CIRCULAR 855

Article 17-B of the Agriculture and Markets Law
Part 256 of Title 1 of the Official Compilation of
Codes, Rules and Regulations of the State of New York

Licensing of Food Salvagers

Revised as of April 13, 2015
ARTICLE 17-B
LICENSING OF FOOD SALVAGERS

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Section 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.

Section 217. Definitions

(a) The term "food salvager" as used in this article, means a person engaged in the business of reconditioning, 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.

Section 218. License required

No person shall act as a food salvager unless licensed by the commissioner as provided in this article.

Section 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.

Section 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.

Section 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.

Section 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.

PART 256

FOOD SALVAGERS

(Statutory authority: Agriculture and Markets Law, Section 222)

Section
256.1 Examination and condemnation of unwholesome food and damaged utensils
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256.10 Visual aids for the inspection of food containers
Section 256.1 Examination and condemnation of unwholesome food and damaged utensils.

Samples of food, drink and single service food containers and utensils, soda straws, paper napkins or any product of a similar nature may be taken by the commissioner as often as may be necessary for the detection of unwholesomeness, damage or contamination.

Section 256.2 Notice to commissioner.

It shall be the duty of food salvagers to notify the commissioner whenever damaged goods subject to the provisions of article 17-B are obtained.

Section 256.3 Movement of seized foods.

(a) It shall be unlawful for foods and devices held under seizure or embargo by the commissioner to be moved to a different location without prior permission granted by the commissioner.

(b) All movements of seized or embargoed foods are to be made only under the supervision of the commissioner.

(c) Food and food products shall be moved from the site of a fire, flood, wreck or other cause as expeditiously as possible so as not to become putrid, unwholesome, rodent or insect harborages, or otherwise a menace to public health.

(d) All seized or quarantined foods, prior to reconditioning and release from seizure, shall be transported only in vehicles provided with devices to render them capable of being locked and sealed. Where highly perishable foods are transported, this is to be done in vehicles provided with adequate refrigeration for product maintenance.

Section 256.4 Records.

A record or receipt of damaged merchandise, merchandise found to be unfit and salvaged merchandise shall be kept by salvagers and shall be kept open for inspection by the commissioner during business hours. These records shall be kept on the premises of the salvager for a period of one year following the completion of transactions involving a lot of merchandise.

Section 256.5 Storage and removal of waste material and unfit foods.

(a) Waste material shall be stored in such a manner as not to become a nuisance, preferably in a separate building. Covered containers shall be used and frequent removal from the premises shall be the rule.

(b) All unfit foods shall be removed from food salvage plants often enough as to not become a nuisance. This removal shall be done only by a method approved by the commissioner and all disposal costs shall be borne by the salvager.
Section 256.6 Required rooms.

Where the operation requires, the following rooms shall be provided to carry on the business of salvage. Receiving room, sorting and cutting room, cleaning room (kitchen), storage area for reconditioned merchandise and waste room. If retail sales are made on the premises, a separate room shall be provided for this purpose. Where frozen or refrigerated foods are handled, refrigerators, freezer rooms and/or freezer cabinets shall be provided.

Section 256.7 Sanitation requirements.

(a) Any building, or portion of any building, regularly used in food salvaging shall at all times be thoroughly clean and free from dust, foul atmosphere and contamination, and shall be properly lighted, drained and ventilated.

(b) The side walls and ceilings of all work rooms shall be well plastered, tiled or constructed of metal or lumber, and shall be painted to the end that they may be readily cleaned. They shall be kept free from dust, dirt and foreign matter and clean at all times.

(c) The floors of all work rooms shall be impermeable and shall be constructed of nonabsorbent material which can be flushed and washed clean with water.

(d) All salvaging plants shall have convenient toilet rooms separate and apart from work rooms. The doors of toilet rooms shall be provided with self-closing devices. The floor of the toilet room shall be of nonabsorbent material and shall be clean at all times. Toilet rooms shall be vented to the outdoors by means of windows or ventilating pipes. Adequate light, either natural or artificial shall be provided.

(e) Lavatories and wash rooms shall be adjacent to toilet rooms, and at other locations where required, and shall be supplied with soap, hot and cold, or warm running water and single-service towels or equivalent, and shall be maintained in a sanitary condition. Before beginning work, after visiting toilet rooms, and at other times as required, work-room employees shall wash their hands and arms thoroughly in clean water.

(f) Every salvaging plant shall be provided with a suitable room or rooms for the changing and handing of wearing apparel of the workers or employees, which shall be separate and apart from the work storage and sales rooms, and shall be kept in a clean and sanitary condition.

(g) Storage rooms for materials shall be kept clean and free from objectionable odors, and shall be rodent and vermin proof.

(h) Doors, windows and other openings of every work room shall be screened during fly season with screens of not coarser than 12-mesh wire screening, or other effective means of insect elimination shall be adopted.

(i) Salvaging plants shall be free of insects and rodents. Extermination, when practiced, shall be done in a safe manner so as not to contaminate foods stored in the plant and shall not make use of highly poisonous substances. Where rodent poisons are used, they shall be placed in properly constructed bait boxes.
(j) The water supply shall be ample, clean and potable with adequate facilities for its distribution in the plant. Complete hose stations to consist of hot and cold running water, mix valve, hose and hose hanger shall be provided where needed.

(k) All apparatus, utensils and appurtenances used in the handling and reconditioning of salvage goods shall be so constructed and placed that they can be thoroughly cleaned. Such equipment shall be kept clean and sanitary and in good repair.

(l) No person shall live or sleep in any building used as a salvaging plant unless the salvaging plant or work room of such salvaging plant is separated by impervious walls without doors or windows or other openings from the parts of the building used for living or sleeping quarters.

(m) Vats, sinks, and other washing equipment, provided with hot and cold running water and proper drains, shall be available for cleaning, rinsing and bactericidal treatment of food containers to be reconditioned. Necessary equipment for drying, buffing, relabeling and repacking shall, where required, be provided.

(n) All work-room employees shall be clean in person at all times and shall wear clean, washable clothing and caps, where the operation requires. They shall not smoke or chew tobacco where unpackaged foods are handled.

(o) No person suffering from or afflicted with a contagious or infectious disease shall be employed in or about any part of a salvaging plant.

(p) All products shall be stored on skids or pallets of sufficient height to facilitate cleaning inspection, and shall not be placed closer than 12 inches to walls. There shall be an aisle at least 18 inches wide between each double row of merchandise.

Section 256.8 Standards for damaged food containers. [Additional statutory authority: Agriculture and Markets Law, Section 18(2) and (6)]

(a) Definitions. For the purpose of this section, the following terms shall have the following meanings:

1. Flipper means a hermetically sealed container in which one end is slightly bulged and remains flat if pressed in. Flippers result from low vacuum.

2. Leaker means a faulty hermetically sealed container that allows its contents to leak due to faulty seaming, rupture of the seal, industrial mishandling, severe denting, holes that develop in the container, or pressure that develops within the container.

3. Sanitize means effective bactericidal treatment by a process that has been approved by the department as being effective in destroying micro-organisms, including pathogens.

4. Springer means a hermetically sealed container with one end that bulges. When manual pressure is applied to the bulged end and released, either the opposite end is forced out or the bulged end springs back. If both ends of the container bulge, but only one end remains flat when
pressed, it is a springer. A springer results from the presence of moderate positive pressure within the container. Bulging or extensive denting of the side walls may produce a springer.

(5) Swell means a hermetically sealed container with two bulged ends. Neither end will remain flat without pressure. A soft swell will yield to manual pressure, but no impression can be made manually on a hard swell. A swell results from positive pressure in the container, usually due to the spoilage of its contents. Some swells, especially in acidic products, may result from a chemical reaction between the contents and the container.

(b) Damaged food containers unsuitable for sale or donation. No person shall possess, sell, offer, or expose for sale or donate the following damaged food containers:

(1) any can or jar with bulged ends, or any container that is a swell, springer or flipper, including cans with bulged lids caused by severe dents; provided, however, that this prohibition shall not apply to beer or carbonated beverage containers that are slightly bulged due to gas, or to pressurized food containers such as coffee or cheese spreads;

(2) any hermetically sealed can, jar or container that exhibits visible evidence of product leakage;

(3) any pull-up, pull-ring, pull-tab or pull-top container that exhibits obvious fractures of the lip scorelines, or any glass container that exhibits evidence of a loosening or opening of the closure or evidence of any other condition affecting the integrity of the seal;

(4) any badly rusted and/or severely pitted container that cannot be properly cleaned and reconditioned by moderate buffing, by means other than the use of steel wire brushes which are prohibited and may not be used for this purpose. Fine brass or copper wire brushes may be used for moderate buffing;

(5) any severely dented can in which the end seam is pulled out of position to such an extent that the malposition is readily noticeable and in which there is evidence that the end seam may have been placed under tension; provided, however, that this prohibition shall not apply to food containers that exhibit moderately deep, sharp, angular indentations and moderately acute crimping of the body wall in which the end seam malposition is so slight that it can only be detected by the use of a straight edge on a flat surface;

(6) any severely dented can that exhibits deep, sharp, angular dents and acute crimping of the body wall; provided, however, that this prohibition shall not apply to food containers that exhibit moderately deep, angular indentations and moderately acute crimping of the body wall;

(7) any severely dented can in which the end seam has been forced out of position to such an extent that the countersink has been buckled, materially affecting the safety and viability of the container; provided, however, that this prohibition shall not include food containers that exhibit body dents that force the end seam inward to such an extent that the countersink is involved, but no sharp edges are evident;

(8) any container that exhibits an improper end seam closure whereby a portion of the cover or body flange has not been tucked properly into the end seam;
(9) any container exhibiting deep, sharp, vertical side rim dents on the double seam in which the continuity of the seam is disrupted, or a rise is noted in the end plate at the site of the rupture; provided, however, that this prohibition shall not include food containers exhibiting deep, sharp, vertical or side rim dents that are not severe enough to cause the lid to buckle or bulge noticeably;

(10) any container that is not properly labeled within the meaning of the Agriculture and Markets Law of the State of New York or that has lost its identity and cannot be properly reidentified. All salvaged foods and food products in containers shall be provided with labels meeting the requirements of section 201 of the Agriculture and Markets Law. If original labels have been lost or removed from containers that are to be resold, food salvager replacement labels shall be affixed to each container. Said labels shall, in addition to meeting the requirements of Agriculture and Markets Law section 201, include the name and address of the food salvager as the distributor;

(11) any paper, plastic or similar food container or wrapping that has been damaged by penetration to such an extent that the product contained therein may have been contaminated or adulterated; provided, however, that this prohibition shall not include any paper, plastic or similar food container or wrapping, that contains only slight damage, such as crushing and in which there is no evidence of penetration of the interior of the container or of exposure of the foods contained therein; and

(12) any container, including one having a press or screw cap, that has been totally immersed in water as the result of fire, flood or similar mishap; provided, however, that this prohibition shall not apply to metal cans or tins of food that have been partially or totally submerged in water as the result of fire, flood or similar mishap and that have been thoroughly cleaned and sanitized with a rinse of a concentration of 100 p.p.m. available chlorine for a minimum period of one minute, or immersed in boiling water for five minutes followed by cooling to 95°F. and thorough drying, or by any other method approved by the department, and that have been subsequently treated to inhibit rust formation.

Section 256.9 Sale of foods in damaged containers to a licensed food salvager. [Additional statutory authority: Agriculture and Markets Law, section 18(2) and (6)]

Food or food products in containers that have been damaged as a result of fire, flood, accident, industrial mishandling, or other cause may be sold to a licensed food salvager for segregation and reconditioning.

Section 256.10 Visual aids for the inspection of food containers. [Additional statutory authority: Agriculture and Markets Law, section 18(2) and (6)]

The following photographs illustrate major defects of damaged containers which shall not be offered for sale or donated, and minor defects of less damaged containers which may be offered for sale or donated. These photographs are demonstrative and illustrative only.
This is an example of a container in which the end seam has been forced out of position to an extent that it is likely to affect the safety and viability of the container (see section 256.8[b][7] of this Part).
Figure 3

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container in which the end seam has been forced out of position to an extent that it is likely to affect the safety and viability of the container (see section 256.8[b][7] of this Part).

Figure 4

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container in which the end seam has been forced out of position to an extent that it is likely to affect the safety and viability of the container (see section 256.8[b][7] of this Part).
This is an example of a container in which a dent affects the end seam, but has not forced it out of position to the extent that it affects the safety and viability of the container (see section 256.8[b][7] of this Part).

This is an example of a container that exhibits moderate, acute crimping of the body wall (see section 256.8[b][6] of this Part).
This is an example of a container that exhibits a moderate dent which has created a slight end seam malposition (see section 256.8[b][5] of this Part).

This is an example of a container in which the end seam has been forced out of position to an extent that it is likely to affect the safety and viability of the container (see section 256.8[b][7] of this Part).
Figure 9

MINOR DEFECT - MAY BE OFFERED FOR SALE OR DONATED

This is an example of a container that exhibits a moderate dent in the end seam (see section 256.8[b][7] of this Part).

Figure 10

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container in which the end seam has been forced out of position to such an extent that the safety and viability of the container is affected (see section 256.8[b][7] of this Part).
Figure 11

MINOR DEFECT- MAY BE OFFERED FOR SALE OR DONATED

This is an example of a container that exhibits a moderate dent in the end seam (see section 256.8[b][7] of this Part).

Figure 12

MAJOR DEFECT- SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container exhibiting deep, sharp, angular dents and acute crimping of the body wall (see section 256.8[b][6] of this Part).
This is an example of a container exhibiting deep, sharp, angular dents and acute crimping of the body wall (see section 256.8[b][6] of this Part). In addition, the end seam has been pulled out of position (see section 256.8[b][5] of this Part).
Figure 15

MAJOR DEFECT—SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container exhibiting deep, sharp, angular dents and acute crimping of the body wall (see section 256.8(b)(6) of this Part). In addition, the end seam has been pulled out of position (see section 256.8(b)(5) of this Part).

Figure 16

MINOR DEFECT—MAY BE OFFERED FOR SALE OR DONATED

This is an example of a container that exhibits moderate dents and moderate acute crimping in the body wall (see section 256.8(b)(5) of this Part).
Figure 17

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container that exhibits sharp, angular dents (see section 256.8[b][6] of this Part).

Figure 18

MINOR DEFECT - MAY BE OFFERED FOR SALE OR DONATED

This is an example of a container that exhibits moderate dents which have not crimped the body wall (see section 256.8[b][6] of this Part).
This is an example of a container that exhibits sharp, angular dents (see section 256.8[b][6] of this Part).

This is an example of a container that has a bulged end (see section 256.8[b][1] of this Part).
Figure 22

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container that has a bulged end (see section 256.8[b][1] of this Part).

Figure 22

MINOR DEFECT - MAY BE OFFERED FOR SALE OR DONATED

This is an example of a container that exhibits a moderate indentation (see section 256.8[b][6] of this Part).
This is an example of a container in which buckles extend into the end seam distorting the countersink. The end seam may have been placed under tension sufficient to jeopardize the hermetic seal (see section 256.8[b][7] of this Part).

This is an example of a container with a buckle that does not involve the end seam (see section 256.8[b][7] of this Part).
Figure 25

MAJOR DEFECT- SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container with buckles which extend into the end seam materially affecting the safety and viability of the container (see section 256.8[b][7] of this Part).

Figure 26

MAJOR DEFECT- SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container with a cable cut (white arrow) which is deep enough to expose the seam laminations.
This is an example of a container with a cable cut which is deep enough to expose the seam laminations.

This is an example of a container with a cable cut (white arrow) which is deep enough to expose the seam laminations.
Figure 29

MAJOR DEFECTS SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container with a lid that is not crimped (see section 256.8[b][8] of this Part).

Figure 30

MAJOR DEFECTS SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a container exhibiting a false seam (see section 256.8[b][8] of this Part).
This is an example of a container with a lid that is not crimped (see section 256.8[b][8] of this Part).

This is an example of a container exhibiting a false seam (see section 256.8[b][8] of this Part).
This is an example of a container exhibiting slight rust which is easily removable by cleaning or moderate buffing (see section 256.8[b][4] of this Part).

This is an example of a badly rusted and severely pitted container that cannot be properly cleaned and reconditioned by moderate buffing by means other than steel wire brushes (see section 256.8[b][4] of this Part).
Figure 35

MINOR DEFECT - MAY BE OFFERED FOR SALE OR DONATED

This is an example of a container exhibiting slight rust which is easily removable by cleaning or moderate buffing (see section 256.8(b)[4] of this Part).

Figure 36

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a badly rusted and severely pitted container that cannot be properly cleaned and reconditioned by moderate buffing by means other than steel wire brushes (see section 256.8(b)[4] of this Part).
This is an example of a badly rusted and severely pitted container that cannot be properly cleaned and reconditioned by moderate buffing by means other than steel wire brushes (see section 256.8(b)[4] of this Part).

These are examples of unlabeled containers (see section 256.8(b)[10] of this Part).
Figure 39

MAJOR DEFECT- SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a damaged container in which the product is exposed (see section 256.8[b][11] of this Part).

Figure 40

MAJOR DEFECT- SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a damaged container in which the product is exposed (see section 256.8[b][11] of this Part).
Figure 41

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a damaged container in which product is exposed (see section 256.8[b][II] of this Part.

Figure 42

MAJOR DEFECT - SHALL NOT BE OFFERED FOR SALE OR DONATED

This is an example of a hermetically sealed can that exhibits visible evidence of product leakage (see section 256.8[b][2] of this Part.
This is an example of a pull top container which contains obvious fractures of the lip scorelines (see section 256.8[b][3] of this Part).