which provide guidelines, conditions and requirements when any live animal is given away under the exceptions provided for in subdivision two of this section.

4. Any person who violates the provisions of this section shall be subject to civil penalty of not more than two hundred fifty dollars or in lieu thereof shall be guilty of a violation punishable solely by a fine of not more than two hundred fifty dollars.

§ 359. Carrying animal in a cruel manner. 1. A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

2. A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-eight consecutive hours, or thirty-six consecutive hours where consent is given in the manner hereinafter provided, without unloading for rest, water and feeding, during five consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. The consent which will extend the period from twenty-eight to thirty-six hours shall be given by the owner, or by person in custody of a particular shipment, by a writing separate and apart from any printed bill of lading or other

railroad form. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed.

§ 359-a. Transportation of horses. 1. Every vehicle utilized for the transportation of more than six horses shall meet the following requirements:

a. The interiors of compartments containing horses shall be constructed of smooth materials, containing no sharp objects or protrusions which are hazardous;

b. The floors shall be of such construction or covered with abrasive material so as to prevent horses from skidding or sliding;

c. There shall be sufficient apertures to insure adequate ventilation;

d. There shall be sufficient insulation or coverings to maintain an adequate temperature in the compartment containing horses;

e. Partitions of sturdy construction shall be placed a maximum of ten feet apart in vehicles which do not have stalls;

f. Doorways shall be of sufficient height to allow safe ingress and egress of each horse contained in the compartment;

g. Each compartment containing horses shall be of such height so as to allow sufficient clearance above the poll and withers of each horse in the compartment;

h. Ramps sufficient for loading and unloading horses shall be provided if the vertical distance from the floor of the compartment containing horses to the ground is greater than fifteen inches; and

i. There shall be at least two doorways for ingress and egress, which shall not be on the same side.

2. Every vehicle utilized for the transportation of more than six horses over a highway shall have no more than one tier.

3. a. Transporting a horse in violation of this section shall be a violation punishable by a fine of not more than two hundred fifty dollars.

b. Any subsequent violation of this section on a date following a conviction under the provisions of this section shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

4. The commissioner shall promulgate rules and regulations, including size specifications, and establish guidelines in order to facilitate compliance with the provisions of this section.

5. a. The term "horse" as used throughout this section shall apply to the entire family of equidae.

b. The term "vehicle" as used throughout this section shall apply to every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

6. The court in which a conviction under the provisions of this section is obtained, shall, within thirty days of such conviction, transmit a copy of the record of conviction to the department which shall maintain a record of such conviction for the purpose of identifying subsequent violations of this section.

§ 360. Poisoning or attempting to poison animals. A person who unjustifiably administers any poisonous or noxious drug or substance to a horse, mule or domestic cattle or unjustifiably exposes any such drug or substance with intent that the same shall be taken by horse, mule or by domestic cattle, whether such horse, mule or domestic cattle be the

property of himself or another, is guilty of a felony. A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, other than a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal other than a horse, mule or domestic cattle, whether such animal be the property of himself or another, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

§ 361. Interference with or injury to certain domestic animals. A person who wilfully or unjustifiably interferes with, injures, destroys or tampers with or who willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse, mule, dog or any other domestic animal used for the purposes of racing, breeding or competitive exhibition of skill, breed or stamina, is interfered with, injured, destroyed or tampered with, or any act tending to produce such interference, injury, destruction or tampering, whether such horse, mule, dog or other domestic animal be the property of himself or another, is guilty of a felony.

§ 362. Throwing substance injurious to animals in public place. A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

§ 363. Unauthorized possession of dogs presumptive evidence of larceny. The unauthorized possession of a dog or dogs, by any person not the true owner, for a period exceeding ten days, without notifying either the owner, the local police authorities, or the superintendent of the state police at Albany, New York, of such possession, shall be presumptive evidence of larceny.

§ 364. Running horses on highway. A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes or permits them to run, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

§ 365. Clipping or cutting the ears of dogs. 1. Whoever clips or cuts off or causes or procures another to clip or cut off the whole or any part of an ear of any dog unless an anaesthetic shall have been given to the dog and the operation performed by a licensed veterinarian, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or a fine of not more than one thousand dollars, or by both.

2. The provisions of this section shall not apply to any dog or person who is the owner or possessor of any dog whose ear or a part thereof has been clipped or cut off prior to September first, nineteen hundred twenty-nine.

3. Each applicant for a dog license must state on such application whether any ear of the dog for which he applies for such license has been cut off wholly or in part.

4. Nothing herein contained shall be construed as preventing any dog whose ear or ears shall have been clipped or cut off wholly or in part, not in violation of this section, from being imported into the state exclusively for breeding purposes.

§ 366. Companion animal stealing. It shall be unlawful for any person:

1. To remove or cause to be removed the collar, identification tag or any other identification by which the owner may be ascertained from any dog, cat or any other companion animal as defined in subdivision five of section three hundred fifty of this chapter, or to entice any identified

dog, cat or other such companion animal into or out of any house or enclosure for the purpose of removing its collar, tag or any other identification, except with the owner's permission;

2. To entice, seize or molest any companion animal, while it is being held or led by any person or while it is properly muzzled or wearing a collar with an identification tag attached, except where such action is incidental to the enforcement of some law or regulation;

3. To transport any companion animal, not lawfully in his possession, for the purpose of killing or selling such companion animal.

Any person violating any of the provisions of this section, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not to exceed six months, or by both.

§ 366-a. Removing, seizing or transporting dogs for research purposes. It shall be unlawful for any person:

1. To remove, seize or transport or cause to remove, seize or transport any dog which belongs to or is licensed to another for the purpose of sale, barter or to give away said dog to a laboratory, hospital, research institute, medical school or any agency or organization engaged in research activity, without the express written permission of the owner or licensee.

2. Any person who violates the provision of this section, upon conviction thereof, shall be guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or by both.

§ 367. Leaving state to avoid provisions of this article. A person who leaves this state with intent to elude any of the provisions of this article or to commit any act out of this state which is prohibited by

them or who, being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state.

§ 368. Operating upon tails of horses unlawful. 1. Any person who cuts the bone, tissues, muscles or tendons of the tail of any horse, mare or gelding, or otherwise operates upon it in any manner for the purpose or with the effect of docking, setting, or otherwise altering the natural carriage of the tail, or who knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or who assists in or is voluntarily present at such cutting, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars or by both. If a horse is found with the bone, tissues, muscles or tendons of its tail cut as aforesaid and with the wound resulting therefrom unhealed, upon the premises or in the charge and custody of any person, such fact shall be prima facie evidence of a violation of this section by the owner or user of such premises or the person having such charge or custody, respectively.

2. Any person who shows or exhibits at any horse show or other like exhibition in this state a horse, mare or gelding, the tail of which has been cut or operated upon in the manner referred to in section one hereof, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both; provided that the provisions of this section shall not apply with respect to an animal the tail of which has been so cut or operated upon, if the owner thereof furnishes to the manager or other official having charge of the horse show or exhibition at which such animal is shown or exhibited an affidavit by the owner, or a licensed veterinarian, in a form approved by the state department of agriculture and markets, stating either that the tail of such horse was so cut prior to June first, nineteen hundred sixty-four, or that it was so cut in a state wherein such cutting was not then specifically prohibited by the laws thereof. Said affidavit shall, to the best of affiant's knowledge,

information and belief, identify the animal with respect to sex, age, markings, sire and dam, and state either that the cutting was done prior to June first, nineteen hundred sixty-four, or the time and place of such cutting and the name and address of the person by whom performed. The affidavit shall be subject to inspection at all reasonable times by any peace officer, acting pursuant to his special duties, or police officer of this state, or by a designated representative of the commissioner. In lieu of furnishing such affidavit to the manager or other official having charge of such horse show or exhibition, the owner of such horse may specify on the entry blank for the horse show or exhibition the name and address of a central registry office designated by the state department of agriculture and markets where such an affidavit has already been filed and is available for inspection.

§ 369. Interference with officers. Any person who shall interfere with or obstruct any constable or police officer or any officer or agent of any duly incorporated society for the prevention of cruelty to animals in the discharge of his duty to enforce the laws relating to animals shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

§ 370. Protection of the public from attack by wild animals and reptiles. Any person owning, possessing or harboring a wild animal or reptile capable of inflicting bodily harm upon a human being, who shall fail to exercise due care in safeguarding the public from attack by such wild animal or reptile, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both. "Wild animal" within the meaning of this section, shall not include a dog or cat or other domestic animal.

Previous attacks upon a human being by such wild animal or reptile, or knowledge of the vicious propensities of such wild animal or reptile, on the part of the possessor or harborer thereof, shall not be required to be proven by the people upon a prosecution hereunder; and neither the

fact that such wild animal or reptile has not previously attacked a human being, nor lack of knowledge of the vicious propensities of such wild animal or reptile on the part of the owner, possessor or harborer thereof shall constitute a defense to a prosecution hereunder.

§ 371. Powers of peace officers. A constable or police officer must, and any agent or officer of any duly incorporated society for the prevention of cruelty to animals may issue an appearance ticket pursuant to section 150.20 of the criminal procedure law, summon or arrest, and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of article twenty-six of the agriculture and markets law. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in presenting the law and facts before such court, tribunal or magistrate in any proceeding taken.

§ 372. Issuance of warrants upon complaint. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.

§ 373. Seizure of animals lost, strayed, homeless, abandoned or improperly confined or kept. 1. Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any

duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place.

1-a. Any police officer in Lewis county may lawfully take possession of any lost, strayed, homeless or abandoned domestic animal, as defined in section one hundred eight of this chapter, found in any street, road or other public place.

2. Any such police officer or agent or officer may also lawfully take possession of any animal in or upon any premises other than a street, road or other public place, which for more than twelve successive hours has been confined or kept in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings or not properly cared for or without necessary sustenance, food or drink, provided that a complaint stating just and reasonable grounds is made under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, and that such warrant authorizing entry and search is issued and delivered by such magistrate; if just and reasonable cause is shown, the magistrate shall immediately issue such warrant.

3. Any such police officer or agent or officer may also lawfully take possession of any unwanted animal from the person in possession or custody thereof.

4. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place or custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

5. Nothing herein contained shall restrict the rights and powers derived from section one hundred seventeen of this chapter relating to

seizure of unlicensed dogs and the disposition to be made of animals so seized or taken, nor those derived from any other general or special law relating to the seizure or other taking of dogs and other animals by a society for the prevention of cruelty to animals.

6. a. If any animal is seized and impounded pursuant to the provisions of this section, section three hundred fifty-three-d of this article or section three hundred seventy-five of this article for any violation of this article, upon arraignment of charges, or within a reasonable time thereafter, the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, hereinafter referred to for the purposes of this section as the "impounding organization", may file a petition with the court in which criminal charges have been filed requesting that the person from whom an animal is seized or the owner of the animal be ordered to post a security. The district attorney prosecuting the charges may file and obtain the requested relief on behalf of the impounding organization if requested to do so by the impounding organization. The security shall be in an amount sufficient to secure payment for all reasonable expenses expected to be incurred by the impounding organization in caring and providing for the animal pending disposition of the charges. Reasonable expenses shall include, but not be limited to, estimated medical care and boarding of the animal for at least thirty days. The amount of the security, if any, shall be determined by the court after taking into consideration all of the facts and circumstances of the case including, but not limited to the recommendation of the impounding organization having custody and care of the seized animal and the cost of caring for the animal. If a security has been posted in accordance with this section, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized animal.

b. (1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney if the district attorney has not filed the

petition on behalf of the petitioner. The petitioner shall also serve a true copy of the petition on any interested person. For purposes of this subdivision, interested person shall mean an individual, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity who the court determines may have a pecuniary interest in the animal which is the subject of the petition. The petitioner or the district attorney acting on behalf of the petitioner, shall have the burden of proving by a preponderance of the evidence that the person from whom the animal was seized violated a provision of this article. The court may waive for good cause shown the posting of security.

(2) If the court orders the posting of a security, the security shall be posted with the clerk of the court within five business days of the hearing provided for in subparagraph one of this paragraph. The court may order the immediate forfeiture of the seized animal to the impounding organization if the person ordered to post the security fails to do so. Any animal forfeited shall be made available for adoption or euthanized subject to subdivision seven-a of section one hundred seventeen of this chapter or section three hundred seventy-four of this article.

(3) In the case of an animal other than a companion animal or pet, if a person ordered to post security fails to do so, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four, three hundred fifty-seven and three hundred seventy-four of this article, order the animal which was the basis of the order to be sold, provided that all interested persons shall first be provided the opportunity to redeem their interest in the animal and to purchase the interest of the person ordered to post security, subject to such conditions as the court deems appropriate to assure proper care and treatment of the animal. The court may reimburse the person ordered to post security and any interested persons any money earned by the sale of the animal less any costs including, but not limited to, veterinary and custodial care. Any animal determined by the court to be maimed, diseased, disabled or infirm so as to be unfit for sale or any useful purpose shall be forfeited to a duly incorporated

society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and be available for adoption or shall be euthanized subject to section three hundred seventy-four of this article.

(4) Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in the animal or in the proceeds from the sale of such animal.

c. In no event shall the security prevent the impounding organization having custody and care of the animal from disposing of the animal pursuant to section three hundred seventy-four of this article prior to the expiration of the thirty day period covered by the security if the court makes a determination of the charges against the person from whom the animal was seized prior thereto. Upon receipt of a petition from the impounding organization, the court may order the person from whom the animal was seized or the owner of the animal to post an additional security with the clerk of the court to secure payment of reasonable expenses for an additional period of time pending a determination by the court of the charges against the person from whom the animal was seized. The person who posted the security shall be entitled to a refund of the security in whole or part for any expenses not incurred by such impounding organization upon adjudication of the charges. The person who posted the security shall be entitled to a full refund of the security, including reimbursement by the impounding organization of any amount allowed by the court to be expended, and the return of the animal seized and impounded upon acquittal or dismissal of the charges, except where the dismissal is based upon an adjournment in contemplation of dismissal pursuant to section 215.30 of the criminal procedure law. The court order directing such refund and reimbursement shall provide for payment to be made within a reasonable time from the acquittal or dismissal of charges.

7. Notwithstanding any other provision of this section to the contrary, the court may order a person charged with any violation of this article to provide necessary food, water, shelter and care for any

animal which is the basis of the charge, without the removal of the animal from its existing location, until the charges against the person are adjudicated. Until a final determination of the charges is made, any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, may be authorized by an order of the court to make regular visits to where the animal is being kept to ascertain if the animal is receiving necessary food, water, shelter and care. Nothing shall prevent any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, from applying for a warrant pursuant to this section to seize any animal being held by the person charged pending the adjudication of the charges if it is determined that the animal is not receiving the necessary food, water, shelter or care.

§ 374. Humane destruction or other disposition of animals lost, strayed, homeless, abandoned or improperly confined or kept. 1. Any agent or officer of any duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, any dog control officer, or any police officer, may lawfully cause to be humanely destroyed (by means provided for in paragraph a of subdivision three of this section) any animal found abandoned and not properly cared for, or any lost, strayed, homeless or unwanted animal, if upon examination a licensed veterinarian shall certify in writing, or if two reputable citizens called upon by such agent, officer or police officer to view the same in his or her presence find that the animal is so maimed, diseased, disabled, or infirm so as to be unfit for any useful purpose and that humane euthanasia is warranted; or after such agent, officer or police officer has obtained in writing from the owner of such animal his or her consent to such destruction.

2. In the absence of such findings or certification, a duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, or any pound maintained by or under contract or agreement with any county, city, town or village may after five days make available for adoption or have humanely destroyed in

accordance with the provisions of this section and subject to subdivisions six, eight and nine of section one hundred seventeen of this chapter, any animal of which possession is taken as provided for in the preceding section, unless the same is earlier redeemed by its owner. Notwithstanding the redemption periods set forth above in this subdivision, any municipality may establish the duration of such periods by local law or ordinance for any cat whose owner cannot be identified by a collar, tag, microchip, tattoo or other identifying mark, provided that no such period shall be less than three days, and provided further that such cat be made available solely for the purposes of adoption and released to an adoptive owner following an examination by a duly-licensed veterinarian, the details of which shall be provided to the adoptive owner.

3. a. Except as provided in subdivision four of this section, euthanasia of animals pursuant to this section shall be accomplished solely by means of injection of sodium pentobarbital or sodium pentobarbital solution administered by a certified euthanasia technician, a licensed veterinarian or a licensed veterinary technician. Euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution shall be performed only upon animals that are heavily sedated, anesthetized, or comatose. However, only a licensed veterinarian may perform euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution upon animals that are not heavily sedated, anesthetized or comatose and only when such licensed veterinarian determines that such intracardiac injection is the most humane option available. Whenever a cardiac injection of sodium pentobarbital or sodium pentobarbital solution is administered by a licensed veterinarian upon an animal that is not heavily sedated, anesthetized or comatose, such veterinarian must document, in writing, the administration of such injection and the reason for its administration. Such documentation shall be retained for at least three years. Under no circumstances shall intracardiac injection be performed on animals that are not heavily sedated, anesthetized or comatose where such animals are under the care of any duly incorporated society for the prevention of cruelty to animals, animal shelter, humane society or pound.

b. No animal shall be left unattended between the time that the euthanasia procedure begins and the time when death is confirmed. The body of a euthanized animal shall not be disposed of in any manner until death is confirmed by a licensed veterinarian, a certified euthanasia technician or a licensed veterinary technician. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars.

The department of health shall promulgate regulations deemed necessary for implementation of the provisions of this subdivision, including regulations governing the training and certification of certified euthanasia technicians.

4. a. Any method of euthanasia other than that provided for in subdivision three of this section is prohibited except that euthanasia of an animal by gunshot is permissible as an emergency measure for an animal that is posing an imminent threat of serious physical injury to a person or to another animal as provided in section one hundred twenty-one-a of this chapter and where the use of a humane method of euthanasia prescribed in this section is rendered impossible or where a severely injured animal is suffering and cannot otherwise be aided.

b. Within ninety days of the effective date of this subdivision, any chamber used to induce hypoxia by means of a lethal gas shall be dismantled, rendered inoperable and beyond repair, and removed from the premises. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars.

5. No person shall release any dog or cat from the custody or control of any pound, shelter, society for the prevention of cruelty to animals, humane society, dog protective association, dog control officer, peace officer or any agent thereof, for any purpose except adoption or redemption by its owner, provided, however, that after the time for redemption has expired, release may be made to another such pound, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated animal protective

association for the sole purpose of placing such animal in an adoptive home when such action is reasonably believed to improve the opportunity for adoption. Notwithstanding the penalties set forth in paragraph b of subdivision three of this section and paragraph b of subdivision four of this section, any violation of this subdivision, subdivision two, three or four of this section, shall constitute a misdemeanor and shall be punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

6. In lieu of such destruction, redemption or other disposition pursuant to this section, such pound, shelter, or society may in its discretion lawfully and without liability deliver such animal for adoption to an individual other than the owner after the time for redemption has expired.

7. Prior to such destruction or other disposition, the owner of the animal may redeem the same upon proving title to the satisfaction of such society and paying such society such amount, approved by a magistrate, as may have been reasonably expended by such society in connection with the care and maintenance thereof.

8. a. In addition to any other penalty provided by law, upon conviction for any violation of section three hundred fifty-one, three hundred fifty-three, three hundred fifty-three-a, three hundred fifty-three-b, three hundred fifty-five, three hundred fifty-six, three hundred fifty-nine, three hundred sixty, three hundred sixty-one, three hundred sixty-five or three hundred sixty-eight of this article, the convicted person may, after a duly held hearing pursuant to paragraph f of this subdivision, be ordered by the court to forfeit, to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, the animal or animals which are the basis of the conviction. Upon such an order of forfeiture, the convicted person shall be deemed to have relinquished all rights to the animals which are the basis of the conviction, except those granted in paragraph d of this subdivision.

b. Pursuant to the provisions of subdivisions two, three, four and

five of this section, no animal in the custody of a duly incorporated society for the prevention of cruelty to animals, a duly incorporated humane society, duly incorporated animal protective association, pound or its authorized agents thereof, shall be sold, transferred or otherwise made available to any person for the purpose of research, experimentation or testing. No authorized agent of a duly incorporated society for the prevention of cruelty to animals, nor of a duly incorporated humane society, duly incorporated animal protective association or pound shall use any animal placed in its custody by the duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society for the purpose of research, experimentation or testing.

c. The court may additionally order that the convicted person or any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, shall not own, harbor, or have custody or control of any other animals, other than farm animals, for a period of time which the court deems reasonable.

d. In the case of farm animals, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four and three hundred fifty-seven of this article, order the farm animals which were the basis of the conviction to be sold. In no case shall farm animals which are the basis of the conviction be redeemed by the convicted person who is the subject of the order of forfeiture or by any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act. The court shall reimburse the convicted person and any duly determined interested persons, pursuant to paragraph f of this subdivision, any money earned by the sale of the farm animals less any costs including, but not limited to, veterinary and custodial care, and any fines or penalties imposed by the court. The court may order that the subject animals be provided with appropriate care and treatment pending the hearing and the

disposition of the charges. Any farm animal ordered forfeited but not sold shall be remanded to the custody and charge of a duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society or its authorized agent thereof and disposed of pursuant to paragraph e of this subdivision.

e. A duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society in charge of animals forfeited pursuant to paragraph a of this subdivision may, in its discretion, lawfully and without liability, adopt them to individuals other than the convicted person or person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely dispose of them according to the provisions of subdivisions two, three, four and five of this section.

f. (1) Prior to an order of forfeiture of farm animals, a hearing shall be held within thirty days of conviction, to determine the pecuniary interests of any other person in the farm animals which were the basis of the conviction. Written notice shall be served at least five days prior to the hearing upon all interested persons. In addition, notice shall be made by publication in a local newspaper at least seven days prior to the hearing. For the purposes of this subdivision, interested persons shall mean any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity who the court determines may have a pecuniary interest in the farm animals which are the subject of the forfeiture action.

(2) All interested persons shall be provided an opportunity at the hearing to redeem their interest as determined by the court in the subject farm animals and to purchase the interest of the convicted person. The convicted person shall be entitled to be reimbursed his interest in the farm animals, less any costs, fines or penalties imposed by the court, as specified under paragraph d of this subdivision. In no case shall the court award custody or control of the animals to any interested person who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act.

g. Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any farm animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in farm animals or in the proceeds from the sale of such farm animals.

§ 375. Officer may take possession of animals or implements used in fights among animals. Any officer authorized by law to make arrests may lawfully take possession of any animals, or implements, or other property used or employed, or about to be used or employed, in the violation of any provision of law relating to fights among animals. He shall state to the person in charge thereof, at the time of such taking, his name and residence, and also, the time and place at which the application provided for by the next section will be made.

§ 376. Disposition of animals or implements used in fights among animals. The officer, after taking possession of such animals, or implements, or other property, pursuant to the preceding section, shall apply to the magistrate before whom complaint is made against the offender violating such provision of law, for the order next hereinafter mentioned, and shall make and file an affidavit with such magistrate, stating therein the name of the offender charged in such complaint, the time, place and description of the animals, implements or other property so taken, together with the name of the party who claims the same, if known, and that the affiant has reason to believe and does believe, stating the grounds of such belief, that the same were used or employed, or were about to be used or employed, in such violation, and will establish the truth thereof upon the trial of such offender. He shall then deliver such animals, implements, or other property, to such magistrate, who shall thereupon, by order in writing, place the same in the custody of an officer or other proper person in such order named and designated, to be by him kept until the trial or final discharge of the offender, and shall send a copy of such order, without delay, to the

district attorney of the county. The officer or person so named and designated in such order, shall immediately thereupon assume such custody, and shall retain the same for the purpose of evidence upon such trial, subject to the order of the court before which such offender may be required to appear, until his final discharge or conviction. Upon the conviction of such offender, the animals, implements, or other property, shall be adjudged by the court to be forfeited. In the event of the acquittal or final discharge, without conviction, of such offender, such court shall, on demand, direct the delivery of the property so held in custody to the owner thereof.

§ 377. Disposal of dead animals. (1) The carcasses of large domestic animals, including but not limited to horses, cows, sheep, swine, goats and mules, which have died otherwise than by slaughter, shall be buried at least three feet below the surface of the ground or otherwise disposed of in a sanitary manner by the owner of such animals, whether the carcasses are located on the premises of such owner or elsewhere. Such disposal shall be completed within seventy-two hours after the owner is directed to do so by any peace officer, acting pursuant to his special duties, police officer, or by a designated representative of the commissioner.

(2) Notwithstanding section forty-one of this chapter, any violation of this section shall constitute a violation. This section shall not apply to animal carcasses used for experimental or teaching purposes.

§ 377-a. Spaying and neutering of dogs and cats. 1. The legislature finds that the uncontrolled breeding of dogs and cats in the state results in an overabundance of puppies and kittens. More puppies and kittens are produced than responsible homes for them can be provided. This leads to many of such animals becoming stray and suffering privation and death, being impounded and destroyed at great expense to the community and constituting a public nuisance and health hazard. It is therefore declared to be the public policy of New York state that every feasible humane means of reducing the production of unwanted puppies and kittens be encouraged.

2. No animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals shall release any dog or cat for adoption to any person unless prior thereto:

(a) the dog or cat has been spayed or neutered; or

(b) the person intending to adopt the dog or cat shall have executed a written agreement with the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals, to have the dog or cat spayed or neutered within thirty days from the adoption date, or in the case of a dog or cat which has not yet reached sexual maturity, within thirty days of the dog or cat reaching six months of age. The person intending to adopt the dog or cat shall deposit with the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals, an amount of not less than thirty-five dollars. Not more than every two years, the commissioner, after holding a public hearing, may raise the amount to be deposited to reflect rising costs; or

(c) the person intending to adopt the dog or cat shall have executed a written agreement with the animal shelter, pound, dog control officer, humane society, dog or cat protective association or society for the prevention of cruelty to animals to have the dog or cat spayed or neutered within thirty days from the adoption date, or in the case of a dog or cat which has not yet reached sexual maturity, within thirty days of the dog or cat reaching six months of age. The person intending to adopt the dog or cat shall have paid an adoption fee which includes the cost of the spay or neuter procedure. The written agreement shall require that the animal shelter, pound, dog control officer, humane society, dog or cat protective association or society for the prevention of cruelty to animals from which the dog or cat is adopted bear the cost of the spay or neuter procedure.

3. For the purposes of this section, the age of the animal at the time of adoption shall be determined by the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals that

releases the animal for adoption and such age shall be clearly written on the written agreement by the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals, prior to the agreement being executed by the person adopting the animal.

4. Any deposit collected pursuant to paragraph (b) of subdivision two of this section that is not claimed within ninety days of its collection, or if the deposit is for an animal under six months of age, within sixty days after the animal has reached six months of age, shall be deposited in the animal population control fund established pursuant to section ninety-seven-xx of the state finance law.

Deposits collected pursuant to paragraph (b) of subdivision two of this section shall be refunded to the adopter upon presentation to the animal shelter, pound, dog control officer, humane society, dog and cat protective association, or duly incorporated society for the prevention of cruelty to animals of written documentation from a licensed veterinarian that the dog or cat has been spayed or neutered, provided that the animal has been spayed or neutered within the time specified in the written agreement, or that because of old age or other health reasons, as certified by a licensed veterinarian examining the dog or cat, spaying or neutering would endanger the animal's life.

5. Nothing contained in this section shall prevent any town, city, village or county in New York state from enacting a local law or ordinance requiring that animal shelters, pounds, dog control officers, humane societies, dog or cat protective associations and duly incorporated societies for the prevention of cruelty to animals within such town, city, village or county spay or neuter dogs and cats prior to releasing such animals for adoption, provided that such local law or ordinance may require spaying or neutering at an age earlier, but in no event later than that required in this section, except where because of advanced age or other health reasons, as certified by a licensed veterinarian who has examined the dog or cat, spaying or neutering would endanger the life of the animal. A town, city, village or county in New York state that enacts such a local law or ordinance shall be exempt

from the provisions of this section.

§ 378. Unlawful tampering with animal research. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Infectious agents" shall be limited to those organisms that cause serious physical injury or death to humans.

(b) "Animal" means any warm or cold-blooded animal or insect which is being used in food or fiber production, agriculture, research, testing, or education, however, shall not include any animal held primarily as a pet.

(c) "Facility" means any building, structure, laboratory, vehicle, pasture, paddock, pond, impoundment or premises where any scientific research, test, experiment, production, education, or investigation involving the use of any animal is carried out, conducted or attempted or where records or documents relating to an animal or animal research, tests, experiments, production, education or investigation are maintained.

(d) "Release" means to intentionally set free from any facility any animal without any right, title, or claim thereto.

(e) "Abandonment" means the intentional relinquishment or forsaking of possession or control of any animal released from a facility.

(f) "Person" means any individual, firm, organization, partnership, association or corporation.

(g) "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof which is stored, tested, studied or examined in any facility, and which is not, and not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.

(h) "Notice" means to provide information in such detail to make a

reasonable person aware of the presence in a facility of infectious agents or secret scientific material.

2. Notice. Any person who, after notice has been given by:

(a) actual notice in writing or orally to the person; or

(b) prominently posting written notice upon or immediately adjacent to the facility; or

(c) notice that is announced upon entry to the facility by any person:

(i) knowingly or intentionally releases an animal from a facility or causes the abandonment of an animal knowing that such animal was exposed to infectious agents prior to such release or abandonment and was capable of transmitting such infectious agents to humans; or

(ii) with intent to do so, causes loss or damage to secret scientific material, and having no right to do so nor any reasonable ground to believe that he has such right, causes loss of or damage to any secret scientific material in an amount in excess of two hundred fifty dollars at a facility, shall be guilty of unlawful tampering with animal research. Unlawful tampering with animal research is a class E felony punishable in accordance with the penal law.

3. Private right of action. Any person who violates any provision of this section shall be liable in any court of competent jurisdiction, including small claims court, in an amount equal to:

(a) Damages sustained as a result of such violation or fifty dollars, whichever is greater, for each violation;

(b) Such additional punitive damages as the court may allow;

(c) Attorney's fees and costs; and

(d) Cost of duplicating any experiment which was damaged by the unlawful tampering with animal research, if applicable.

In any action brought by any person to enforce this section, the court may, subject to its jurisdiction, issue an injunction to restrain or prevent any violation of this section or any continuance of any such violation.

§ 379. Prohibition of the selling of fur, hair, skin or flesh of a dog

or cat. 1. It shall be unlawful for any person, firm, partnership or corporation to knowingly import, sell, offer for sale, manufacture, distribute, transport or otherwise market or trade in the fur, hair, skin or flesh of a domesticated dog (canis familiaris) or domesticated cat (felis catus or domesticus), whether domestically raised or imported from another country, or any product or item containing or comprised of the fur, hair, skin or flesh of a dog or cat. As used in this section the term "domesticated dog or cat" shall not mean or include coyote (ranis latrans), fox (vulpes volpes, vulpes cinereoargenteus), lynx (felis lynx) or bobcat (felis rufus).

2. Manufacturers or suppliers shall provide certification to each retailer that any fur, hair, skin or flesh contained in such items is not derived from domesticated dog or domesticated cat.

3. The commissioner shall establish a standard for the certification required by the provisions of subdivision two of this section on the effective date of this section.

4. A violation of this section shall be punishable by a civil penalty of up to one thousand dollars for an individual and up to five thousand dollars for a corporation for the first violation. Any subsequent violation shall be punishable by a civil penalty of up to twenty-five thousand dollars.

5. Any civil penalties collected pursuant to this section of law are payable to the animal population control fund established pursuant to section ninety-seven-xx of the state finance law.

6. (a) No provision of this section shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations involving the use of dog or cat fur or flesh, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of this article.

(b) No provision of this section shall be construed to prohibit any person, firm, partnership or corporation from importing, selling,

offering for sale, manufacturing, distributing, transporting, or otherwise marketing or trading in the fur, hair, skin, or flesh of a domesticated dog or cat for the purposes of conducting scientific tests, experiments or investigations that are to be performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of this article.

§ 380. Use of elephants in entertainment acts. 1. No person shall use or cause to be used elephants in any type of entertainment act.

2. Any person that violates the provisions of this section, or any rule or regulation promulgated pursuant thereto, may be assessed, by the commissioner, a civil penalty not to exceed one thousand dollars for each such violation.

3. The provisions of this section shall not apply to:

(a) institutions accredited by the Association of Zoos and Aquariums; and

(b) wildlife sanctuaries as defined in subdivision thirty-two of section 11-0103 of the environmental conservation law.

4. As used in this section:

(a) "Elephant" means the three species of the family Elephantidae:

(i) Loxodonta africana and Loxodonta cyclotis, also known as the African elephant; and

(ii) Elephas maximus, also known as the Asian elephant or Indian elephant.

(b) "Entertainment act" means any exhibition, act, circus, trade show, carnival, ride, parade, race, performance or similar undertaking which is primarily undertaken for the entertainment or amusement of a live audience.

(c) "Person" means an individual, partnership, limited liability company, corporation, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative of any such entity.

§ 381. Prohibition of the declawing of cats. 1. No person shall perform an onychectomy (declawing), partial or complete phalangectomy or tendonectomy procedure by any means on a cat within the state of New York, except when necessary for a therapeutic purpose. Therapeutic purpose means the necessity to address the physical medical condition of the cat, such as an existing or recurring illness, infection, disease, injury or abnormal condition in the claw that compromises the cat's health. Therapeutic purpose does not include cosmetic or aesthetic reasons or reasons of convenience in keeping or handling the cat.

2. Any person who performs an onychectomy, partial or complete phalangectomy or tendonectomy procedure on any cat within the state of New York in violation of the provisions of subdivision one of this section shall be punishable by a civil penalty not to exceed one thousand dollars.

§ 382. Prohibition of the slaughter of race horses and race horse breeding stock. 1. Notwithstanding any other provision of law, it shall be unlawful for any person, corporation, association, or other entity to slaughter or have another person, corporation, association, or other entity slaughter a horse for a commercial purpose that such person, corporation, association or other entity knows to have been a race horse or race horse breeding stock.

2. Notwithstanding any other provision of law, it shall be unlawful for any person, corporation, association, or other entity who owns or is in the process of taking ownership of a race horse or race horse breeding stock to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, or receive, or direct another person to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, or receive a horse that such person, corporation, association or other entity knows to be a race horse or race horse breeding stock with the intent of slaughtering or having another person, corporation, association, or other entity

slaughter such race horse or race horse breeding stock.

3. For the purposes of this section:

(a) "race horse" shall mean:

(i) a thoroughbred horse which meets or ever met the standards to be eligible to race at any track licensed to operate pursuant to article two of the racing, pari-mutuel wagering and breeding law; or

(ii) a standardbred horse which meets or ever met the standards to be eligible to race at any track licensed to operate pursuant to article three of the racing, pari-mutuel wagering and breeding law;

(b) "race horse breeding stock" shall mean: any mare or stallion used, or intended to ever be used, to produce a foal that is intended to be used as a race horse as defined in this subdivision, as well as the foal bred by such a mare or stallion.

(c) "slaughter" shall mean the intentional killing, or having another kill, a race horse or race horse breeding stock, if that person knows that the purpose of such killing is using any part of such race horse or race horse breeding stock for human or animal consumption. Nothing herein shall prohibit a person from lawful disposition of a deceased race horse or race horse breeding stock or any part of such horse or stock.

4. (a) A violation of this section is a misdemeanor punishable by a fine of not more than one thousand dollars per each race horse or race horse breeding stock for an individual person and up to two thousand five hundred dollars per each race horse or race horse breeding stock for a corporation, association or other entity, for the first violation. Any subsequent violation shall be punishable by a fine of up to two thousand dollars per each race horse or race horse breeding stock for an individual person and up to five thousand dollars per each race horse or race horse breeding stock for a corporation, association, or other entity.

(b) A violation of this section will subject any New York state gaming commission license to the provisions of section two hundred twenty or three hundred nine of the racing, pari-mutuel wagering and breeding law.

5. (a) Any and all fines collected pursuant to a violation involving a

thoroughbred horse shall be remitted to the New York state thoroughbred breeding and development fund established pursuant to section two hundred fifty-two of the racing, pari-mutuel wagering and breeding law, and shall be deposited by that fund into a dedicated account to be spent by the fund solely for the purpose of the care of retired race horses, consistent with paragraph h of subdivision two of section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law.

(b) Any and all fines collected pursuant to a violation involving a standardbred horse or race horse breeding stock shall be remitted to the agriculture and New York state horse breeding development fund established pursuant to section three hundred thirty of the racing, pari-mutuel wagering and breeding law, and shall be deposited by that fund into a dedicated account, to be spent by the fund solely for the purpose of the care of retired race horses, consistent with paragraph j of subdivision one of section three hundred thirty-two of the racing, pari-mutuel wagering and breeding law.

6. Notwithstanding any other provision of law, each and every owner of a race horse that has competed in New York state on or after January first, two thousand twenty-two, or any other horse used for breeding purposes in New York state on or after January first, two thousand twenty-two, shall not be liable for any violation of this section with respect to such horse if such owner can demonstrate that there is proper documentation of a transfer of ownership to a party with no financial or familial relationship to the owner.

7. Legal liability under this section for any race horse shall be limited to the last individual or corporation in the chain of ownership of said horse, as determined by notice to the breed registry as referenced in section two hundred twenty-five of the racing, pari-mutuel wagering and breeding law for that breed or other documentation of ownership. Further, the purchaser or seller of any registered race horse sold by a New York state resident or corporation who is a member of such registry shall be required to provide notification of said sale to the relevant breed registry in order to document ownership and protect previous owners from liability under this section.

8. The commissioner shall develop a program, in cooperation with the gaming commission, New York state thoroughbred breeding and development fund, and the agriculture and New York state horse breeding development fund to disseminate information about the provisions of this section to horse owners, sellers, buyers and transporters including, but not limited to farmers, recreational horse businesses, livestock and horse dealers, horse rescue and aftercare organizations, renderers, animal food producers, and any other organizations or businesses potentially impacted by this section.

9. All corporations, associations, or other entities offering for sale or purchase, thoroughbred or standardbred horses, including livestock auction houses must have signage conspicuously posted, which shall reference that it is illegal to sell or transfer a thoroughbred or standardbred race horse or breeding stock for the purposes of slaughter and explicitly state the penalties associated with the violation of this section. Such signage shall also reference that it is illegal to sell or transfer a horse to be slaughtered for the purpose of human or animal consumption and explicitly state the penalties associated with the violation of section three hundred eighty-five of this article. Such signage shall occur no later than ninety days after the effective date of this subdivision.

§ 383. Examination of seized animals or animals taken possession of. 1. Consistent with the provisions of section one hundred seventeen of this chapter and sections three hundred seventy-three and three hundred seventy-four of this article, no later than twenty-four hours, or as soon as practicable, after a companion animal that is a dog or a cat has been seized or taken possession of, except for such animals that have been surrendered by the owner, by any dog control officer, animal control officer or peace officer acting pursuant to his or her special duties, or police officer in the employ of or under contract with a municipality, or any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, pound or shelter that is operated by or under contract to a municipality, such officer, society, pound or shelter shall take steps to:

(a) Check such animal for all forms of identification, including, but not limited to, tags, microchips, tattoos or licenses; and

(b) If practicable and if the necessary technology and equipment are available, for the purposes of this paragraph, make available to the public on the internet on a website or social media maintained by or otherwise made available to such officer, society, pound or shelter by the municipal or county government in which such officer, society, pound or shelter is located, a photograph, and a general description of the animal to assist the owner or owners in finding the animal, including the breed or breeds, if known. Information about the animal may be withheld if deemed appropriate to facilitate finding the owner or otherwise protect the safety of the animal. The notice required by this paragraph may be made by means other than the internet if use of the internet is impracticable.

2. No later than twenty-four hours or as soon as practicable after the seizure or taking possession of such animal potentially identifiable by a form of identification, including a license, tag, tattoo or microchip, or records or reports that are readily available of animals reported to be lost, reasonable efforts shall be made to identify and provide actual notice to the owner of the animal by any means reasonably calculated to provide actual notice to the owner.

§ 384. Special provisions related to the importation of dogs and cats into the state for sale, resale or adoption. 1. Any dog or cat imported into this state for the purposes of sale, resale or adoption shall be held by the consignee for a period of not less than forty-eight hours. Such dog or cat shall be vaccinated in accordance with section twenty-one hundred forty-one of the public health law and part sixty-five of the commissioner's rules and regulations.

2. If, during the holding period prescribed in subdivision one of this section, any dog or cat imported into the state for sale, resale or adoption exhibits signs of infectious, contagious, parasitic or communicable disease, including but not limited to coughing, sneezing, vomiting, diarrhea or bloody stool, such dog or cat must be isolated and

examined by a duly licensed attending veterinarian immediately. Any dogs or cats that have been deemed exposed to such dog or cat must be quarantined, if necessary, under the direction of such attending veterinarian and held until such attending veterinarian declares them to be free of disease.

3. Any dog or cat passing through the state to points beyond, or brought into the state for temporary residence for purposes of exhibition, or which enters the state for delivery to research institutions, for fifteen days or fewer, shall be exempt from the provisions of this section, provided that such dog or cat is at all times properly restrained and under the immediate control of the owner or custodian, and that such dog or cat that is in the state for more than fifteen days is accompanied with proof of proper immunization against rabies. It shall be an affirmative defense to the offense of failure to have accompanied proof of proper immunization against rabies of such dog or cat, upon the presentation of proof that such dog or cat had in fact been immunized against rabies at the time of the infraction.

4. Violation of any provision of this section shall be a civil offense, for which a penalty of not less than one hundred dollars and not more than one thousand dollars for each violation shall be imposed. Any person licensed pursuant to article twenty-six-A or twenty-six-C of this chapter who violates any provision of this section may be subject to denial, revocation, suspension, or refusal of renewal of his or her license in accordance with the provisions of section four hundred twenty-one of this chapter.

§ 385. Prohibition of slaughtering horses for human or animal consumption. 1. Notwithstanding any other provision of law, it shall be unlawful for any person, corporation, association, or other entity to slaughter or have another person, corporation, association, or other entity slaughter a horse if any part of such horse will be used for human or animal consumption.

2. Notwithstanding any other provision of law, it shall be unlawful

for any person, corporation, association, or other entity who owns or is in the process of taking ownership of a horse to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, receive, give away, hold, or accept, or direct another person to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, receive, give away, hold, or accept a horse, with the intent of slaughtering or having another person, corporation, association, or other entity slaughter such horse for the purpose of human or animal consumption.

3. Notwithstanding any other provision of law, it shall be unlawful for any person, corporation, association, or other entity who owns or is in the process of taking ownership of horseflesh to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, receive, give away, hold, or accept, or direct another person to import, export, sell, offer to sell or barter, transfer, purchase, possess, transport, deliver, receive, give away, hold, or accept horseflesh, with the intent of slaughtering or having another person, corporation, association, or other entity slaughter such horse for the purpose of human or animal consumption.

4. For the purposes of this section:

(a) The term "horseflesh" shall mean the flesh of a dead horse, including the animal's viscera, skin, hide, hooves, and bones; and

(b) The term "slaughter" shall mean the intentional killing, or having another kill a horse if such person knows that the purpose of such killing is using any part of such horse for human or animal consumption.

5. A violation of this section is a misdemeanor punishable by a fine of not more than one thousand dollars per horse for an individual person, and up to two thousand five hundred dollars per horse for a corporation, association, or other entity, for the first violation. Any subsequent violation shall be punishable by a fine of up to two thousand dollars per horse for an individual person, and up to five thousand dollars per horse for a corporation, association, or other entity.

6. The provisions of this section shall be in addition to, and not in

lieu of, any other laws protecting animal welfare. This section shall not be construed to limit any state law or rules protecting the welfare of animals or to prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations. Nothing in this section shall prohibit a person from otherwise lawful disposition of a deceased horse or any part of such horse.

7. If any provision of this section, or the application thereof to any person or circumstances, is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section that can be given effect without the invalid or unconstitutional provision or application, and to such end the provisions of this section shall be severable.

§ 386. Requirements for live auctions. The department shall make a good faith effort to have an agent present at each livestock auction where horses are being sold. Such agent shall be charged with the review of all health certificates for all thoroughbred and standardbred horses sold.

ARTICLE 26-A
CARE OF ANIMALS BY PET DEALERS

Section 400. Definitions.
401. Minimum standards of animal care.
402. Records of purchase and sale.
403. Licenses.
404. License refusal, suspension, or revocation.
405. Inspection of pet dealers.
406. Violations.
407. Construction with other laws.

§ 400. Definitions. As used in this article:

1. "Animal" means a dog or a cat.

2. "Consumer" means any individual purchasing an animal from a pet dealer. A pet dealer shall not be considered a consumer.

3. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.

4. "Pet Dealer" means any person who engages in the sale or offering for sale of more than nine animals per year for profit to the public. Such definition shall include breeders who sell or offer to sell animals; provided that it shall not include the following:

(a) Any breeder who sells or offers to sell directly to the consumer fewer than twenty-five animals per year that are born and raised on the breeder's residential premises;

(b) Any municipal pound or shelter dedicated to the care of unwanted animals which makes such animals available for adoption whether or not a fee for such adoption is charged, established and maintained pursuant to subdivision one of section one hundred fourteen of this chapter, and that is duly licensed as an animal shelter pursuant to article twenty-six-C of this chapter;

(c) Any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization dedicated to the care of unwanted animals which makes such animals available for adoption whether or not a fee for such adoption is charged that is exempt from taxes pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that is duly licensed as an animal shelter pursuant to article twenty-six-C of this chapter; and

(d) Any public authority providing shelter services for the care of unwanted animals.

(e) Any retail pet shop as defined in subdivision eight of section seven hundred fifty-two of the general business law.

§ 401. Minimum standards of animal care. Pet dealers shall comply with the following minimum standards of care for every animal in their custody or possession.

1. Housing. (a) Animals shall be housed in primary enclosures or cages, which shall be constructed so as to be structurally sound. Such enclosures shall be maintained in good repair to contain the animal housed inside and protect it from injury. Surfaces shall have an impervious surface so as not to permit the absorption of fluids and which can be thoroughly and repeatedly cleaned and disinfected without retaining odors.

(b) Primary enclosures or cages housing the animals shall provide sufficient space to allow each animal adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around, and lie down with its limbs outstretched. If the flooring is constructed of metal strands, such strands must either be greater than one-eighth inch in diameter (nine gauge wire) or shall be coated with a material such as plastic or fiberglass, and shall be constructed so as not to allow passage of the animal's feet through any opening in the floor of the enclosure. Such flooring shall not sag or bend substantially between structural supports.

(c) Housing facilities shall be adequately ventilated at all times to provide for the health and well-being of the animal. Ventilation shall be provided by natural or mechanical means, such as windows, vents, fans, or air conditioners. Ventilation shall be established to minimize drafts, odors, and moisture condensation.

(d) The temperature surrounding the animal shall be compatible with the health and well-being of the animal. Temperature shall be regulated by heating and cooling to sufficiently protect each animal from extremes of temperature and shall not be permitted to fall below or rise above ranges which would pose a health hazard to the animal. This shall include supplying shade from sunlight by natural or artificial means.

(e) The indoor facilities housing the animals shall be provided with adequate lighting sufficient to permit routine inspection and cleaning and be arranged so that each animal is protected from excessive illumination which poses a health hazard to the animal. Animal areas must be provided with regular diurnal light cycles of either natural or

artificial light.

(f) The indoor and outdoor facilities housing the animals, including the primary enclosure or cage, shall be designed to allow for the efficient elimination of animal waste and water in order to keep the animal dry and prevent the animal from coming into contact with these substances. If drains are used they shall be constructed in a manner to minimize foul odors and backup of sewage. If a drainage system is used it shall comply with federal, state, and local laws relating to pollution control.

(g) In the event that a pet dealer has a pregnant or nursing dog on his or her premises, the pet dealer shall provide a whelping box for such dog. Separate and apart from the whelping box, a pet dealer shall provide a pregnant or nursing dog with a separate space accessible to her that complies with the standards set forth in paragraph (b) of this subdivision. Each nursing dog shall be provided with a sufficient amount of floor space to nurse and care for her litter.

(h) Pet dealers shall designate and provide an isolation area for animals that exhibit symptoms of contagious disease or illness. The location of such designated area must be such as to prevent or reduce the spread of disease to healthy animals and must otherwise meet all housing requirements of this section.

2. Sanitation. Housing facilities, including primary enclosures and cages, shall be kept in a clean condition in order to maintain a healthy environment for the animal. This shall include removing and destroying any agents injurious to the health of the animal and periodic cleanings. Primary enclosures must be cleaned daily and sanitized at least once every two weeks by washing all soiled surfaces with appropriate detergent solutions and disinfectant or by using a combination detergent or disinfectant product that accomplishes the same purpose with a thorough cleaning of the surfaces to remove excreta, feces, hair, dirt, debris and food waste to permit effective sanitization, followed by a clean water rinse. The primary enclosure or cage shall be constructed so as to eliminate excess water, excretions, and waste material. Under no circumstances shall the animal remain inside the primary enclosure or cage while it is being cleaned with sterilizing agents or agents toxic to animals or cleaned in a manner likely to threaten the health and

safety of the animal. Trash and waste products on the premises shall be properly contained and disposed of so as to minimize the risks of disease, contamination, and vermin.

3. Feeding and watering. (a) Animals shall be provided with wholesome and palatable food, free from contamination and of nutritional value sufficient to maintain each animal in good health.

(b) Animals shall be adequately fed at intervals not to exceed twelve hours or at least twice in any twenty-four hour period in quantities appropriate for the animal species and age, unless determined otherwise by and under the direction of a duly licensed veterinarian.

(c) Sanitary food receptacles shall be provided in sufficient number, of adequate size, and so located as to enable each animal in the primary enclosure or cage to be supplied with an adequate amount of food.

(d) Animals shall be provided with regular access to clean, fresh water, supplied in a sanitary manner sufficient for its needs, except when there are instructions from a duly licensed veterinarian to withhold water for medical reasons.

4. Handling. Each animal shall be handled in a humane manner so as not to cause the animal physical injury or harm.

5. Veterinary care. (a) Any pet dealer duly licensed pursuant to this article shall designate an attending veterinarian, who shall provide veterinary care to the dealer's animals which shall include a written program of veterinary care and regular visits to the pet dealer's premises. Such program of veterinary care shall include:

(i) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this article;

(ii) The use of methods determined to be appropriate by the attending veterinarian to prevent, control, and respond to diseases and injuries, and the availability of emergency, weekend, and holiday care;

(iii) Daily observation of all animals to assess their health and well-being; provided, however, that daily observation of animals may be accomplished by someone other than the attending veterinarian who has received the guidance identified in subparagraph (iv) of this paragraph; and provided, further, that a mechanism of direct and frequent

communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(iv) Adequate guidance to personnel involved in the care and use of animals regarding handling and immobilization;

(v) Pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures; and

(vi) In the case of dealers who sell or offer to sell twenty-five or more dogs or cats per year to the public for profit that are born and raised on the dealer's residential premises, annual veterinary examinations, at a minimum, for all intact adult dogs or cats on such dealer's premises.

(b) All animals shall be inoculated as required by state or local law. Veterinary care appropriate to the species shall be provided without undue delay when necessary. Each animal shall be observed each day by the pet dealer or by a person working under the pet dealer's supervision.

(c) Within five business days of receipt, but prior to sale of any dog or cat, the pet dealer shall have a duly licensed veterinarian conduct an examination and tests appropriate to the age and breed to determine if the animal has any medical conditions apparent at the time of the examination that adversely affect the health of the animal. For animals eighteen months of age or older, such examination shall include a diagnosis of any congenital conditions that adversely affect the health of the animal. Any animal diagnosed with a contagious disease shall be treated and caged separately from healthy animals.

(d) If an animal suffers from a congenital or hereditary condition, disease, or illness which, in the professional opinion of the pet dealer's veterinarian, requires euthanasia, the veterinarian shall humanely euthanize such animal without undue delay.

(e) In the event an animal is returned to a pet dealer due to a congenital or hereditary condition, illness, or disease requiring veterinary care, the pet dealer shall, without undue delay, provide the animal with proper veterinary care.

6. Humane euthanasia. Humane euthanasia of an animal shall be carried out in accordance with section three hundred seventy-four of this

chapter.

7. Exercise requirements. Pet dealers shall develop, maintain, document, and implement an appropriate plan to provide dogs with the opportunity for daily exercise. In developing such plan, consideration should be given to providing positive physical contact with humans that encourages exercise through play or other similar activities. Such plan shall be approved by the attending veterinarian, and must be made available to the department upon request.

8. Grooming. All animals shall be groomed regularly to prevent excessive matting of fur, overgrown toenails and flea and tick infestation.

§ 402. Records of purchase and sale. Each pet dealer shall keep and maintain records for each animal purchased, acquired, held, sold, or otherwise disposed of. The records shall include the following:

1. The name and address of the person from whom each animal was acquired. If the person from whom the animal was obtained is a dealer licensed by the United States department of agriculture, the person's name, address, and federal dealer identification number. If the person from whom the animal was obtained is a dealer licensed by the department, the person's name, address, and state dealer identification number. In the case of cats, if a cat is placed in the custody or possession of the pet dealer and the source of origin is unknown, the pet dealer shall state the source of origin as unknown, accompanied by the date, time, and location of receipt. Notwithstanding the provisions of this subdivision, no pet dealer shall knowingly buy, sell, exhibit, transport, or offer for sale, exhibition, or transportation any stolen animal. No pet dealer shall knowingly sell any cat or dog younger than eight weeks of age.

2. The original source of each animal if different than the person recorded in subdivision one of this section.

3. The date each animal was acquired.

4. A description of each animal showing age, color, markings, sex, breed, and any inoculation, worming, or other veterinary treatment or medication information available. Records shall also include any other significant identification, if known, for each animal, including any official tag number, tattoo, or implant.

5. The name and address of the person to whom any animal is sold, given, or bartered or to whom it is otherwise transferred or delivered. The records shall indicate the date and method of disposition.

6. Records for each animal shall be maintained for a period of two years from the date of sale or transfer, whichever occurs later. During normal business hours, the records shall be made available to persons authorized by law to enforce the provisions of this article.

§ 403. Licenses. 1. No person shall operate as a pet dealer unless such person holds a license issued therefor by the commissioner. Notwithstanding the foregoing, a pet dealer, in operation on or before the effective date of this section, who has filed an application for an initial license under this article shall be authorized to operate without such license until the commissioner grants or, after notice and opportunity to be heard, declines to grant such license. Each application for a license shall be made on a form supplied by the department and shall contain such information as may be required by the department. Renewal applications shall be submitted to the commissioner at least thirty days prior to the commencement of the next license year.

2. The commissioner may delegate his or her authority pursuant to this section to issue pet dealer licenses to the county or city where the pet dealer seeking licensure is located. Such delegation shall be pursuant to an agreement entered into by the commissioner and such city or county.

3. Each application for a license shall be accompanied by a

nonrefundable fee of one hundred fifty dollars.

4. The moneys received by the commissioner pursuant to this section shall be deposited in the "pet dealer licensing fund" established pursuant to section ninety-seven-rr of the state finance law.

5. Where the authority to issue pet dealer licenses is delegated to the county or city pursuant to subdivision two of this section, that county or city shall, on or before the fifth day of each month, remit to the appropriate municipal financial officer one hundred percent of all license fees collected during the preceding month. The remittance shall be accompanied by a report of license sales made during such month. A copy of such report shall simultaneously be sent to the commissioner. All license fees so remitted shall be the property of the municipality, and shall be used solely for the purpose of carrying out and enforcing the provisions of this article and of article thirty-five-D of the general business law.

6. Inspection in accordance with section four hundred five of this article, the results of which establish compliance with the provisions of this article and with the provisions of article thirty-five-D of the general business law regarding recordkeeping and consumer disclosure requirements for pet dealers, shall precede issuance of a license or renewal thereof under this section.

7. Upon validation by the commissioner or the county or city authorized under this section to issue pet dealer licenses, the application shall become the license of the pet dealer.

8. The commissioner shall provide a copy of the license to the pet dealer. The commissioner shall also retain a copy of the license. In those counties where the commissioner has delegated the licensing authority to the county or city that county or city shall, provide a copy of the license to the pet dealer and a copy to the commissioner. The county or city shall also retain a copy of the license in its own records.

9. No pet dealer shall publish or advertise the sale or availability of any dog or cat unless the publication or advertisement is accompanied by the pet dealer's license number. Notwithstanding the foregoing, a pet dealer, in operation on or before the effective date of this section, who has filed an application for an initial license under this article may publish or advertise the sale or availability of any dog or cat without the publication or advertisement being accompanied by the pet dealer's license number until the commissioner grants or, after notice and opportunity to be heard, declines to grant such license.

10. Such license shall be renewable annually, together with the payment of a nonrefundable fee of one hundred dollars, or upon payment of a nonrefundable fee of twenty-five dollars for those pet dealers who engage in the sale of less than twenty-five animals in a year.

11. Pet dealers shall conspicuously display their license on the premises where the animals are kept for sale so that they may be readily seen by potential consumers.

§ 404. License refusal, suspension, or revocation. The commissioner may decline to grant or renew or may suspend or revoke a pet dealer license, on any one of the following grounds:

1. Material misstatement in the license application.

2. Material misstatement in or falsification of records required to be kept pursuant to this article, or under any regulation promulgated thereunder, or failure to allow the commissioner or his or her authorized agents to inspect records or pet dealer facilities.

3. Violation of any provision of this article or conviction of a violation of any provision of article twenty-six of this chapter or regulations promulgated thereunder pertaining to humane treatment of animals, cruelty to animals, endangering the life or health of an animal, or violation of any federal, state, or local law pertaining to the care, treatment, sale, possession, or handling of animals or any

regulation or rule promulgated pursuant thereto relating to the endangerment of the life or health of an animal.

4. Before any license shall be suspended or revoked, the commissioner, or any hearing officer he or she may designate, shall hold a hearing, upon due notice to the licensee, in accordance with any regulations promulgated by the department and in accordance with articles three and four of the state administrative procedure act. Where a licensee has three consecutive inspections in which the licensee has failed to correct deficiencies of a critical nature, pursuant to this section, the commissioner shall hold a hearing to consider the suspension or revocation of the pet dealer license. Nothing in this section shall prohibit the commissioner from taking additional actions as otherwise permitted by this section regarding such licenses prior to the occurrence of three consecutive inspections in which the licensee has failed to correct deficiencies of a critical nature.

5. Any action of the commissioner shall be subject to judicial review in a proceeding under article seventy-eight of the civil practice law and rules.

§ 405. Inspection of pet dealers. 1. The commissioner or his or her authorized agents shall, at a minimum, make yearly inspections of pet dealers' facilities to ensure compliance with the provisions of this article and with the provisions of article thirty-five-D of the general business law, except for those pet dealers who engage in the sale of less than twenty-five animals in a year, in which case inspections shall be made whenever in the discretion of the commissioner or his or her authorized agents, a complaint warrants such investigation.

2. The commissioner may, pursuant to an agreement entered into with a county or city delegate the authority to conduct inspections of pet dealers and to respond to complaints concerning pet dealers to such county or city where the pet dealer is located; provided however such delegation of inspection authority shall only be permitted where the commissioner has delegated his or her authority to issue licenses

pursuant to section four hundred three of this article.

3. Any person conducting an inspection of a pet dealer or responding to a complaint concerning a pet dealer shall be specifically trained in the proper care of cats and dogs and in the investigation and identification of cruelty to animals.

§ 406. Violations. 1. In addition to the penalties provided for elsewhere in this section, a pet dealer who violates any provisions of this article may be subject to denial, revocation, suspension, or refusal of renewal of his or her license in accordance with the provisions of section four hundred four of this article.

2. Violation of any provision of this article, is a civil offense, for which a penalty of not less than one hundred dollars and not more than one thousand dollars for each violation may be imposed.

3. The provisions of this article may be enforced concurrently by the department and by the county or city to which the commissioner has delegated his or her licensing and inspection authority pursuant to section four hundred three and four hundred five of this article, and all moneys collected thereunder shall be retained by such municipality or local government.

§ 407. Construction with other laws. Nothing in this article shall be construed to (a) limit or restrict agents or officers of societies for the prevention of cruelty to animals or the police from enforcing other provisions of article twenty-six of this chapter or any other law relating to the humane treatment of, or cruelty to, animals, (b) limit or restrict any municipality from enacting or enforcing any authorized local law, rule, regulation or ordinance of general application to businesses governing public health, safety or the rights of consumers, or (c) limit or restrict any municipality from enacting or enforcing a local law, rule, regulation or ordinance governing pet dealers, as such term is defined in this article, including a law, rule, regulation or

ordinance governing the health or safety of animals acquired or maintained by pet dealers, the source of animals sold or offered for sale by pet dealers, and the spay or neuter of such animals; provided, however, that any such local law, rule, regulation or ordinance shall be no less stringent than the applicable provisions of this article and may not result in essentially banning all sales of dogs or cats raised and maintained in a healthy and safe manner. Where any penalty may be authorized for the violation of such a local law, rule, regulation or ordinance, the authorized penalty in such local law, rule, regulation or ordinance may not exceed a civil penalty of up to five hundred dollars. Where a municipality adopts such a local law, rule, regulation or ordinance that is more stringent than the applicable provisions of this article, such municipality shall have sole responsibility for enforcement of such law, rule, regulation or ordinance that is more stringent than the applicable provisions of this article.

ARTICLE 26-B
EMERGENCY RESPONSE SERVICES FOR ANIMALS

Section 410. Establishment of animal response teams.
411. Agreements with animal welfare organizations for assistance in emergencies and disasters.

§ 410. Establishment of animal response teams. 1. The commissioner is hereby authorized to establish state and county animal response teams to support the prevention of, preparedness for, response to, and recovery from emergencies and disasters affecting animals in New York state. The commissioner may appoint qualified volunteers to such teams which may include appropriate state agency and specialty personnel and such other personnel and volunteers he or she deems appropriate. For purposes of this section, "qualified volunteer" shall mean a person who does not receive compensation for his or her services, who is an active member of an animal response team and has either been activated by directive of the commissioner or is acting in an official capacity of the animal response team pursuant to guidelines from the commissioner.

2. The commissioner shall be responsible for training such teams established pursuant to this section to ensure response during emergencies and disasters.

3. Individuals appointed to an animal response team shall be deemed volunteer state employees for purposes of section seventeen of the public officers law and section three of the workers' compensation law.

4. The commissioner shall promulgate rules and regulations relating to the formation, training, appointing and activation of state and county animal response teams established pursuant to this article, and is authorized to solicit and accept funds from any public or private source to help carry out the provisions of this article. Provided, however, that the commissioner shall consult with state and local emergency personnel relative to the activation of such animal response teams.

§ 411. Agreements with animal welfare organizations for assistance in emergencies and disasters. The commissioner is hereby authorized to enter into agreements with animal welfare organizations at no direct cost to the state to support the prevention of, preparedness for, response to, and recovery from emergencies and disasters affecting animals in New York state.

ARTICLE 26-C
REGULATION OF ANIMAL SHELTERS

Section 420. Definitions.
421. License required and inspection of facilities.
422. Personnel training requirements.
423. Recordkeeping and protocols.
424. General facility standards.
425. Animal housing.
426. Sanitation.
427. Shelter management protocols.
428. Animal husbandry.
429. Veterinary care.

430. Behavior.
431. Transportation.
432. Foster care provider requirements.
433. Violations.
434. Waiving of requirements authorized.

§ 420. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Adoption" means the transfer of legal ownership to and possession by any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog or cat, owned by the animal shelter regardless of whether a fee is involved.

2. "Adult" shall mean cats and dogs five months of age and older, for the purposes of determining appropriate housing within an animal shelter.

3. "Animal" shall mean a dog or cat as defined in this section, but shall not be construed to diminish or restrict the mission of any animal shelter defined in this section or other entity duly incorporated pursuant to section fourteen hundred three of the not-for-profit corporation law solely to the care of dogs or cats.

4. "Air handling system" shall mean the device or equipment used to regulate, circulate, exchange, heat, and/or cool the air inside a building.

5. "Ambient temperature" shall mean the temperature of the environment inside a room or building.

6. "Animal shelter" shall mean a public or not-for-profit entity owning, operating, or otherwise maintaining a building, structure, or facility where temporary or permanent housing and care is provided to stray, abandoned, abused, seized, impounded, owner-surrendered or otherwise unwanted animals regardless of whether or not such facility

also serves as a personal residence. This includes but is not limited to: facilities owned, operated, or maintained by a duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society dog or cat protective association, or pound; any person in the employ of, or organization operated by or under contract to a municipality to provide care for seized or impounded animals; or any other not-for-profit organization involved in the protection, care, or rehoming of animals. Unless otherwise provided in this article, the term "animal shelter" shall not include the personal residence of any foster care provider as defined in this section; a facility commonly known as a boarding kennel, where the ownership of the animal is not transferred; any entity licensed as a pet dealer pursuant to article twenty-six-A of this chapter; any duly incorporated animal hospital owned, operated or supervised by a duly licensed veterinarian; or any facility where the owner or operator is licensed by the New York state department of environmental conservation as a nuisance wildlife control agent or wildlife rehabilitator.

7. "Aseptic" shall mean procedures or techniques performed in a manner sufficient to exclude harmful bacteria, viruses, or other microorganisms.

8. "Behavioral evaluation" shall mean an ordered series of interactions with an animal to determine their behavioral response to various stimuli likely to be encountered in a typical home environment.

9. "Cat" shall mean any member of the species Felis catus, regardless of age, sex, breed, ownership status or behavior around humans.

10. "Chemical capture" shall mean the use of drugs administered to an animal by a remote delivery system in order to immobilize it for the purposes of capture.

11. "Cleaning" shall mean the physical removal of debris and organic material from an environment.

12. "Conspecific" shall mean another member of the same species.

13. "Control pole" shall mean a restraint device consisting of a rigid metal pole with an adjustable wire noose used for handling and restraint of dogs, also commonly referred to as a catch pole or rabies pole.

14. "Death", for the purposes of describing the disposition of an animal, shall mean those animals who die but are not euthanized, regardless of cause.

15. "Disinfection" shall mean the process where microorganisms are killed or inactivated, typically through the application of a chemical or by some physical process (e.g. steam, heat, etc).

16. "Dog" shall mean any member of the species Canis lupis familiaris, regardless of age, sex, breed, ownership status, or behavior around humans.

17. "Drop boxes" shall mean unattended enclosures at an animal shelter that are accessible to the public and used to contain animals brought to the animal shelter outside of regular business hours.

18. "Enclosure" shall be defined as an area of confinement used for housing a single animal or group of animals housed together. An enclosure may be a cage, run, kennel, room, or other such confining area.

19. "Enriched" shall mean environment that reduces stress and promotes the physical health and behavioral well-being of an animal.

20. "Enrichment" shall mean a process for improving the environment and behavioral care of confined animals in order to reduce stress and improve well-being. Enrichment shall include, but not be limited to, providing physical and mental stimulation, encouraging species-typical behaviors, and modifying the animal's housing environment.

21. "Foster care provider" shall mean any individual voluntarily providing temporary care for one or more animals in their home that

remain in the custody and under the responsibility of an animal shelter.

22. "Infectious disease" shall mean a disease or condition caused by bacteria, viruses, fungi or parasites that can be transmitted, directly or indirectly, from one animal or individual to another.

23. "Intracardiac" shall mean an injection made directly into one of the chambers of the heart.

24. "Intrahepatic" shall mean an injection made into the liver.

25. "Intrarenal" shall mean an injection made into the kidney.

26. "Intrasplenic" shall mean an injection made into the spleen.

27. "Juvenile" shall mean any cat or dog between two and five months of age for the purposes of determining appropriate housing within an animal shelter.

28. "Loss" for the purposes of describing the disposition of an animal, shall mean those animals who escape or go missing while in the care of an animal shelter.

29. "Long-term stay" shall mean any duration of care in an animal shelter of fourteen days or longer.

30. "Neonate" shall mean any cat or dog less than two months of age, for the purposes of determining appropriate housing within an animal shelter.

31. "Pathogen" shall mean a biologic organism capable of causing disease in an animal, such as a bacteria, virus, or fungus.

32. "Primary enclosure" shall mean the area of confinement used for housing an animal and where the animal spends the majority of its time in an animal shelter.

33. "Thermoregulation" shall mean the ability of an animal to maintain its internal body temperature within a normal physiologic range.

34. "Transport" shall mean the physical movement of an animal from one location to another, regardless of purpose and whether or not custody or responsibility for such animal changes as a result, when carried out by the shelter or an agent thereof.

35. "Transfer" shall mean the transfer of ownership and physical custody of an animal for an animal's care and well-being from an animal shelter to another organization as authorized pursuant to subdivision five of section three hundred seventy-four of this chapter.

36. "Unenveloped virus" shall mean those viruses without an outer lipid layer that are more difficult to inactivate through sanitation procedures. Unenveloped viruses of concern in an animal shelter environment include canine and feline parvoviruses, feline calicivirus, and canine adenovirus-2.

37. "Zoonotic" shall mean any disease that may be transmitted between humans and animals.

§ 421. License required and inspection of facilities. 1. Any person eligible for exemption from the definition of pet dealer pursuant to paragraphs (b) and (c) of subdivision four of section four hundred of this chapter shall be licensed by the department pursuant to the provisions of this section. Notwithstanding the foregoing, any person, operating an animal shelter on or before the effective date of this section, who has filed an application for an initial license under this article is hereby authorized to operate without such license until the commissioner grants or, after notice of an opportunity to be heard, declines to grant such license. Each application for license shall be made on a form supplied by the department and shall contain such information as required by the commissioner. Renewal applications shall be submitted to the commissioner at least thirty days prior to the commencement of the next license year.

2. Application for licensure as set forth in this section shall be made annually to the commissioner on a form prescribed by the commissioner. Such form shall include but not be limited to the following information, provided however that paragraphs (a), (b) and (c) of this subdivision shall not apply to municipal pounds or shelters as defined in paragraph (b) of subdivision four of section four hundred of this chapter:

(a) Proof of the applicant's tax exempt designation pursuant to paragraph 3 of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended;

(b) Proof of the applicant's incorporation as a not-for-profit organization in this state pursuant to the not-for-profit corporation law, provided further that such organization is in good standing with the attorney general and the department of state;

(c) Proof of the applicant's registration with the attorney general pursuant to article seven-A of the executive law;

(d) If the applicant is a municipal pound or shelter as defined in paragraph (b) of subdivision four of section four hundred of this chapter, a copy of the applicant's employer identification number;

(e) The name of the applicant and the name or names under which the applicant offers its services to the public, any name under which the applicant has offered such services to the public during the past five years, and whether the applicant has ever held a pet dealer license issued pursuant to article twenty-six-A of this chapter;

(f) The address and telephone number of the applicant and for any other premises owned or leased by such applicant's organization to carry out the purposes for which it was incorporated and by which it is eligible for a licensing exemption pursuant to paragraphs (b) and (c) of subdivision four of section four hundred of this chapter;

(g) The website and email address of the applicant;

(h) The number of animals taken in, adopted, placed into permanent or temporary homes, or otherwise transferred into, out of, or within the state by the applicant during the prior calendar year;

(i) The number of animals currently harbored by the applicant;

(j) The species of animal the applicant typically harbors for

adoption, placement or transfer;

(k) A description of facilities by which the applicant carries out the purposes for which it was incorporated, including a statement regarding whether the applicant harbors the animals in its care in its own physical animal shelter or utilizes foster care provider homes, commercial boarding kennels or other arrangements;

(l) A sworn statement, signed by the applicant, declaring an exemption from the definition of pet dealer pursuant to section four hundred of this chapter;

(m) Current training protocol and procedural practices as prescribed pursuant to sections four hundred twenty-two and four hundred twenty-three of this article; and

(n) Other information as deemed necessary to satisfy the commissioner of the applicant's character and responsibility.

3. The commissioner shall conduct an inspection of the applicant's facilities prior to the issuance of a license pursuant to this section, and annual inspections of the applicant's facilities licensed pursuant to this section prior to renewal of such license. The commissioner may periodically conduct unannounced inspections of such facilities, and whenever, in the discretion of the commissioner, a complaint warrants such investigation. Animal shelters licensed pursuant to this section shall provide open hours to the commissioner so that inspections can occur in a timely manner. Renewal of an animal shelter license shall not be granted until all outstanding violations issued pursuant to this article are corrected and any outstanding monetary penalties assessed pursuant to this article are paid in full.

4. Upon validation by the commissioner, the application shall become the license of the animal shelter and an exemption from the definition of pet dealer as defined in section four hundred of this chapter shall be granted. The commissioner shall retain a copy of such license and provide a copy of the license to the animal shelter. Animal shelters licensed pursuant to this section shall conspicuously display their license on the premises where its animals are harbored. The commissioner shall also provide the licensee with a pet dealer exemption identification number. The licensee's pet dealer exemption

identification number shall be prominently displayed on the licensee's websites and any publications or advertisements made available to the public.

5. Such license shall be renewable annually, upon the payment of a nonrefundable fee of one hundred fifty dollars.

6. The moneys received by the commissioner pursuant to this section shall be deposited in the "animal shelter regulation fund" established pursuant to section ninety-nine-pp of the state finance law.

7. The commissioner may decline to grant or renew, or may suspend or revoke an animal shelter license, on any one or more of the following grounds, provided that before any of the aforementioned actions are taken pursuant to this section, the commissioner shall hold a hearing, upon due notice to the licensee in accordance with any regulations promulgated by the department and in accordance with articles three and four of the state administrative procedure act, and provided further that any action of the commissioner is subject to judicial review in a proceeding under article seventy-eight of the civil practice law and rules:

(a) material misstatement in the license application;

(b) material misstatement in or falsification of records required to be kept pursuant to this article, or under any regulation promulgated thereunder, or failure to allow the commissioner to inspect records of animal shelter facilities;

(c) violation of any provision of this article or conviction of a violation of any provision of article twenty-six of this chapter or regulations promulgated thereunder pertaining to humane treatment of animals, cruelty to animals, endangering the life or health of an animal, or violation of any federal, state, or local law pertaining to the care, treatment, sale, possession, or handling of animals or any regulation or rule relating to the endangerment of the life or health of an animal;

(d) failure to comply with any of the provisions of this article or the licensing exemption requirements of section four hundred of this chapter; 1 NYCRR Part 65 regarding the importation of dogs and cats;

section twenty-one hundred forty-one of the public health law or any rule or regulation promulgated thereunder; or any rule or regulation promulgated by the commissioner following the effective date of this article to effectuate the purposes of this article;

(e) failure to renew a license within the period prescribed in subdivision one of this section; or

(f) the applicant or registrant was previously licensed as a pet dealer pursuant to article twenty-six-A of this chapter.

§ 422. Personnel training requirements. 1. Each animal shelter licensed pursuant to this article shall provide training to all staff members and volunteers having direct animal care responsibilities. Such training shall be provided within the first sixty days of employment and at least annually thereafter and shall be in addition to any and all training otherwise required by federal, state, or local law or regulation.

2. Acceptable training modalities shall include, but not be limited to, online webinars, on-site lectures or seminars, off-site conferences for animal shelter staff, or other formal training modalities as authorized by the commissioner.

3. Training topics shall include, but not be limited to, the following:

(a) humane handling techniques;

(b) infectious diseases commonly found in animal shelters;

(c) zoonotic diseases;

(d) animal cruelty;

(e) sanitation procedures;

(f) body language and normal behaviors for all species regularly handled; and

(g) required documentation and data entry.

4. Complete documentation of training sessions shall be maintained for a period of not less than three years from the date of training completion. Such documentation shall include, but not be limited to, the

following:

(a) the date of training delivery and the date of completion;

(b) the topic or topics of the training session; and

(c) the provider of the training and a list of training course attendees.

§ 423. Recordkeeping and protocols. 1. Each animal shelter shall examine an animal upon intake for unique identifiers and any other form of identification that may allow for reunification with an owner, as prescribed in sections one hundred seventeen and three hundred eighty-two of this chapter.

2. Each animal shelter shall create and maintain a record for each animal in their custody or possession which shall minimally include:

(a) Unique identifiers and any other identification associated with the animal upon examination at entry, including but not limited to a tattoo, a permanent official identification number as prescribed in section one hundred twelve of this chapter or other identification tags, rabies tags and numbers, or a microchip number, if present;

(b) The name, address and telephone number of the person surrendering an animal or from whom an animal is seized, and additional contact information as the commissioner may require, or the address or cross-streets and city, town, or village where the animal was located or found prior to intake, if known;

(c) The date of intake into and departure from the animal shelter;

(d) Whether the animal was adopted, transferred, redeemed by its owner, died or was humanely euthanized, and, if applicable, the name, address, and phone number of the receiving individual or agency;

(e) Basic descriptors including species, age, gender, physical description including color, and the spay or neuter status at entry if determinable with reasonable certainty;

(f) Any available behavioral or health history or information otherwise obtained at intake, including bite history and rabies vaccination status, when known; and

(g) All veterinary and behavioral examinations, treatments, procedures, or medications occurring during the animal's time under the

care of the shelter.

3. Notwithstanding any other provision of law or regulation to the contrary, records for each animal shall be maintained for not less than three years from the date of animal departure.

4. Previous bite history shall be fully disclosed in writing to an adopter, transfer partner, or reclaiming owner and provided in any reports regarding the animal, as applicable.

5. Nothing in this section shall preclude or otherwise supersede record disclosure requirements prescribed in section sixty-seven hundred fourteen of the education law, or any requirement regarding the creation, maintenance, or retention of veterinary medical records in state or federal law or veterinary practice guideline.

6. Each animal shelter shall maintain a record of its designated foster care providers that shall include the written agreement established between such animal shelter and such providers pursuant to section four hundred thirty-two of this article, each provider's name, address, telephone number, email address if available, types of animals for which the provider is willing to provide care, inspection reports, and current number of animals in the care of a designated foster care provider. Such records shall be updated immediately in the event any contact information for a given foster care provider changes.

7. Each animal shelter shall maintain summary records of their total annual animal intake and dispositions by species, by source of intake, and by type of disposition. Such records shall be made available to the commissioner upon request. The commissioner shall make such records available to the public upon request pursuant to article six of the public officers law.

8. Each animal shelter shall develop and maintain written protocols sufficiently detailed to achieve and maintain the standards prescribed in this section. These shall include, but not be limited to, the following:

(a) animal handling;
(b) behavioral assessment;
(c) enrichment and stress reduction;
(d) management of bite/scratch cases; and
(e) sanitation.

9. Each animal shelter shall also develop and maintain the following written protocols, approved by a duly licensed veterinarian and sufficiently detailed to achieve and maintain the standards prescribed in this article:
(a) nutrition and feeding;
(b) physical examination;
(c) emergency veterinary care;
(d) pain management;
(e) vaccinations;
(f) parasite control;
(g) anesthesia and surgery, if performed on-site by the organization;
(h) humane euthanasia; and
(i) outbreak management/control of infectious diseases.

10. Protocols established by each animal shelter pursuant to this section shall be reviewed annually and updated as necessary by designated administrative and managerial staff. Such protocols shall be made readily accessible to appropriate staff and volunteers.

§ 424. General facility standards. 1. All facilities and all interior components of each animal shelter shall be constructed of materials that ensure a sound physical structure, and shall be maintained so as to protect animals from injury, ensure containment of animals within the property, and restrict unauthorized entry of other animals and humans to the building.

2. Indoor building surfaces in direct contact with animals shall be constructed of materials that are non-porous, water resistant, non-toxic and able to withstand regular cleaning and disinfection. Adequate drainage shall prevent the accumulation of water or other liquids on

floors.

3. Electrical power and running water shall be maintained to all parts of the facility that house animals, with written emergency plans for back-up sources or relocation of the animals to a safe environment in the event of outages lasting more than four hours.

4. Readily accessible sinks shall be convenient to all animal care areas. Single service soap and towels or electric hand dryers shall be available at all hand-washing locations.

5. Ambient temperatures in all indoor animal housing areas shall be routinely maintained between sixty and eighty degrees fahrenheit.

6. Each animal shall be monitored and provided with an environment allowing maintenance of normal body temperature based on species, breed, body condition, medical condition, and age.

7. Each animal shelter shall document regular maintenance of air handling systems according to the manufacturer's recommendations.

8. Ammonia levels shall be kept at less than two parts per million.

9. Each animal shelter shall provide separate housing areas, segregated by species and from uninfected, unexposed animals, for the housing of any animal with an infectious disease that may be transmitted within the shelter environment and requiring isolation as determined by a licensed veterinarian. Doors separating such rooms from the remainder of the facility shall be kept closed.

10. Each animal shelter shall minimize continuous exposure of personnel and animals to sound levels exceeding eighty-five decibels. Active measures shall be taken and documented to minimize sound levels in housing areas. Such measures may include modified kennel design, relocation of particularly loud animals, or use of visual barriers, sound baffling, and behavioral enrichment protocols. Each animal shelter shall use a decibel-meter at a minimum of once weekly to measure the

level of sound in their kennels during cleaning and resting times. A record of such measurements and the date such measurements were recorded shall be maintained by each animal shelter.

11. Each animal shelter shall provide animal housing areas that provide adequate lighting and a means to maintain diurnal light cycles pursuant to an established schedule. All animals shall have a minimum of eight hours each of light and darkness within a twenty-four-hour cycle.

12. Each animal shelter shall establish and maintain a written plan for pest and vermin control including the following:

(a) Method of controlling rodent infestation that is effective and safe for both humans, and animals housed in the facility;

(b) A record or copies of service reports from outside service providers related to pest and vermin control that documents dates, methods, locations, and outcomes, if applicable; and

(c) Food stored in rodent proof containers to prevent spoilage, contamination, and infestation once opened, if packaging has been damaged, or as otherwise required by such plan.

13. The use of unattended drop boxes for intake of animals is prohibited.

§ 425. Animal housing. 1. Each licensed animal shelter shall provide each animal in its custody or possession with a suitable primary enclosure that meets the requirements prescribed in this section.

2. Unsupervised tethering for periods exceeding thirty minutes is prohibited.

3. Animal housing shall meet the following requirements:

(a) materials used in housing construction shall be non-porous, water-resistant, non-toxic, and able to withstand regular cleaning and disinfection;

(b) drainage shall prevent accumulation of water or other liquids on floors; and

(c) housing shall be structurally sound, in good repair and maintained in a safe, working condition to properly confine animals, prevent injury, keep animals safe from predation, keep other animals out, and allow animals to remain dry and clean.

4. Wire or slat-bottom cages are prohibited unless a solid tray is provided for the cage bottom to prevent injury to the animal.

5. Animal populations shall be segregated appropriately, in accordance with the following requirements:

(a) dogs and cats shall be housed in separate rooms with efforts made to minimize the exposure of cats to the barking of dogs to the extent practicable;

(b) animals of the same species shall be separated by age groups (e.g. neonates and juveniles; adults) except that nursing animals may be housed with their offspring;

(c) animals with known or suspected infectious diseases shall be housed in isolation areas as prescribed in subdivision nine of section four hundred twenty-four of this article;

(d) nothing in this subdivision shall be construed to prevent the temporary housing of animals in areas without such segregation for medical care and in pre- and post-operative surgical areas.

6. Well-socialized, healthy animals may be housed with one or more conspecifics. Animals housed together shall be compatible and have similar environmental requirements. Such housing shall not allow exposure to numerous different animals on a frequently changing basis.

7. Prior to being housed with one or more other animals the following conditions shall apply:

(a) all animals are vaccinated and dewormed against the pathogens specified in section four hundred twenty-nine of this article;

(b) physical examinations verifying the absence of clinical signs of infectious diseases have been performed;

(c) surgical sterilization or housing in same-sex groupings, except littermates under twelve weeks of age; and

(d) the animal has a collar or tag to facilitate visual

identification, unless the animal's age or condition is such that application of visual identification is not practicable or would be detrimental to the animal's health.

8. Animals that are poorly socialized, fearful, or aggressive towards other animals or that are ill, injured, or within a week of whelping or queening shall be housed individually in a suitably sized, enriched primary enclosure.

(a) Littermates under the age of twelve weeks may be co-housed in an isolation area if all individuals are infected with the same infectious, contagious, parasitic or communicable disease.

(b) Dogs and cats within a week of giving birth or until separation from the offspring shall be provided with a box with a solid floor large enough to allow the animal to lie fully stretched on its side, permitting all offspring to nurse and to accommodate all offspring until weaned; and an area large enough to allow the dam or queen to leave the whelping box.

9. Each enclosure shall clearly indicate the identities of all animals contained within, specifying each animal's unique identifier as required under section four hundred twenty-three of this article. Each animal shall also be individually identified.

10. All primary enclosures shall provide sufficient space to allow each animal, regardless of species, to:

(a) make all normal postural adjustments;

(b) fully stretch its body and have sufficient room to circle, lie down, and stand upright without the head or tail touching the sides of the enclosure even with the presence of water and food bowls, beds, litter boxes, and other normal cage objects; and

(c) allow animals to sit, sleep and eat away from areas of their enclosure where they defecate and urinate.

11. Any primary enclosure housing two or more animals shall provide the following:

(a) sufficient space and quality of environment to allow all animals to maintain social distances;

(b) adequate areas for hiding, resting, feeding, and elimination with sufficient space to separate areas and the ability for all animals to access those areas.

12. Regardless of the size of the primary enclosure, the number of animals cohoused in a primary enclosure at one time shall not exceed the following thresholds:

(a) twelve adult cats;

(b) two litters of kittens not to exceed ten kittens total;

(c) five adult dogs; or

(d) one litter of puppies.

13. Puppies and kittens less than sixteen weeks of age shall not be housed in the same enclosure with adults other than their dam or queen, or foster or surrogate dam or queen.

14. All animals housed with one or more conspecifics shall be separated for feeding or observed at feeding times for antagonistic interactions that pose a safety and welfare concern.

15. Animals shall not be housed outdoors for more than twelve hours within a twenty-four-hour period, with the exception of free-roaming cats under the care of the animal shelter.

16. Outdoor primary enclosures shall comply with all housing requirements prescribed in this section and shall provide the following:

(a) protection from the elements at all times;

(b) adequate drainage to prevent the accumulation of excess water in or around the enclosures;

(c) a moisture-proof, insulated shelter structure large enough to simultaneously accommodate all animals in the enclosure, unless immediate entry to an indoor portion of the enclosure is accessible;

(d) security from unauthorized entry of other animals into the enclosure;

(e) a separate, shaded area sufficient to simultaneously accommodate all animals, except when animals have immediate access to an indoor portion of the enclosure;

(f) clean dry bedding at all times and a heat source when the outdoor temperature falls below fifty degrees fahrenheit; and

(g) enclosures that allow outdoor access for cats shall be fully enclosed to prevent escape from the enclosure.

17. For any animal in the custody or possession of any animal shelter for fourteen days or longer, alternative housing shall be provided in one of the following formats:

(a) enriched cages at least twice the size otherwise required for an animal's size;

(b) foster care in a private home, office, or other suitable off-site location; or

(c) room housing.

§ 426. Sanitation. Any animal shelter licensed pursuant to this article shall establish and maintain sanitation protocols that include the following:

1. use of one or more agents that have cleaning and disinfectant properties that are effective under conditions present in a given environment and with demonstrated effectiveness against the pathogens for which animals are at risk;

2. removal of animals from enclosures and placement in another appropriate enclosure or separation from the area being cleaned or disinfected by a functional compartment door when water, cleaning, or disinfecting agents are sprayed in or near an animal's enclosure;

3. dedicated equipment for cleaning and disinfection for use in each separate area of the shelter designated as cat or dog isolation, holding, adoptions or other functionally separate areas within the facility;

4. cleaning and disinfecting in between each use of items and surfaces that come into contact with animals, including but not limited to food and water bowls, litter boxes and exam tables, or procedures to discard

and replace with new items for each animal;

5. cleaning and disinfecting all enclosures for temporary or permanent housing before a new animal enters such enclosure;

6. daily cleaning and at least once weekly disinfecting of enclosures that house the same animal or animals during a long-term stay;

7. cleaning and disinfecting enclosures when the enclosure becomes heavily soiled or otherwise contaminated or a new animal is added to the enclosure;

8. laundering of all animal bedding in a machine with detergent when soiled and thoroughly drying such bedding before reuse, or removing and disposing of such bedding appropriately;

9. cleaning of outdoor premises from clutter that may pose a safety concern and fecal material removed at least once daily;

10. appropriate use and disposal of protective garments worn during cleaning and intensive animal-handling activities within an animal shelter; and

11. proper hygiene of shelter staff, volunteers, and visitors, including signage, supervision, and hand sanitation.

§ 427. Shelter management protocols. 1. Each animal shelter shall have a clear, written, management structure that defines staff authority, reporting structure and responsibilities, and is readily accessible to all staff and volunteers.

2. Staffing shall be sufficient to allow adequate time, per animal, for cleaning and daily feeding, and to meet the minimum requirements for socialization and exercise of animals as prescribed in section four hundred thirty of this article.

3. The total number of animals housed in an animal shelter facility or foster home shall not exceed the number of housing units available at the facility as required by section four hundred twenty-five of this article; provided, however, that exceptions to the provisions of this subdivision shall be permissible for periods not to exceed forty-five contiguous days in the event of an animal seizure pursuant to article twenty-six of this chapter or a natural disaster where an official declaration of the disaster or emergency has been made.

4. All animals shall be observed daily by a manager or designee to identify each animal's needs for care, housing and service and to ensure that each animal has a plan to advance efficiently through the shelter.

§ 428. Animal husbandry. 1. (a) Each animal shelter shall provide each animal under its care with fresh, potable water at all times unless otherwise directed by a duly licensed veterinarian.

(b) Each animal shelter shall feed each animal under its care a complete and nutritionally balanced, species-specific and life-stage-appropriate diet as indicated by the animal's age, weight, and medical health, or as directed by a duly licensed veterinarian in accordance with the written protocols required by section four hundred twenty-three of this article.

(c) Food shall be provided at least once daily for adult animals, at least twice daily for animals less than six months of age, and at least three times daily for animals less than two months of age.

(d) Perishable animal food shall be refrigerated.

(e) Animal food and water containers shall be present in sufficient number and location to safely enable each animal in the enclosure to access an adequate supply of food and water. Food and water bowls shall be of the type that can be easily sanitized, be kept clean and shall be cleaned and disinfected prior to use by a different animal, unless disposable bowls are used and replaced between animals.

(f) Each animal shall be observed during or following each feeding time to ensure daily food intake, or at least once every twenty-four hours for animals continually offered food. Such observations shall be recorded.

2. (a) Humane and safe physical restraint to limit some or all normal voluntary movement of any animal in each animal shelter's care shall minimize fear, pain, stress and suffering for the animal, protect both the animal and personnel from harm, and be of the least intensity and duration required to allow the specific procedure or procedures to be performed properly.

(b) (i) Frightened or fractious animals may be appropriately tranquilized, under the orders and supervision of a duly licensed veterinarian, if they cannot be restrained safely and humanely.

(ii) No physical force shall be used as punishment or in anger.

(iii) Handling methods shall minimize the chance of escape and ensure the safety of both humans and animals.

(c) Restraint devices and handling techniques employed by each animal shelter shall be used in a manner that minimizes animal stress and risk of injury to both animals and personnel, in the event such devices and techniques are necessary for the safe handling of the animal.

(i) All equipment shall be maintained in good working order.

(ii) Cats shall not be restrained with control poles. Humane traps, cat boxes, nets, towels, or other equipment appropriate for handling fractious animals may be used. Squeeze cages, feral cat boxes, or humane traps with dividers shall be used for restraining cats and administering tranquilizers prior to handling.

§ 429. Veterinary care. 1. Prescription medications and treatments shall be administered by each animal shelter under the advisement of or in accordance with written protocols provided by a duly licensed veterinarian.

2. All drugs shall be documented and dispensed by each animal shelter in accordance with applicable local, state, and federal laws and regulations.

3. All incoming animals shall be assessed within two hours after intake by a trained animal shelter staff member to determine if any physical abnormalities exist that require immediate veterinary attention

in accordance with the shelter's written protocol for emergency care, as required by section four hundred twenty-three of this article.

4. Each animal shelter shall have the ability to provide for veterinary assessment and humane care in a timely fashion through in-house facilities or at an off-site location.

5. Pursuant to the written protocol for emergency veterinary care required by section four hundred twenty-three of this article, each animal shelter shall provide appropriate and timely veterinary care for any animal that is in distress, experiencing pain, or showing signs of significant illness or injury.

6. Each animal shelter shall recognize and treat acute and chronic pain appropriately, as set forth in article twenty-six of this chapter. The legal status regarding the ownership of any animal shall not prevent treatment to relieve suffering.

7. Each animal shelter shall provide a complete physical examination of all animals in its custody or possession by trained shelter staff within twenty-four hours of intake to identify medical or behavioral conditions that require further evaluation and care. Animals shall specifically be examined for bite wounds; animals that have potentially been exposed to rabies shall be managed in accordance with applicable local and state laws. Each animal shelter shall comply with the rabies reporting requirements prescribed in 10 NYCRR 2.14.

8. Each animal shelter shall vaccinate each animal in its custody or possession with core vaccines as recommended by national standards and guidelines specific to animal shelters as established, endorsed or approved by the American Association of Feline Practitioners (AAFP), American Animal Hospital Association (AAHA), or the Association of Shelter Veterinarians (ASV).

9. Each animal shelter shall provide all dogs, cats, and ferrets in its custody or possession with a rabies vaccination prior to release in accordance with local public health laws. Each animal shelter shall be

in compliance at all times with section one hundred nine of this chapter and title four of article twenty-one of the public health law.

10. At a minimum, each animal shelter shall treat all animals in its custody or possession for hookworms and roundworms prior to release and/or placement in foster care.

11. When a physical or behavioral abnormality is identified at the time of intake or at any time during any animal's shelter stay, staff members shall follow written medical protocols required by section four hundred twenty-three of this article, to determine if and when any animal in its custody or possession needs to be examined by a duly licensed veterinarian. If the animal is in foster care, the foster care provider shall follow written medical protocols to determine whether the animal needs to be examined by a duly licensed veterinarian.

12. Any animal in the custody or possession of any animal shelter for more than thirty days shall be examined and weighed at least monthly by a trained staff member. Animals in foster care shall be examined and weighed at least once every six months by a trained staff member.

13. Any apparently healthy animal remaining within the custody or possession of any animal shelter shall be examined by a duly licensed veterinarian at least every six months, or more frequently if problems are identified.

14. Each animal shelter shall provide regular grooming to prevent discomfort or injury to each animal in its custody or possession. Matted, soiled, or otherwise unkempt animals shall be provided with timely grooming to alleviate discomfort and prevent injury within forty-eight hours of intake or identification of condition. Severe matting that prevents normal movement, an animal's ability to eat, drink, urinate, or defecate, or that compromises tissue health shall be treated as a medical emergency requiring immediate care.

15. (a) No animal shelter shall release any dog or cat for adoption to any person unless the dog or cat has been spayed or neutered, in

accordance with section three hundred seventy-seven-a of this chapter.

(b) Prior to performing spay/neuter surgery at any animal shelter:

(i) All animals in such shelter's custody or possession shall receive an examination by a duly licensed veterinarian within twenty-four hours of surgery and anesthesia. Such examination may be performed under sedation or anesthesia if, due to the animal's behavior, an examination is not possible while awake.

(ii) Balanced anesthetic protocols that include sedation, the provision of pre- and post-operative analgesia, stress reduction, muscle relaxation and controlled, reversible loss of consciousness shall be utilized for all animals.

(iii) While surgery is being performed, the operating area shall be dedicated to surgery and contain the necessary equipment for anesthesia and patient monitoring.

(iv) Aseptic surgical technique shall be required, and separate sterile instruments shall be used for each patient. All instruments and equipment shall be maintained in proper working condition.

(v) A permanent tattoo shall be placed on the ventral abdomen of shelter-owned cats and dogs at the time of spay or neuter.

(vi) Each animal shelter shall provide adoptive owners instructions in both written and verbal forms for ten-day post-operative care of recently spayed or neutered animals.

(c) Written protocols required by section four hundred twenty-three of this chapter, shall be followed to handle related post-operative emergencies.

§ 430. Behavior. 1. Each animal shelter shall take measures, by way of written questionnaire, personal interview or other means deemed necessary by the commissioner, to collect a behavioral history for each animal in its custody or possession at the time of intake.

2. Routine care and handling of any animal in the custody or possession of each animal shelter, including the timing of feeding and sanitation procedures shall be performed on a regular daily schedule.

3. At least twenty minutes of positive social interactions, in

addition to time spent providing feeding, cleaning, basic husbandry or care with people shall be provided by each animal shelter on a daily basis for any animal in such shelter's custody or possession except those so poorly socialized to humans that such contact would be unpleasant, stressful or pose a safety risk to other animals or humans. Daily handling and positive exposure to people and other animals shall be provided for any dog or cat less than four months of age, while taking appropriate precautions to limit infectious disease. Positive social interactions shall include but not be limited to petting an animal, walking, reward based training or interactive play with toys. Time spent providing basic husbandry and animal care shall not be used to offset the social interaction time requirements of this subdivision.

4. Each animal shelter shall provide each animal in its custody or possession opportunity for exercise and exploration in the following manner:

(a) all cats housed in a cage, kennel, or room that provides less than eighteen square feet of floor space per cat for fourteen days or longer shall be permitted at least fifteen minutes per day at least five days per week outside of their primary enclosure to exercise and explore;

(b) all dogs residing in the shelter for fourteen days or longer shall be permitted time outside of their primary enclosure to exercise and explore for at least twenty minutes per day five days per week; or

(c) in the event such activities are not possible due to any animal's health, behavior, order of the commissioner or legal restriction, the condition and reason shall be documented in such animal's medical record.

5. Each animal shelter shall implement additional measures for enrichment and stress reduction for any animal in its custody or possession showing persistent hiding, hostile interactions with other animals, reduced activity, depression or social withdrawal, barrier frustration or aggression, self-injurious behavior, repetitive non goal-oriented movement, or stereotypic behaviors. Such measures shall be documented in such animal's medical record created pursuant to section four hundred twenty-three of this article.

6. Use of aversive methods in animal training or behavioral modification is prohibited except in reward-based method situations, where skilled application of the least aversive method that is expected to succeed may be appropriate.

7. Animal shelters may perform a systematic behavioral evaluation on animals prior to rehoming or other placement. In the event such evaluations are performed, the following requirements shall apply:

(a) staff performing such evaluations shall receive, in advance, adequate training in the performance and interpretation of the behavioral evaluation or evaluations; and

(b) documentation of the results of every behavior evaluation performed shall be added to the animal's record created pursuant to section four hundred twenty-three of this article.

8. Each licensed animal shelter shall fully disclose all available information regarding the behavior of any animal in its custody or possession prior to such animal's transfer to an individual or another organization as authorized pursuant to section three hundred seventy-four of this chapter. Such information shall include, but not be limited to prior history, observed behaviors in the shelter, and the results of any systematic behavioral evaluations performed.

9. Any animal in the custody or possession of a licensed animal shelter that is observed to be experiencing mental suffering or behavioral deterioration shall be assessed and appropriately treated.

§ 431. Transportation. 1. Vehicle requirements. (a) Vehicles and operators employed by or otherwise serving as an agent of any animal shelter to transport animals shall adhere to all applicable federal, state, and local laws.

(b) Any animal transported by an animal shelter or its agent shall not be placed unconfined or tethered in the back of an open pick-up or flatbed truck.

(c) Any animal shelter or its agent transporting any animal shall safely and securely confine such animal in an enclosure such as a crate,

carrier, or cage within the vehicle. Foster care providers serving as an agent of any animal shelter for purposes of this section may be authorized to provide secure alternatives to enclosures for transport of large dogs.

(d) Any transport vehicle transporting dogs or cats for any animal shelter shall have adequate space, comfortable environmental conditions, and good air quality. The animal compartment of the transport vehicle shall provide fresh air, free of vehicle exhaust fumes.

(e) Each transport vehicle, including cargo spaces, shall be heated and cooled as necessary to provide for normal thermoregulation of the animals being transported.

(f) Each transport vehicle shall have a thermometer placed in the animal compartment. The ambient temperature in the cargo space shall be maintained between sixty and eighty-five degrees fahrenheit, unless the health of the animal necessitates an ambient temperature that exceeds or is less than such parameters. The operator of such vehicle shall monitor cargo area temperatures at least every four hours to ensure such temperatures are maintained.

2. General responsibilities of animal shelters of origin prior to transport. (a) It is the responsibility of the animal shelter of origin to reasonably ensure that its destination animal shelters have the ability to meet the requirements of subdivision four of this section prior to transporting any animal. A written contract or memorandum of understanding between the animal shelter of origin, any intermediate animal shelter, the destination animal shelter and any transporting agent not directly employed by such shelters, shall be executed for each animal transfer of one or more animals. Such document shall include the responsibilities of each party and shall be revised or updated as necessary to ensure that information is current.

(b) A contact person shall be designated for each animal shelter and any intermediate transfer points.

(c) Each transporting organization identified in any agreement established pursuant to subparagraph (i) of paragraph (d) of this subdivision shall adhere to all public health laws and local laws for source location, intermediate transfer points, and final destination.

(d) (i) For dogs or cats imported into the state, the animal shelter

of origin shall ensure that each dog or cat to be transported aged three months of age or older has been vaccinated against rabies not more than twelve months prior to the date of transport when using a one-year vaccine, or not more than thirty-six months prior to the date of transport when using a three-year vaccine, as evidenced by a valid certificate of immunization signed by a duly licensed veterinarian. Such vaccine shall be approved by the United States department of agriculture. The immunization requirement shall not apply if a veterinarian certifies in writing that because of old age or other reason, the life of the dog would be endangered by the administration of the rabies vaccine.

(ii) At a minimum, the animal shelter of origin shall administer the following core vaccinations to each dog or cat to be transported that is four weeks of age or older:

(1) For dogs, a modified live product for Distemper virus, Adenovirus, and Parvovirus as well as an intranasal or oral avirulent culture Bordetella bronchiseptica vaccination prior to departing from the animal shelter of origin.

(2) For cats, a modified live product for Feline Viral Rhinotracheitis, Feline Calici Virus, and Feline Panleukopenia.

(iii) The animal shelter of origin shall treat each animal for internal and external parasites as appropriate for the age, species, and medical condition.

(iv) (1) The animal shelter of origin shall examine each dog and cat for medical or behavioral concerns at most twenty-four hours prior to initiation of transport. All medical and behavioral observations shall be recorded and communicated to any intermediate animal shelter, the destination animal shelter and any transporting agent not directly employed by such shelters.

(2) A health record shall accompany each animal to be transported.

(3) A health certificate is required for each animal to be transported into the state in accordance with part sixty-five of the commissioner's rules and regulations. Such certificate shall accompany each animal during transport and be completed and signed by a duly licensed veterinarian.

(v) Each animal shall be individually identified with a collar, tag, tattoo, microchip or combination of such identifiers. All animals shall

have, at a minimum, one form of visual identification.

3. General responsibilities during transport. (a) Each animal transported shall be provided with absorbent bedding.

(b) No animal shall be sedated or tranquilized unless recommended by a duly licensed veterinarian and veterinary guidance is provided for such animal's care during transport.

(c) The maximum transport time to an intermediate animal shelter or a destination animal shelter for dogs and cats shall include not more than fourteen hours confined to the transport vehicle, including load time. Transports exceeding fourteen hours must include an overnight stop at an intermediary location, where the dogs and cats being transported shall be allowed the opportunity to exercise and eliminate outside of the transport vehicle.

(d) The transporting animal shelter or its agent shall observe each animal being transported as often as circumstances allow, but not less than once every four hours. During such observations, animals should be watered and fed consistent with paragraphs (g) and (h) of this subdivision, and the transport area cleaned as appropriate.

(e) Each dog shall be provided with the opportunity to exercise and eliminate at least once every twelve hours while confined to the transport vehicle, including load time. Each dog being transported that is less than twelve weeks of age shall be removed from their enclosure and allowed to exercise and eliminate at least every two hours.

(f) No dog or cat shall be left unattended in any transport vehicle for more than one hour, regardless of whether heating, ventilation and air conditioning (HVAC) is provided in such vehicle.

(g) The transporting animal shelter or its agent shall provide each animal being transported with wholesome and palatable food except when there are instructions from a duly licensed veterinarian to withhold food for medical reasons. Such food shall be free from contamination, of nutritional value sufficient to maintain each animal in good health and be provided at least every twelve hours for adult animals; at least every eight hours for animals less than six months of age; and at least every six hours for animals less than four months of age.

(h) If water cannot be provided at all times, the transporting animal shelter or its agent shall provide clean, fresh water to each animal

being transported at least every four hours during observation stops required pursuant to paragraph (b) of subdivision four of this section. Such water shall be supplied in a sanitary manner sufficient for its needs, except where there are instructions from a duly licensed veterinarian to withhold water for medical reasons.

(i) Animal enclosure requirements. (i) Animal enclosures in transport vehicles shall be suitable to allow the animal to stand, sit erect, turn around while standing, and to lie in a natural position. If more than one animal occupies any enclosure during transport, such enclosure shall provide adequate space for each to lie down comfortably at the same time without lying on top of each other.

(ii) Unfamiliar animals shall not be contained together in the same enclosure.

(iii) Crates, carriers or cages shall not be stacked in the transport vehicle in a manner that increases animal stress or discomfort, compromises ventilation, allows waste material to pass between cages, interferes with care and observation, or hinders emergency removal.

(iv) All animal enclosures and compartments shall be free of sharp edges or other hazardous materials.

(v) The floor of any enclosure shall prevent injury, discomfort, and leakage of fluids into other enclosures.

(vi) The animal shelter or its agent shall ensure that each animal transported is safely and securely confined within each enclosure as prescribed by this section and that enclosure doors are secured to prevent accidental opening.

(vii) The animal shelter or its agent shall secure each primary enclosure to prevent movement within the transport vehicle.

(viii) Each dog or cat less than eight weeks of age shall be transported in an enclosure with their mother, with adequate space to allow the mother to lie down on her side with legs extended to facilitate nursing unless such dog or cat is orphaned, a duly licensed veterinarian directs otherwise, the transport period does not exceed one hour, or transport with the mother is deemed to pose a significant safety risk. In the event such dog or cat is not transported with its mother, the animal shelter or its agent shall ensure an adequate environment and temperature for the offspring. The transporting animal shelter or its agent shall transport animals with known or suspected

infectious diseases that could be spread during transport in separate compartments from healthy animals.

(ix) The transporting animal shelter or its agent shall clean animal enclosures and replace litter as often as necessary to prevent soiling any animal being transported. If any animal must be removed from an enclosure to facilitate cleaning, the transporting animal shelter or its agent shall employ safeguards to ensure animal safety and prevent escape.

(j) Transport vehicle operators. (i) Transport vehicle operators and individuals who assist in the transport of animals shall have training in animal health, animal care, and safety issues to recognize and respond to animal needs during transport.

(ii) Transport vehicle operators shall avoid unnecessary sudden acceleration, deceleration, excessive lateral movement, noise and vibration.

(iii) Transport vehicle operators and individuals who assist in the transport of animals shall observe dogs and cats for any medical or behavioral concerns during each stop and shall respond appropriately to any concerns identified.

(iv) Transport vehicle operators and individuals who assist in the transport of animals shall clean and disinfect each enclosure after use in transporting an animal and before transporting different animals in the same enclosure.

4. General requirements of destination animal shelters. Each destination animal shelter shall provide the following:

(a) Adequately trained personnel ready to receive and medically evaluate each animal received from any transporting animal shelter or its agent upon arrival;

(b) A physical examination of each animal received from any transporting animal shelter with corresponding documentation performed by trained personnel pursuant to section four hundred twenty-three of this article within four hours of arrival;

(c) Veterinary care in accordance with section four hundred twenty-nine of this article for each animal received from any transporting animal shelter requiring such care and additional reasonable care.

(d) Adequate housing for arriving animals prepared in advance of arrival, including:

(i) Housing in a quarantine area if needed, based on assessment of health status, animal source, and risk of infectious, contagious, parasitic or communicable disease; and

(ii) Isolation areas for animals with known or suspected contagious diseases, as required under sections four hundred twenty-four and four hundred twenty-five of this article.

5. No animal shelter or its agents shall transport any dog or cat less than one year of age whose point of origin is any breeder licensed by the United States department of agriculture pursuant to the provisions of U.S.P.L. 89-544 as of August twenty-fourth, nineteen sixty-six, or any subsequent corresponding sections of the federal Animal Welfare Act, as from time to time amended.

§ 432. Foster care provider requirements. 1. No person may operate as a foster care provider in this state without first having signed a written agreement with an animal shelter licensed pursuant to this article stating that such person may operate as a foster care provider with the approval and under the responsibility of such animal shelter. Such agreement shall be renewed not less than once every two years, and a copy of such agreement shall be kept by both the animal shelter and foster care provider and made available for inspection by the commissioner upon request. It shall be the responsibility of the animal shelter entering into such agreement with any foster care provider pursuant to this article to ensure that such foster care provider is able to responsibly harbor and provide necessary sustenance for any animal placed in their care by such animal shelter in a manner that promotes the good health, safety and welfare of such animals. No animal shelter shall knowingly enter into any agreement pursuant to this subdivision with any person who has been previously convicted of a violation of any provision of article twenty-six of this chapter or regulations promulgated thereunder pertaining to humane treatment of animals, cruelty to animals, endangering the life or health of an animal, or violation of any federal, state, or local law pertaining to

the care, treatment, sale, possession, or handling of animals or any regulation or rule relating to the endangerment of the life or health of an animal.

2. Foster care providers may harbor animals owned by a licensed animal shelter but shall not own such animals and shall keep a copy of the current record of each animal harbored under any agreement established pursuant to subdivision one of this section. Such record shall be maintained at the physical premises where such foster care providers harbor such animals. Animal shelters may, if appropriate to protect the identity of the source of any animal, provide their foster care providers with a partial animal record that excludes the name and address of the organization or individual from whom such animal was obtained and the date of receipt, so long as such animal shelters keep a copy of the complete record at the location where it maintains such records pursuant to section four hundred twenty-three of this article. It is the responsibility of the animal shelter with which such foster care provider has established an agreement pursuant to subdivision one of this section to ensure compliance with this subdivision.

3. Any animal harbored by a foster care provider pursuant to this section that is affected by an infectious or contagious disease shall be handled in a manner that prevents the spread of such disease in accordance with subdivision nine of section four hundred twenty-four of this article. It shall be the responsibility of the animal shelter with which such foster care provider has established an agreement pursuant to subdivision one of this section to ensure compliance with this subdivision.

§ 433. Violations. 1. Any animal shelter that violates any provision of this article may be subject to licensure denial, revocation, suspension, or refusal of license renewal in accordance with the provisions of subdivision seven of section four hundred twenty-one of this article.

2. Violation of any provision of this article shall be a civil

offense, for which a penalty of not less than one hundred dollars and not more than one thousand dollars for each violation may be imposed by the commissioner; provided, that whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not less than one hundred dollars and not more than one thousand dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

3. Any animal shelter that violates any provisions of this article shall correct such violations to the satisfaction of the commissioner within a period not to exceed ten days; provided, however, that where such violation poses a severe or immediate threat to public health or animal safety or well-being, such violation shall be corrected to the satisfaction of the commissioner within a period not to exceed seventy-two hours.

4. Nothing in this section shall preclude the commissioner from taking additional actions to address violations related to the immediate threat to animal safety or well-being, including but not limited to, suspension of animal shelter operations until such violations are corrected to the satisfaction of the commissioner.

5. Upon identification of one of more violations, the commissioner shall provide the animal shelter with a written description of all violations issued and the steps necessary to correct such deficiencies.

§ 434. Waiving of requirements authorized. The commissioner is hereby authorized to waive the requirements established pursuant to this article during a disaster emergency, provided that an official declaration of such disaster emergency has been made by the governor or his or her delegated state official pursuant to section twenty-eight of the executive law.

ARTICLE 27

NOURISH NEW YORK

Section 450. Declaration of legislative findings and intent.
451. Definitions.
452. Nourish New York program.

§ 450. Declaration of legislative findings and intent. While the Nourish New York program was developed in response to disrupted food supply chains due to the COVID-19 pandemic, it has emerged as an important innovation, significantly supporting the state's farms while providing nourishing fresh foods to people experiencing food insecurity. The COVID-19 crisis unveiled the weaknesses in our state's food supply system and has caused serious economic hardships for the state's farms and agribusinesses. But, in the ten months since its inception, Nourish New York has already strengthened the state's food supply network and expanded markets for New York farm products. The local food movement has also gained significant momentum during the pandemic, with increasing numbers of New Yorkers wanting to know where their food is sourced. This presents the state with a major opportunity to support our local economies and create greater equity in our food system by providing greater access to local, healthy options in food insecure areas through making the Nourish New York program permanent.

§ 451. Definitions. 1. "Food relief organization" means a religious organization or other not-for-profit that provides food for free to persons experiencing food insecurity, including but not limited to a food pantry, food bank, or soup kitchen or community-based organization that provides food for free to persons experiencing food insecurity.

2. "Surplus agricultural products" means consumable or edible agricultural products grown, produced or harvested in New York, including processed products as defined pursuant to subdivision three of this section, but shall not include beverages containing alcohol. "Surplus agricultural products" shall also include New York grown, produced or harvested milk, and milk products, including but not limited to two percent fat milk and whole milk.

3. "Processed products" means any agricultural commodity that is grown, produced or harvested in New York state and further processed by butchering, freezing, canning, pasteurizing, boiling, altering its state and/or blending with other ingredients, so long as the final product contains at least fifty-one percent by weight or volume agricultural products that are grown, produced or harvested in New York state, regardless of where processed.

§ 452. Nourish New York program. 1. The commissioner shall, to the extent permitted by state or federal appropriations for such purpose, facilitate programming that ensures surplus agricultural products are provided to food relief organizations at competitive wholesale prices.

2. The commissioner shall provide technical assistance and information about the program to food relief organizations, producers of surplus agricultural products and the public.

3. The commissioner shall provide means, which may include posting on the department's website, for producers to make available surplus agricultural products and for food relief organizations to access surplus agricultural products.

ARTICLE 28

SPECIAL POWERS AND DUTIES OF THE DEPARTMENT WITH RESPECT TO RETAIL FOOD STORES, FOOD SERVICE ESTABLISHMENTS AND FOOD WAREHOUSES

Section 500-a. Definitions.
500-b. Licensure.
500-c. Granting, suspending or revoking licenses.
500-d. Review.
500-e. Power of commissioner to investigate.
500-f. Sanitary inspections.
500-g. Penalties.
500-h. Remedies.
500-i. Severability.

§ 500-a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption occurs on or off the premises, or whether or not there is a charge for the food.

2. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term does not include establishments which handle only pre-packaged, non-potentially hazardous foods, roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments, or food and beverage vending machines.

3. "Zone" means an administratively determined geographic portion of the state to which inspectors are assigned by the department.

4. "Food warehouse" shall mean any food establishment in which food is

held for commercial distribution.

§ 500-b. Licensure. No person shall maintain or operate a retail food store, food service establishment or food warehouse unless such establishment is licensed pursuant to the provisions of this article, provided, however, that establishments registered, permitted or licensed by the department pursuant to other provisions of this chapter, 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, or subject to inspection by the United States department of agriculture pursuant to the federal meat, poultry or egg inspection programs, shall be exempt from licensure under this article.

1. Application for licensure of a retail food store, food service establishment or food warehouse shall be made, upon a form prescribed by the commissioner, on or before December first of every other year for the registration period beginning January first following.

2. Upon submission of a completed application, together with the applicable licensing fee, the commissioner may issue a license to the retail food store, food service establishment or food warehouse described in the application for two years from the date of issuance pursuant to the provisions of this article.

3. The license fee shall be two hundred fifty dollars provided, however, that food warehouses shall pay a license fee of four hundred dollars.

4. Notwithstanding the preceding sentence, the commissioner shall, upon submission of a completed application for a new license by an applicant that is a chain store, as defined by subdivision five of section two hundred fifty-one-z-two of this chapter, issue such license for a period ending on the same date as the licenses of the other chain stores that are a part of the same network.

§ 500-c. 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 such commissioner 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 offered for sale or stored 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 percent 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.

§ 500-d. 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.

§ 500-e. Power of commissioner to investigate. The commissioner and such commissioner's duly authorized representatives in the performance of their 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 offered for sale or stored, or where food or food products are being bought, sold or handled for retail or wholesale.

§ 500-f. Sanitary inspections. 1. The department shall assign at least one retail food specialist to each inspection zone. Such specialists shall assist retail food stores, food service establishments, and food warehouses in remedying chronic deficiencies and shall ensure that effective pest control and other sanitary measures are properly implemented.

2. Such specialists shall be given additional training to that normally provided to sanitary inspectors to qualify them for their duties under this section, with particular emphasis on the problems unique to retail food stores, food service establishments, and food warehouses and pest control measures.

3. The department shall inspect each retail food store at least once in every twelve-month period. Any store that fails two consecutive inspections shall be inspected at least once in every six-month period until it has passed two consecutive inspections.

4. In addition to any and all remedies provided in this article, in the event that a retail food store fails three consecutive inspections, the department may, in its discretion, order such establishment to cease all retail or wholesale operation until it passes inspection or suspend or revoke any license issued to such establishment.

5. Each retail food store and food service establishment shall post a copy of the date and results of its most recent sanitary inspection by the department in a conspicuous location near each public entrance, as prescribed by the commissioner. Such copies shall also be made available to the public upon request.

§ 500-g. Penalties. No operator of a retail food store, food service establishment, or food warehouse 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 retail food store, a food service establishment or a food warehouse 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.

§ 500-h. 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, such commissioner 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.

§ 500-i. Severability. If any provision of this article or the application thereof 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.

ARTICLE 29

GROWTH OF HEMP

Section 505. Definitions.
506. Growth, sale, distribution, transportation and processing of hemp and products derived from such hemp permitted.
507. Prohibitions.
508. Regulations.
509. Hemp grower's authorization, license; fees; requirements.
510. Granting, suspending or revoking licenses.
511. Proceedings to review.
512. Transferability; change in ownership or control.
513. Access to criminal history information through the division of criminal justice services.
514. Records.
515. Aids to enforcement.
516. Compliance action plan.
517. Penalties.
518. Remedies.
519. Hemp economic development.
520. Hemp data collection and best farming practices.
521. Severability.

§ 505. Definitions. As used in this article:

1. "Hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of a percent on a dry weight basis.

2. "Institution of higher education" means:

(a) any of the colleges and universities described in subdivision three of section three hundred fifty-two of the education law;

(b) a college established and operated pursuant to the provisions of article one hundred twenty-six of the education law, and providing two-year or four-year post-secondary programs in general and technical

educational subjects and receiving financial assistance from the state;

(c) the city university of New York, as defined in subdivision two of section sixty-two hundred two of the education law; and

(d) a not-for-profit two or four-year university or college given the power to confer associate, baccalaureate or higher degrees in this state by the legislature or by the regents under article five of the education law.

3. "License" means a license, permit or registration issued pursuant to this article.

4. "Processing of hemp in connection with its growing and cultivation" means the growing, cultivation, cloning, harvesting, drying, curing, grinding and trimming of hemp plants.

§ 506. Growth, sale, distribution, transportation and processing of hemp and products derived from such hemp permitted. 1. Notwithstanding any provision of law to the contrary, hemp and products derived from such hemp are agricultural products which may be grown, cultivated, produced, processed, manufactured, possessed in the state, and sold, distributed, or transported in the state, pursuant to authorization under federal law, the provisions of this article, article thirty-three-B of the public health law or any other state law.

2. Notwithstanding any provision of law to the contrary restricting the growing or cultivating, processing, manufacturing, sale, distribution or transportation of hemp and products derived from such hemp, and subject to authorization of the growth and cultivation of hemp under federal law, the commissioner may: (a) authorize the growing, cultivating, processing and manufacturing of hemp as part of agricultural pilot programs conducted by the department or an institution of higher education to study the growth and cultivation, sale, distribution, transportation, processing and manufacturing of such hemp and products derived from such hemp provided that the sites and programs used for growing or cultivating hemp are authorized by, and registered with, the department; and (b) license the growth and

cultivation of hemp, including the processing of hemp in connection with its growing and cultivation, and the sale of hemp plants or hemp seed.

§ 507. Prohibitions. 1. Except as authorized by federal and state law, and rules and regulations promulgated thereunder, the growth, cultivation, sale, distribution or export of hemp is prohibited.

2. Hemp produced outside the state and sold or distributed in the state shall meet all standards established for hemp under state law, rules and regulations.

§ 508. Regulations. The commissioner is hereby authorized to adopt, amend, promulgate and issue rules and regulations consistent with the provisions of this article, including, but not limited to:

1. The authorization or licensing of any person who may acquire or possess hemp plants or viable seeds, grow or cultivate hemp plants, or sell, purchase, distribute, or transport such plants, plant parts, or seeds;

2. Reasonable license fees and duration of licensure, which shall be at least three years;

3. Maintaining relevant information regarding land on which hemp is produced within the state, including the legal description of the land and its latitude and longitude, for a period of not less than three calendar years;

4. The procedure for testing of hemp produced in the state for delta-9 tetrahydrocannabinol levels, using post decarboxylation, other similarly reliable methods, or any other method authorized by the United States department of agriculture;

5. Procedures for effective disposal of hemp plants or products derived from hemp that are produced in violation of this article or its

rules and regulations;

6. Procedures for conducting sampling of hemp to verify that hemp is not produced in violation of this article or its rules and regulations;

7. Such other matters that are necessary or appropriate for the state to obtain approval from the United States department of agriculture to assume primary regulatory authority over the production of hemp, pursuant to federal law;

8. Such other matters that are necessary or appropriate for the administration of agricultural pilot programs of the department or institutions of higher education or the regulation of program participants or their activities;

9. Record keeping and any reporting requirements;

10. Reasonably necessary security measures;

11. Standards, practices or requirements for the growth, cultivation and the processing of hemp in connection with its cultivation, as necessary, depending upon the hemp's intended use; or

12. Such other rules and regulations as the commissioner deems appropriate or necessary.

§ 509. Hemp grower's authorization, license; fees; requirements. 1. No person shall: (a) grow, cultivate, process, produce, sell or distribute hemp in the state unless authorized by the commissioner as part of an agricultural research pilot program established under this article; or (b) grow, cultivate and process hemp in connection with its growing and cultivation or sell hemp plants or hemp seed unless licensed by the commissioner. Mere transportation, such as by common carrier or another entity or individual, does not constitute activity subject to licensing under this article.

2. A hemp grower license does not authorize the processing or retail sale of hemp for human consumption, as defined in section thirty-three hundred ninety-eight of the public health law, unless the licensee also obtains a cannabinoid hemp processor license, cannabinoid hemp retailer license, or any other license required pursuant of article thirty-three-B of the public health law.

3. Applications for licenses, authorizations or a modification thereof, as set out in regulation, shall be upon a form specified by the commissioner, accompanied by a reasonable application fee for new applications or significant modifications to an application, which shall be established by regulation and which may be made non-refundable by regulation.

4. The commissioner may also assess a reasonable authorization or licensing fee established by regulation, scaled to cover the estimated, or if known, actual costs of inspections, regulatory testing and other administrative expenses of the authorized or licensed activity, which fee shall be paid prior to the issuance of the authorization or license.

5. The applicant, if an individual, shall be asked to furnish together with the application evidence of his or her good moral character and, if an entity, the applicant shall be asked to furnish together with the application evidence of the good moral character of the individuals who have or will have substantial responsibility for the licensed or authorized activity and those in control of the entity, including principals, officers, or others exercising such control. The names of such individuals shall be set forth in the application.

6. The applicant shall furnish evidence of his, her or its experience and competency, and that the applicant has adequate facilities, equipment, process controls, testing capability and security, to grow, cultivate and process hemp in connection with its growing and cultivation or to sell hemp plants or hemp seed.

7. The department shall provide an application for renewal of any license issued under this article not less than ninety days prior to the

expiration of the current license. A renewal application shall be submitted to the commissioner at least thirty days prior to the expiration of the authorization or license, on a form or forms provided by the commissioner for such purpose.

§ 510. Granting, suspending or revoking licenses. After due notice and opportunity to be heard, as established by rules and regulations, the commissioner may decline to grant a new license, impose conditions or limits with respect to the grant of a license, modify an existing license or decline to renew a license, or suspend or revoke a license already granted, whenever the commissioner finds that:

1. A material statement contained in an application is or was false or misleading;

2. The applicant or licensee, or a person in a position of management and control thereof or of the licensed activity, does not have good moral character, necessary experience or competency, adequate facilities, equipment, process controls, testing capability or security, to grow, cultivate and process hemp in connection with its growing and cultivation or to sell hemp plants or hemp seed;

3. After appropriate notice and opportunity, the applicant or licensee has failed to produce any records or provide any information required by this article, the rules and regulations promulgated pursuant thereto or demanded by the commissioner, reasonably related to the administration and enforcement of this article;

4. The applicant or licensee, or any officer, director, partner, or other person exercising any position of management or control thereof has willfully failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto or other law of this state applicable to the licensed activity; or

5. The licensee has failed to comply with its compliance action plan established under section five hundred sixteen of this article.

§ 511. Proceedings to review. The action of the commissioner in refusing to grant or renew a license, or in revoking or suspending a license, or in conditioning or limiting the granting or renewal of a license, may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, and the decision of the commissioner shall be final unless within four months from the date of service thereof upon the party affected thereby a court proceeding is instituted to review such action. The pleadings upon which such review proceeding is instituted shall be served in the manner specified in the civil practice law and rules, unless a different manner of service is provided in an order to show cause granted by the supreme court.

§ 512. Transferability; change in ownership or control. 1. Licenses issued under this article are not transferable, absent written consent of the commissioner.

2. A license shall become void by a change in ownership, substantial corporate change or change of location or acreage grown without prior written approval of the commissioner. The commissioner may promulgate rules and regulations allowing for certain types of changes in ownership without the need for prior written approval.

§ 513. Access to criminal history information through the division of criminal justice services. In connection with the administration of this article, the commissioner is authorized to request, receive and review criminal history information through the division of criminal justice services, referred to as "the division" for the purposes of this section, with respect to any person seeking authorization under this article to undertake a hemp pilot project or a hemp license; and/or each individual who has substantial management responsibility for the authorized or licensed activity or those in control of the entity, including principals, officers, or other such persons. Those persons for whom criminal history information is sought shall promptly submit to the

division his or her fingerprints in such form and in such manner as specified by the division, for the purpose of conducting a search identifying criminal convictions and pending criminal charges and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the specified processing fees for the cost of the division's full search and retain procedures and a national criminal history record check for such information. The commissioner, or his or her designee, shall submit such fingerprints and the processing fee to the division. The division shall forward to the commissioner a report with respect to the person's previous criminal convictions and pending criminal charges, if any, or a statement that the person has no such previous criminal history according to its files. Fingerprints submitted to the division pursuant to this section may also be submitted to the federal bureau of investigation for a national criminal history record check as described in this section. If additional copies of fingerprints are required, the person to be fingerprinted shall furnish them upon request.

§ 514. Records. Every licensee shall keep, in such form as the commissioner may direct, such records as may be required pursuant to rules and regulations promulgated pursuant to this article.

§ 515. Aids to enforcement. 1. All licensees shall be subject to reasonable inspection by the department and a person who holds a license must make himself or herself, or an agent thereof, available and present for any inspection required by the department. The department shall make reasonable accommodations so that ordinary business is not interrupted, and safety and security procedures are not compromised by the inspection.

2. The commissioner may promulgate rules and regulations to aid in the enforcement of this article, provided such enforcement tools, remedies and/or procedures are available to the commissioner for enforcement with respect to similar licensed practices or prohibited conduct under this

chapter, and/or the civil practice law and rules.

§ 516. Compliance action plan. If the commissioner determines, after notice and an opportunity to be heard, that a licensee has negligently violated a provision of this article or its rules or regulations, that licensee shall be required to comply with a corrective action plan established by the commissioner to correct the violation by a reasonable date and to periodically report to the commissioner with respect to the licensee's compliance for a period of no less than the next two calendar years following the commencement date of the compliance action plan. Notwithstanding the above, this provision shall not be applicable to a research partner conducting hemp research pursuant to a research partner agreement, the terms of which shall control.

§ 517. Penalties. Notwithstanding the provisions of any law to the contrary, except section five hundred sixteen of this article, the failure to comply with a requirement of this article, a rule or regulation promulgated thereunder, or the research agreements entered into by those conducting department authorized research may be punishable by a civil penalty of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation within three years; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter, within three years.

§ 518. 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 a manner consistent with this chapter and/or the civil practice law and rules.

§ 519. Hemp economic development. The commissioner shall consult and cooperate with the New York state urban development corporation, the New

York state hemp workgroup created pursuant to section one hundred eight of the cannabis law, and representatives of industries that currently use, or may potentially use, industrial hemp in their products, with respect to the funding and support of research, and product and business development and promotion, concerning hemp and businesses involved in growing, cultivating, and processing hemp for uses including, but not limited to food, fiber, packaging, cannabinoid content, and construction materials.

§ 520. Hemp data collection and best farming practices. 1. The commissioner shall have the power to collect and publish data and research concerning, among other things, the growth, cultivation, production and processing methods of hemp and products derived from hemp and work with the New York state college of agriculture and life sciences at Cornell pursuant to section fifty-seven hundred twelve of the education law and Cornell cooperative extension pursuant to section two hundred twenty-four of the county law to promote best farming practices for hemp which are compatible with state water quality and other environmental objectives.

2. The department, in conjunction with the department of environmental conservation, shall promulgate all necessary rules and regulations, as well as a process for approval, governing the safe production of hemp, including, but not limited to, environmental and energy standards and restrictions on the use of pesticides.

3. The department shall, to the extent practicable, share data and documentation related to an agricultural research pilot program with the office of cannabis management.

§ 521. Severability. If any provision of this article or the application thereof 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.

ARTICLE 30

Saving Clauses; Laws Repealed; When to Take Effect.

Section 550. Application of provisions of other laws and of documents.
551. Existing rules and regulations continued.
552. Pending actions or proceedings.
553. Existing rights preserved.
554. Laws repealed.
555. When to take effect.

§ 550. Application of provisions of other laws and of documents. Wherever the terms department of agriculture, department of farms and markets, department of foods and markets, department of weights and measures, department of health, commissioner of agriculture, commissioner of farms and markets, commissioner of foods and markets, state superintendent of weights and measures, or state commissioner of health, shall occur in any law, contract or document, such terms shall be deemed to mean and refer to the department of agriculture and markets and the commissioner of agriculture and markets respectively, so far as such law, contract or document pertains to matters which are within the jurisdiction of such department under the provisions of this chapter. Whenever, by the education law or other statute, the commissioner of agriculture is made a member by virtue of his office of the board of managers or trustees or other governing body of a state institution, the term commissioner of agriculture shall be deemed to mean the commissioner of agriculture and markets.

§ 551. Existing rules and regulations continued. The rules and regulations now in force and effect, pertaining to any matter within the jurisdiction of the department, adopted in pursuance of any law, the duty of enforcing which is imposed upon the department as provided herein, shall continue in full force and effect until they are modified, amended or repealed as provided by this chapter.

§ 552. Pending actions or proceedings. This chapter shall not affect pending actions or proceedings brought by or against the department of agriculture and markets or the department of farms and markets, the commissioner of agriculture and markets or the commissioner of farms and markets, the department of agriculture, the commissioner of agriculture, the department of foods and markets, the commissioner of foods and markets, the state superintendent of weights and measures, the state commissioner of health, or any other officer, person or corporation, or by or in behalf of the people of the state, under or in pursuance of any of the provisions of the laws which are to be enforced or carried into effect under the provisions of this chapter by the department, but the same may be prosecuted or defended in the same manner and for the same purpose by the department, or by the proper officer or party, under the provisions of this chapter. Any investigation, examination or proceeding undertaken, commenced or instituted by the department of agriculture and markets or the department of farms and markets, the commissioner of agriculture and markets or the commissioner of farms and markets, the department of agriculture, the commissioner of agriculture, the department of foods and markets, the commissioner of foods and markets, the state superintendent of weights and measures, the state commissioner of health, or any other officer, under the provisions of the laws which are to be enforced or carried into effect as provided in this chapter by the department, may be conducted or continued to a final determination by the department, commissioner, or other proper officer of such department, in the same manner and under the same terms and conditions as though this chapter had not been passed.

§ 553. Existing rights preserved. The provisions of this act, or the repeal of any provisions of any statute thereby shall not effect or impair any act done or right accrued or acquired, or any liability, penalty, forfeiture or punishment incurred or imposed or any limitation or defense accrued or established, prior to its enactment, but the same may be asserted, enforced, prosecuted or inflicted in the same manner and to the same extent as if this act had not been passed.

§ 554. Laws repealed. Chapter nine of the laws of nineteen hundred and nine, entitled "An act in relation to agriculture, constituting chapter one of the consolidated laws,"; chapter eight hundred and two of the laws of nineteen hundred and seventeen, entitled "An act in relation to farms and markets, constituting chapter sixty-nine of the consolidated laws,"; articles two, two-a, thirteen, fourteen, fifteen, and twenty-five-a, and sections three hundred and ninety, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, and three hundred and ninety-seven, of chapter twenty-five of the laws of nineteen hundred and nine, entitled "An act relating to general business, constituting chapter twenty of the consolidated laws,"; and section forty-three, forty-six, forty-seven, forty-eight, and forty-nine, of chapter forty-nine of the laws of nineteen hundred and nine, entitled "An act in relation to the public health, constituting chapter forty-five of the consolidated laws,"; and all acts and parts of acts amendatory thereof or supplemental thereto, are hereby repealed.

§ 555. When to take effect. This chapter shall take effect April first, nineteen hundred and twenty-two.