

CHAPTER 39. FROZEN DESSERTS STANDARDS**MISCELLANEOUS**

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Authority

The provisions of this Chapter 39 issued under section 9 of The Frozen Dessert Law (31 P. S. § 417-9), unless otherwise noted.

Source

The provisions of this Chapter 39 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242, unless otherwise noted.

Cross References

This chapter cited in 7 Pa. Code § 37.4 (relating to scope).

MISCELLANEOUS

§ 39.1. Scope.

This chapter applies to frozen desserts. Wholesale manufacturers of frozen desserts shall also comply with Chapter 59 (relating to milk sanitation).

Source

The provisions of this § 39.1 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1507) to (1508).

§ 39.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Approved sampler—A person certified by the Department to obtain samples of milk or milk products, including frozen desserts, for analysis by a Commonwealth approved laboratory.

Department—The Department of Agriculture of the Commonwealth.

Dispensing freezer—Equipment which freezes frozen desserts so they are served in a soft condition for sale to the customer.

FDA—The United States Food and Drug Administration.

Frozen dessert licensee—A person, whether a resident or nonresident of this Commonwealth, operating a frozen dessert plant, whose products are sold or offered for sale in this Commonwealth, who has applied, paid the annual license fee and been issued a valid license under section 7 of The Frozen Dessert Law (31 P. S. § 417-7).

Frozen desserts—Ice cream, frozen custard, French ice cream, French custard ice cream, frozen dietary dairy dessert, frozen yogurt, dietary frozen dessert or lowfat frozen dairy dessert, ice milk, freezer-made milk shakes, fruit sherbet, water ices, quiescently frozen confections, quiescently frozen dairy confections, whipped cream confections, bisque tortoni, mellorine frozen desserts, and products which are similar in appearance, odor or taste to the products or are prepared or frozen as such products are customarily prepared or frozen, whether made with dairy or nondairy products. The term does not include commonly known or designated bakery products as frozen cakes and pastries, cream pies and fillings and toppings, meringue pie fillings and toppings, cream and ice box pies, fruit and custard pie fillings, Boston cream pie fillings, cream puff fillings and custards, eclair and Napoleon fillings, and custards or similar products.

Frozen dessert plants—Places, premises or establishments where frozen desserts are manufactured, prepared or processed for distribution or sale.

Generally recognized as safe—Foods, substances and additives meeting the eligibility criteria set forth by the FDA at 21 CFR 170.30—170.38.

Label—Written, printed or graphic matter attached to or on a package.

Mix—A frozen dessert before being frozen.

Mobile unit—Vehicles on which frozen desserts are manufactured, prepared, processed or converted, and which are used in selling and dispensing frozen desserts, including temporary buildings which may be moved from place to place.

Mobile unit depot—Buildings from which mobile units operate and are cleaned and sanitized and where frozen desserts for sale from mobile units may be handled and stored.

Nonpermit holder—A frozen dessert licensee not possessing a milk products permit.

Package—Cartons, boxes, jars, bottles, pails, wrappers or other containers for frozen desserts.

Pennsylvania Approved Dairy Laboratory—

(i) A commercial or regulatory laboratory authorized by the Department to do official analyses of milk and milk products, including frozen desserts.

(ii) A milk industry laboratory officially designated by the Department for the examination of producer samples of raw milk for pasteurization or of commingled raw milk for pasteurization for the detection of growth inhibitor residues and bacterial limits. The laboratories may also be designated for the

examination of milk products, frozen desserts and frozen desserts mixes, processed under their direct control.

Person—An individual, corporation, firm, association or other form of business entity.

Retail manufacturer of frozen desserts—A manufacturer of frozen desserts who uses a mix prepared by a Milk Products Permit Holder and sells frozen desserts only on premises where produced.

Seasonally (Seasonal)—Production of frozen desserts of less than 5 months duration in a licensing year.

Secretary—The Secretary of the Department or an authorized representative.

Standard of identity—The set of criteria for the evaluation of product quality and consistency which, when satisfied, establishes the identity of a particular food for sale, marketing or distribution.

Wholesale manufacturer of frozen desserts—A manufacturer who prepares a mix and manufactures frozen desserts or manufactures frozen desserts for sale off premises where produced.

Source

The provisions of this § 39.2 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial pages (103196) and (89842).

§ 39.3. Notification to Department.

When a manufacturer of frozen desserts not made with fats other than milkfat desires to manufacture frozen desserts using fats other than milkfat, and when a manufacturer of frozen desserts in which milkfat is not used desires to manufacture desserts with milkfat, the manufacturer shall notify the Department.

Source

The provisions of this § 39.3 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1508) to (1509).

§ 39.4. Contents of labels.

In addition to the specific requirements for labeling of particular frozen desserts in this chapter, the following general requirements apply for all frozen desserts:

- (1) Each package or container of frozen dessert shall be marked with the name of the product, and the product shall conform with the definition of standards thereon.
- (2) Packages or containers shall bear the name and address of the manufacturer or distributor. When the name and address of the distributor appears in lieu of that of the processor, such words as “manufactured for” or “distributed by” shall also appear on the package. Containers showing a general office address or the name and address of the distributor shall be further labeled to

identify the manufacturing plant by assigned numerical code or the name and address of the manufacturer.

(3) Packages shall bear a statement of the net contents.

(4) Packages of frozen desserts shall bear a statement of optional ingredients, listed in descending order of predominance.

(5) Bulk containers of frozen desserts shall show the manufacturer's name and address or assigned code, type of product and flavor statement.

(6) When frozen desserts are dispensed for sale from factory filled containers, each container shall bear the name of the food and the name and address of the plant or manufacturer or the FIPS Code of the plant or manufacturer, in a location on the container so that it can be read after the cover has been removed and discarded.

(7) When frozen desserts are dispensed from bulk or dispensed at the time of manufacture, information that will clearly advise each purchaser as to the type of product being offered for sale shall be displayed in a conspicuous manner.

Source

The provisions of this § 39.4 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1509).

§ 39.5. Standards for frozen dessert mix.

(a) *Source of mix.* Mix shall be obtained from or made only by those plants meeting the requirements of Chapter 59, Subchapter B (relating to standards for milk and milk products) and holding a permit to sell milk products as issued by the Department.

(b) *Pasteurization.* Mix shall be pasteurized in accordance with the applicable requirements of Chapter 59, Subchapter B (relating to standards for milk and milk products) and shall be held in storage temperatures not in excess of 45°F.

(c) *Ingredients.* Ingredients entering into the composition of frozen desserts mix shall be clean, safe and wholesome, and may not conceal damage or inferiority.

Source

The provisions of this § 39.5 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1509).

§ 39.6. Wholesale manufacturers of frozen desserts.

Wholesale manufacturers of frozen desserts shall conform with requirements of Chapter 59, Subchapter B (relating to standards for milk and milk products) and shall hold permits to sell milk products as issued by the Department.

Source

The provisions of this § 39.6 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1509) to (1510).

STANDARDS FOR FROZEN DESSERTS**§ 39.11. Temporary marketing permit.**

Frozen desserts to be sold in this Commonwealth shall conform with established definitions and standards of identity, except that a person holding a current Pennsylvania frozen dessert license who wishes to manufacture a frozen dessert for which a standard of identity has not been promulgated by the Secretary, may make application to the Secretary for a temporary marketing permit to market the product. The application shall be on a form furnished by the Secretary and shall contain information that the Secretary may require. The permit shall be for a period not to exceed 1 year, although the temporary marketing permit may be extended for a period of up to 1 year by the Secretary if a new standard of identity has been introduced under section 9(b) of the Frozen Dessert Law (31 P. S. § 417-9). The Secretary may revoke a permit if the application contains misleading statements, or if the Secretary determines that unfair competitive advantage is gained through the issuance of the permit, or that the need no longer exists for a permit.

Source

The provisions of this § 39.11 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1510) to (1511).

§ 39.12. Ice cream and frozen custard.**(a) Description.**

(1) Ice cream is a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in subsection (b). Ice cream may contain one or more of the optional caseinates specified in subsection (c), subject to the conditions set forth in this chapter, and other safe and suitable nonmilk-derived ingredients and excluding other food fats, except natural components of flavoring ingredients used or added in incidental amounts to accomplish specific functions. Ice cream is sweetened with nutritive carbohydrate sweeteners and may or may not be characterized by the addition of flavoring ingredients.

(2) Ice cream contains not less than 1.6 pounds of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon. Ice cream contains not less than 10% milkfat, not less than 10% nonfat milk solids, except that when it contains milkfat at 1.0% increments above the 10% minimum, it may contain the following milkfat-to-nonfat milk solids levels:

<i>Percent milkfat</i>	<i>Minimum percent nonfat milk solids</i>
10	10
11	9
12	8
13	7
14	6

When one or more bulky flavors are used, the weights of milkfat and total milk solids are not less than 10% and 20%, respectively, of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished food. In no case is the weight of milkfat or total milk solids less than 8.0% and 16%, respectively, of the weight of the finished food. Except in the case of frozen custard, ice cream contains less than 1.4% egg yolk solids by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. Frozen custard shall contain not less than 1.4% egg yolk solids by weight of the finished food; however, when bulky flavors are added the egg yolk solids content of frozen custard may be reduced in proportion to the amount by weight of the bulky flavors added, but in no case is the content of egg yolk solids in the finished food less than 1.12%. A product containing egg yolk solids in excess of 1.4%, the maximum set forth in this paragraph for ice cream, may be marketed if labeled as specified by subsection (e)(1).

(3) When calculating the minimum amount of milkfat and nonfat milk solids required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying, and this weight may be multiplied by 1.4.

(b) *Optional dairy ingredients.* The optional ingredients referred to in subsection (a) are: cream, dried cream, plastic cream—sometimes known as concentrated milkfat, butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate, and whey and those

modified whey products—such as reduced lactose whey, reduced minerals whey, and whey protein concentrate that have been determined by the Food and Drug Administration to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5%, has a titratable acidity of not more than 0.17%, calculated as lactic acid. The term “milk” as used in this section means cow’s milk. Whey and modified whey products used contribute, singly or in combination, not more than 25% by weight of the total nonfat milk solids content of the finished food. The modified skim milk, when adjusted with water to a total solids content of 9.0% is substantially free of lactic acid as determined by titration with 0.1N NaOH, and it has a pH value in the range of 8.0 to 8.3.

(c) *Optional caseinates.* The optional caseinates referred to in subsection (a) which may be added to ice cream mix containing not less than 20% total milk solids are: Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate and sodium caseinate. Caseinate may be added in liquid or dry form, but shall be free of excess alkali.

(d) *Methods of analysis.* Fat content shall be determined by the methods contained in the *Official Methods of Analysis of the Association of Official Analytical Chemists*, 13th Ed., 1980 (A.O.A.C. Methods). Fat content shall be determined by the method contained in *Fat; Roesse-Gottlieb Method Official Final Action*, A.O.A.C. Section 16.287).

(e) *Nomenclature.*

(1) The name of the food is ice cream, except that when the egg yolk solids content of the food is in excess of that specified for ice cream by subsection (a), the name of the food is frozen custard or French ice cream or French custard ice cream.

(2) If the food contains no artificial flavor, the name of the principal display panels of the label shall be accompanied by the common or usual name of the characterizing flavor, such as vanilla, in letter not less than 1/2 the height of the letters used in the words “ice cream.”

(3) If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the natural flavor predominates, the name of the principal display panels of the labels shall be accompanied by the common name of the characterizing flavor, in letters not less than 1/2 the height of the letters used in the words “ice cream,” followed by the word “flavored,” in letters not less than 1/2 the height of the letters in the name of the characterizing flavor, such as “Vanilla flavored,” or “Peach flavored,” or “Vanilla flavored and Strawberry flavored.”

(4) If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the artificial flavor predominates, or if artificial flavor is used alone the name on the principal display panels of the label shall

be accompanied by the common name of the characterizing flavor in letters not less than 1/2 the height of the letters used in the words "ice cream," preceded by "artificial" or "artificially flavored," in letters not less than 1/2 the height of the letters in the name of the characterizing flavor, such as "artificial Vanilla," "artificially flavored Strawberry," or "artificially flavored Vanilla and artificially flavored Strawberry."

(5) If the food is subject to the requirements of paragraph (3), or if it contains any artificial flavor not simulating the characterizing flavor, the label shall also bear the words "artificial flavor added" or "artificial _____ flavor added," the blank being filled in with the common name of the flavor simulated by the artificial flavor in letters of the same size and prominence as the words that precede and follow it.

(6) Wherever the name of the characterizing flavor appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words prescribed by this subsection shall immediately and conspicuously precede or follow such name, in a size reasonably related to the prominence of the name of the characterizing flavor. In any event, the size of the type shall not be less than 6-point on packages containing less than 1 pint, not less than 8-point on packages containing at least 1 pint but less than one-half gallon, not less than 10-point on packages containing at least one-half gallon but less than 1 gallon, and not less than 12-point on packages containing 1 gallon or over. Where the characterizing flavor and a trademark or brand are presented together, other written, printed, or graphic matter that is a part of or is associated with the trademark or brand, may intervene if the required words are in such relationship with the trademark or brand as to be clearly related to the characterizing flavor. If the finished product contains more than one flavor of ice cream subject to the requirements of this subsection, the statements required by this subsection need appear only once in each statement of characterizing flavors present in such ice cream, such as "Vanilla flavored, Chocolate and Strawberry flavored, artificial flavors added."

(7) If the food contains both a natural characterizing flavor and an artificial flavor simulating the characterizing flavor, a reference to the natural characterizing flavor shall, except as otherwise authorized by this subsection, be accompanied by a reference to the artificial flavor, displayed with substantially equal prominence, such as "Strawberry and artificial Strawberry flavor."

(8) An artificial flavor simulating the characterizing flavor shall be deemed to predominate in the following:

(i) In the case of vanilla beans or vanilla extract used in combination with vanillin if the amount of vanillin used is greater than 1 ounce per unit of vanilla constituent, as defined in 21 CFR 169.3(c) (relating to definitions).

(ii) In the case of fruit or fruit juice used in combination with artificial fruit flavor, if the quantity of the fruit or fruit juice used is such that, in relation to the weight of the finished ice cream, the weight of the fruit or fruit

juice—including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content—is less than 2.0% in the case of citrus ice cream, 6.0% in the case of berry or cherry ice cream and 10% in the case of ice cream prepared with other fruits.

(iii) In the case of nut meats used in combination with artificial nut flavor, if the quantity of nut meats is such that, in relation to the finished ice cream, the weight of the nut meats is less than 2.0%.

(iv) In the case of two or more fruits or fruit juices, or nut meats, or both, used in combination with artificial flavors simulating the natural flavors and dispersed throughout the food, if the quantity of any fruit or fruit juice or nut meat is less than one half the applicable percentage specified in subparagraph (ii) or (iii). For example, if a combination ice cream contains less than 5.0% of bananas and less than 1.0% of almonds it would be “artificially flavored banana-almond ice cream.” If it contains more than 5.0% of bananas and more than 1.0% of almonds it would be “banana-almond flavored ice cream.”

(9) If two or more flavors of ice cream are distinctively combined in one package, as “Neapolitan” ice cream, this paragraph shall govern each flavor of ice cream comprising the combination.

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of 21 CFR 101.4 (relating to food; designation of ingredients), except that sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of all the terms “milkfat and nonfat milk” when one of any combination of two or more of the ingredients listed in 21 CFR 101.4(b)(3), (4), (8), and (9) are used or alternatively as permitted in 21 CFR 101.4. Under section 402(k) of the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. § 343(K)), (relating to misbranded food) artificial color need not be declared in ice cream. Voluntary declaration of such color in ice cream is recommended.

Source

The provisions of this § 39.12 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1512).

Cross References

This section cited in 7 Pa. Code § 39.13 (relating to lactose reduced ice cream); 7 Pa. Code § 39.14 (relating to goat’s milk ice cream); 7 Pa. Code § 39.15 (relating to ice milk); 7 Pa. Code § 39.18 (relating to sherbet); 7 Pa. Code § 39.22 (relating to mellorine); 7 Pa. Code § 39.23 (relating to frozen yogurt); 7 Pa. Code § 39.24 (relating to frozen lowfat yogurt or lowfat frozen yogurt); 7 Pa. Code § 39.25 (relating to frozen nonfat yogurt or nonfat frozen yogurt); 7 Pa. Code § 39.28 (relating to frozen dietary dairy dessert); 7 Pa. Code § 39.29 (relating to dietary frozen dessert or lowfat frozen dessert); and 7 Pa. Code § 39.39 (relating to nonfat frozen dessert or frozen dairy dessert).

§ 39.13. Lactose reduced ice cream.

(a) Lactose reduced ice cream is the product resulting from the treatment of ice cream, as defined in § 39.12 (relating to ice cream and frozen custard), by the addition of safe and suitable enzymes to convert sufficient amounts of lactose to glucose and galactose so that the remaining lactose is 30% or less of the lactose in ice cream conforming to § 39.12.

(b) The name of the food is lactose reduced ice cream.

(c) The label on lactose reduced ice cream in addition to all other required information shall contain a complete list of ingredients in accordance with 21 CFR 101.4 (relating to food; designation of ingredients), and contain nutrition information as required by 21 CFR 101.9 (relating to nutrition labeling of food).

(d) Wherever the name appears on the container, the words lactose reduced shall be in the same type style and size and in the same color and contrasting background as the words ice cream.

Source

The provisions of this § 39.13 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1512).

§ 39.14. Goat's milk ice cream.

(a) *Description.* Goat's milk ice cream is the food prepared in the same manner prescribed in § 39.12 (relating to ice cream and frozen custard), for ice cream, and complies with § 39.12 except that the only optional dairy ingredients that may be used are those in subsection (b). Caseinates may not be used. Section 39.12(e)(1) and (f) does not apply.

(b) *Optional dairy ingredients.* The optional dairy ingredients referred to in subsection (a) are goat's skim milk, goat's milk and goat's cream. These optional dairy ingredients may be used in liquid, concentrated or dry form.

(c) *Nomenclature.* The name of the food is goat's milk ice cream or, alternatively, ice cream made with goat's milk, except that when the egg yolk solids content of the food is in excess of that specified for ice cream in § 39.12(a), the name of the food is goat's milk frozen custard or, alternatively frozen custard made with goat's milk, or goat's milk French ice cream, or alternatively, French ice cream made with goat's milk, or goat's milk French custard ice cream, or, alternatively, French custard ice cream made with goat's milk.

(d) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable provisions 21 CFR 101.4 (relating to food; designation of ingredients).

Source

The provisions of this § 39.14 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1512).

Cross References

This section cited in 7 Pa. Code § 39.17 (relating to goat’s milk ice milk).

§ 39.15. Ice milk.

(a) *Description.* Ice milk is the food prepared from the same ingredients and in the same manner prescribed in § 39.12 (relating to ice cream and frozen custard) for ice cream and complies with § 39.12 including the requirements for label statement of optional ingredients, except that all of the following apply:

- (1) Its content of milkfat is more than 2.0% but not more than 7.0%.
- (2) Its content of total milk solids is not less than 11%.
- (3) Caseinates may be added when the content of total milk solids is not less than 11%.
- (4) The provision for reduction in milkfat and nonfat milk solids content from the addition of bulky flavors in § 39.12 applies, except that in no case will the milkfat content be less than 2%, nor the nonfat milk solids content be less than 4%. When the milkfat content increases in increments of 1% above 2% minimum, it may contain the following milkfat to nonfat milk solids levels.

<i>Percent milkfat</i>	<i>Minimum percent nonfat milk solids</i>
2	9
3	8
4	7
5	6
6	5
7	4

- (5) The quantity of total solids per gallon is not less than 1.3 pounds.
- (6) When any artificial coloring is used in ice milk, directly or as a component of any other ingredients, the label shall bear the statement “artificially colored,” “artificial coloring added,” “with added artificial color,” or “_____, an artificial color added,” the blank being filled in with the common or usual name of the artificial color. In lieu of this, in case the artificial color is a component of another ingredient, “_____ artificially colored.”
- (7) If both artificial color and artificial flavoring are used, the label statements may be combined.

(b) *Nomenclature.* The name of the food is ice milk.

(c) *Restriction upon sale.* When ice milk containing characterizing flavor or color is sold either from a dispensing freezer or by dipping, the statement “Ice Milk Served Here” shall be included on a sign or menu board in reasonable proximity to the items containing ice milk. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing

ice milk and on a contrasting background. A sign or menu board declaration is not required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In this case, the menu shall contain the statement "Ice Milk Served Here." The statement shall be in reasonable proximity to the menu items containing ice milk, and the letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing ice milk. A menu listing ice milk or items prepared with ice milk shall conform to this subsection.

Source

The provisions of this § 39.15 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended June 2, 1989, effective June 3, 1989, 19 Pa.B. 2352. Immediately preceding text appears at serial pages (89849) to (89851).

Cross References

The section cited in 7 Pa. Code § 39.16 (relating to lactose reduced ice milk); 7 Pa. Code § 39.17 (relating to goat's milk ice milk); and 7 Pa. Code § 39.31 (relating to freezer-made shakes, freezer-made milk shakes and freezer-made lowfat milk shakes).

§ 39.16. Lactose reduced ice milk.

- (a) Lactose reduced ice milk is the product resulting from the treatment of ice milk, as defined in § 39.15 (relating to ice milk) by the addition of safe and suitable enzymes to convert sufficient amounts of lactose to glucose and galactose so that the remaining lactose is 30% or less of the lactose in ice milk conforming to § 39.15.
- (b) The name of the food is lactose reduced ice milk.
- (c) The label on lactose reduced ice milk, in addition to all other required information, shall contain a complete list of ingredients in accordance with 21 CFR 101.4 (relating to foods; designation of ingredients) and contain nutrition information as required by 21 CFR 101.9 (relating to nutrition labeling of food).
- (d) Wherever the name appears on the container, the words "lactose reduced" shall be in the same type style and size and in the same color and contrasting background as the words ice milk.
- (e) The provisions for serving ice milk from a dispensing freezer as required in § 39.15 applies.

Source

The provisions of this § 39.16 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.17. Goat's milk ice milk.

- (a) Goat's milk ice milk is the food prepared in the same manner prescribed in § 39.14 (relating to goat's milk ice cream), for goat's milk ice cream, except that subsection (c) shall not apply. Goat's milk ice milk shall comply with all the requirements of § 39.15(a) (relating to ice milk).

(b) The name of the food is goat's milk ice milk or alternatively ice milk made with goat's milk.

(c) The provisions for serving ice milk from a dispensing freezer as required by § 39.15 (relating to ice milk) shall apply.

Source

The provisions of this § 39.17 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1512).

§ 39.18. Sherbet.

(a) *Description.*

(1) Sherbet is a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in subsection (b), and may contain one or more of the optional caseinates specified in subsection (c), subject to the conditions set forth in this section, and other safe and suitable nonmilk derived ingredients. Sherbet excludes other food fats, except those added in small amounts to accomplish specific functions or natural components of flavoring ingredients used. Sherbet is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of one or more of the characterizing fruit ingredients specified in subsection (d) or one or more of the nonfruit characterizing ingredients specified in subsection (e).

(2) Sherbet weighs not less than 6 pounds to the gallon. The milkfat content is not less than 1.0% nor more than 2.0%. The nonfat milk derived solids content is not less than 1.0%. The total milk or milk derived solids content is not less than 2.0% nor more than 5.0% by weight of the finished food. Sherbet characterized by a fruit ingredient shall have a titratable acidity, calculated as lactic acid, of not less than 0.35%.

(b) *Optional dairy ingredients.* The optional dairy ingredients referred to in subsection (a) are: Cream, dried cream, plastic cream, (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, superheated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, and whey and those modified whey products, such as, reduced lactose whey reduced minerals whey, and whey protein concentrates, that have been determined by the Food and Drug Administration to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of

8.5%, has a titratable acidity of not more than 0.17%, calculated as lactic acid. The term "milk" as used in this section means cow's milk.

(c) *Optional caseinates.* The optional caseinates referred to in subsection (a) which may be added to sherbet mix are: Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, and sodium caseinate. Caseinates may be added in liquid or dry form, but must be free of excess alkali. Such caseinates are not considered to be milk solids.

(d) *Optional fruit characterizing ingredients.* The optional fruit characterizing ingredients referred to in subsection (a) are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, or partially or wholly dried. The fruit may be thickened with pectin or other optional ingredients. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. The fruit may be acidulated. In the case of concentrated fruit or fruit juice, from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used. In the case of citrus juice or concentrated citrus juices, cold-pressed citrus oil may be added in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that, in relation to the weight of the finished sherbet, the weight of fruit or fruit juice, including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content, is not less than 2.0% in the case of citrus sherbets, 6.0% in the case of berry sherbets, and 10% in the case of sherbets prepared with other fruits. For the purpose of this section, tomatoes and rhubarb are considered as kinds of fruits.

(e) *Optional nonfruit characterizing ingredients.* The optional nonfruit characterizing ingredients referred to in subsection (a) include, but are not limited to, the following:

- (1) Ground spice or infusion of coffee or tea.
- (2) Chocolate or cocoa, including syrup.
- (3) Confectionery.
- (4) Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the sherbet.
- (5) Any natural or artificial food flavoring, except any having a characteristic fruit or fruit-like flavor.

(f) *Nomenclature.*

(1) The name of each sherbet is as follows:

- (i) The name of each fruit sherbet is _____ sherbet, the blank being filled in with the common name of the fruits from which the fruit ingredients used are obtained. When the names of two or more fruits are included, such

names shall be arranged in order of predominance, if any, by weight of the respective fruit ingredients used.

(ii) The name of each nonfruit flavored sherbet is _____ sherbet, the blank being filled in with the common or usual name or names of the characterizing flavor or flavors, for example, “peppermint,” except that if the characterizing flavor used is vanilla, the name of the food is _____ sherbet, the blank being filled in as specified by § 39.12(e)(2) and (8) (relating to ice cream and frozen custard).

(2) When the optional ingredients, artificial flavoring, or artificial coloring are used in sherbet, they shall be named on the label as follows:

(i) If the flavor ingredients consist exclusively of artificial flavoring, the label designation shall be “artificially flavored.”

(ii) If the flavoring ingredients are a combination of natural and artificial flavors, the label designation shall be “artificial and natural flavoring added.”

(iii) The label shall designate coloring by the statement “artificially colored,” “artificial coloring added,” “with added artificial coloring,” or “_____, an artificial color added,” the blank being filled in with the name of the artificial coloring used.

(g) *Characterizing flavors.* Wherever there appears on the label any representation as to the characterizing flavors of the food and such flavors consist in whole or in part of artificial flavoring, the statement required by subsection (f)(2)(i) and (ii), as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter, except that the word “sherbet” may intervene, in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type shall not be less than 6-point on packages containing less than 1 pint, not less than 8-point on packages containing at least 1 pint but less than one-half gallon, not less than 10-point on packages containing at least one-half gallon but less than 1 gallon, and not less than 12-point on packages containing 1 gallon or over.

(h) *Display of statements required.* Except as specified in subsection (g), the statements required by subsection (f)(2) shall be set forth on the principal display panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(i) *Label declarations.* Each of the optional ingredients used shall be declared on the label, as required by the applicable sections of 21 CFR Part 101 (relating to food labeling).

Source

The provisions of this § 39.18 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1512) to (1513).

Cross References

This section cited in 7 Pa. Code § 39.20 (relating to water ice).

§ 39.19. Nonfruit sherbet.**(a) Description.**

(1) Nonfruit sherbet is a food having a characteristic fruit flavor, but it shall not contain any fruit or fruit juice. Nonfruit sherbet is prepared by freezing while stirring pasteurized mix consisting of one or more of the optional dairy ingredients specified in subsection (b). Nonfruit sherbet may contain one or more of the optional caseinates specified in subsection (c), subject to the conditions set forth in this section, and any other safe and suitable nonmilk derived ingredients. Nonfruit sherbet shall exclude other food fats, except such as are added in small amounts to accomplish specific functions. Nonfruit sherbet is sweetened with nutritive carbohydrate sweeteners and contains characteristic fruit like flavor.

(2) Sherbet weighs not less than 6 pounds to the gallon. The milkfat content is not less than 1.0% nor more than 2.0%, the nonfat milk derived solids content not less than 1.0%, and the total milk or milk derived solids content is not less than 2.0% nor more than 5.0% by weight of the finished food.

(b) Optional dairy ingredients. The optional dairy ingredients referred to in subsection (a) are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, superheated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, and whey and those modified whey products, such as reduced lactose whey, reduced minerals whey, and whey protein concentrate, that have been determined by the Food and Drug Administration to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5%, has a titratable acidity of not more than 0.17%, calculated as lactic acid. The term "milk" as used in this section means cow's milk.

(c) Optional caseinates. The optional caseinates referred to in subsection (a) that may be added to nonfruit sherbet are: Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate and sodium caseinate. Caseinates may be added in liquid or dry form, but must be free of excess alkali. The caseinates are not considered to be milk solids.

(d) Nomenclature. The name of the food is nonfruit sherbet.

(e) *Additional requirements.* In addition to all other required information, the label shall:

(1) Contain a complete list of ingredients, in accordance with 21 CFR 101.4 (relating to food; designation of ingredients).

(2) Comply with 21 CFR 101.22 (relating to foods; labeling of spices, flavorings, colorings and chemical preservatives).

(3) Contain the following statement “Imitation _____ sherbet.” The blank is to be filled in by the characterizing flavor used. The letters in the word imitation shall be the same size, type and color and on the same contrasting background as the name of the characterizing flavor and the word sherbet.

(4) The statement required in paragraph (3) shall be followed immediately by the words “contains no fruit or fruit juice” in letters at least half the size of those used in paragraph (3).

(5) When a sign is used at the point of purchase to advertise nonfruit sherbet, it shall contain the same information as required in paragraphs (3) and (4).

(6) When nonfruit sherbet is sold other than in properly labeled factory filled containers, a sign or menu board shall be conspicuously displayed on the sale premises or vehicle where it can be clearly read by customers under normal conditions of purchase, stating the name of the food and the information required in paragraphs (3) and (4). The statement shall be in reasonable proximity to the menu items containing nonfruit sherbet and the letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing nonfruit sherbet. A menu listing nonfruit sherbet or items prepared with nonfruit sherbet shall conform to this paragraph.

(7) The sign or menu board required under paragraph (6) need not be used if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such case, the menu shall contain the name of the food and the information required in paragraphs (3), (4) and (6).

Source

The provisions of this § 39.19 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.20. Water ice.

(a) *Description.* Water ices are prepared from the same ingredients and in the same manner prescribed in § 39.18 (relating to sherbet) for sherbets, except that the mix need not be pasteurized. Water ice shall comply with § 39.18 including the requirements for label statement of optional ingredients except that no milk or milk derived ingredient and no egg ingredient, other than egg white, is used.

(b) *Nomenclature.* The name of the food is _____ ice, the blank being filled in, in the manner as specified in § 39.18(f)(1)(i) and (ii) as appropriate.

Source

The provisions of this § 39.20 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.21. Nonfruit water ice.

(a) Nonfruit water ice is an ice having a characterizing fruit like flavor, but it shall not contain any fruit or fruit juice. Nonfruit water ice is prepared while stirring a mix composed of all of the following:

- (1) Characterizing fruit like flavors.
- (2) One or more nutritive sweeteners.
- (3) Any other safe and suitable ingredient approved by the Department.

(b) The finished nonfruit water ice weighs not less than 6 pounds per gallon.

(c) In addition to all other required information the label shall:

(1) Contain a complete list of ingredients, in accordance with 21 CFR 101.4 (relating to food; designation of ingredients).

(2) Comply with 21 CFR 101.22 (relating to foods; labeling of spices, flavorings, colorings, and chemical preservatives).

(3) Contain the following statement "Imitation _____ water ice." The blank is to be filled in by the characterizing flavor used. The letters in the word imitation shall be the same size, type and color and on the same contrasting background as the name of the characterizing flavor and the words "water ice."

(4) The statement required in paragraph (3) shall be followed immediately by the words "contains no fruit or fruit juice" in letters at least half the size of those used in paragraph (3).

(5) When a sign is used at the point of purchase to advertise nonfruit water ice, it shall contain the name of the food and the same information as required in paragraphs (3) and (4).

(6) When nonfruit water ice is sold other than in properly labeled factory filled containers, a sign or menu board must be conspicuously displayed on the sale premises or vehicle where it can be clearly read by customers under normal conditions of purchase, stating the name of the food and the information required in paragraphs (3) and (4). The statement shall be in reasonable proximity to the menu items containing nonfruit water ice and the letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing nonfruit water ice. Any menu listing nonfruit water ice or items prepared with nonfruit water ice shall conform to this paragraph.

(7) The sign or menu board required under paragraph (6) need not be used if each customer is provided with a menu stating the name of the food and the information required in paragraphs (3), (4) and (6) in bold face capitals as large as those used in listing items containing nonfruit water ice.

Source

The provisions of this § 39.21 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1513).

§ 39.22. Mellorine.(a) *Description.*

(1) Mellorine is a food produced by freezing while stirring a pasteurized mix consisting of safe and suitable ingredients including, but not limited to, milk derived nonfat solids and animal or vegetable fat, or both, only part of which may be milkfat. Mellorine is sweetened with nutritive carbohydrate sweetener and is characterized by the addition of flavoring ingredients.

(2) Mellorine contains not less than 1.6 pounds of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon. Mellorine contains not less than 6.0% fat and 2.7% protein having a protein efficiency ratio (PER) not less than that of whole milk protein—108% of casein—by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content of the finished food be less than 4.8% or the protein content be less than 2.2%. The protein to meet the minimum protein requirements shall be provided by milk solids, not fat, or other milk derived ingredients.

(3) When calculating the minimum amount of milkfat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulk ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

(b) *Fortification.* Vitamin A is present in a quantity which will ensure that 40 international units (IU) are available for each gram of fat in mellorine, within limits of good manufacturing practice.

(c) *Methods of analysis.* Fat and protein content, and the protein efficiency ratio shall be determined by the following methods contained in the *Official Methods of Analysis of the Association of Official Analytical Chemists*, 13th ed., 1980 (A.O.A.C. Methods):

(1) Fat content shall be determined by the method: *Fat, Roese-Gottlieb Method Official Final Action* (A.O.A.C., Section 16.287).

(2) Protein content shall be determined by one of the following methods: *Nitrogen Official Final Action*, Kjeldahl Method, Section 16.285, or *Dye Binding Method*, Section 16.286.

(3) The protein efficiency ratio shall be determined by the method: *Biological Evaluation of Protein Quality Official Final Action*, Sections 43.212—43.216.

(d) *Nomenclature.* The name of the food is mellorine. The name of the food on the label shall be accompanied by a declaration indicating the presence of characterizing flavoring in the same manner as is specified in § 39.12(e) (relating to ice cream and frozen custard).

(e) *Label declaration.* The common or usual name of each of the ingredients used shall be declared on the label, in accordance with 21 CFR 101.4 (relating to food; designation of ingredients) except that sources of milkfat or milk solids not fat may be declared, in descending order of predominance either by the use of the terms “milkfat,” and “nonfat milk” when one or any combination of two or more ingredients listed in 21 CFR 101.4(b)(3), (4), (8) and (9) are used, or alternatively as permitted in 21 CFR 101.4.

(f) *Sales.* Mellorine shall be sold, held, offered for sale by any manufacturer, wholesaler, retailer, or any other seller only in properly labeled factory filled containers except in the following instances:

(1) Mellorine may be sold from a dispensing freezer. When mellorine is sold in such manner from a dispensing freezer a sign or menu board shall be displayed where it can be easily read by customers under normal conditions of sale, stating “Mellorine Served Here.” When items containing mellorine are listed on a sign or menu board, the statement “Mellorine Served Here” shall be included on the menu board in reasonable proximity to the items containing mellorine. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing mellorine and on a contrasting background.

(2) No sign or menu board declaration shall be required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such a case the menu shall contain the statement “Mellorine Served Here.” The statement shall be in reasonable proximity to the menu items containing mellorine, and the letters on the statement shall be bold face capitals at least as large as the letters used in listing items containing mellorine. Any menu listing mellorine or items prepared with mellorine shall conform to this paragraph.

(3) Mellorine may be dipped from a properly labeled bulk container. If mellorine is served in this manner, a sign or menu board shall be displayed where it can be easily read by customers under normal conditions of sale stating “Mellorine Served Here.” When items containing mellorine are listed on a sign or menu board the statement “Mellorine Served Here” shall be included in reasonable proximity to the items containing mellorine. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing mellorine.

(4) No sign or menu board declaration shall be required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such a case, the menu shall contain the statement “Mellorine Served Here.” The statement shall be in reasonable proximity to

the menu items containing mellorine, and the letters on the statement shall be bold face capitals at least as large as the letters used in listing items containing mellorine. Any menu listing mellorine or items prepared with mellorine shall conform to this paragraph.

Source

The provisions of this § 39.22 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1513).

§ 39.23. Frozen yogurt.

(a) Frozen yogurt is the food which is prepared by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in § 39.12 (relating to ice cream and frozen custard), except that a sweetener that has been affirmed as generally recognized as safe or has been approved as a food additive for this use by the FDA may be used in place of, or in combination with, nutritive carbohydrate sweeteners.

(1) The ingredients are cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*.

(2) Fruit, nuts or other flavoring materials may be added before or after the mix is pasteurized and cultured.

(3) The standard plate count requirement for frozen desserts applies to the mix prior to culturing.

(b) Frozen yogurt, exclusive of flavoring, contains not less than 3.25% milk-fat, not less than 8.25% milk solids not fat and has a titratable acidity of at least 0.3% expressed as lactic acid. If the titratable acidity of the frozen yogurt mix is less than 0.3%, the manufacturer may establish compliance with this section by disclosing to the Department quality control records that demonstrate as a result of bacterial culture fermentation at least a 0.15% increase in titratable acidity, calculated as lactic acid, above the apparent titratable acidity of the uncultured dairy ingredients in the frozen yogurt mix. This characteristic acidity is developed as a result of the bacterial activity, and no heat or bacteriostatic treatment, other than refrigeration, which results in destruction or partial destruction of the organisms, may be applied to the product after culturing. The finished yogurt shall weigh at least 5 pounds per gallon. The name of the food is frozen yogurt.

(c) In addition to other required information, the label shall contain a complete list of ingredients, in accordance with 21 CFR 101.4 and 101.22 (relating to food; designation of ingredients and foods; labeling of spices, flavorings, colorings and chemical preservatives). On the label of frozen yogurt the strains of bacteria may be collectively referred to as yogurt culture.

Source

The provisions of this § 39.23 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial page (89860).

§ 39.24. Frozen lowfat yogurt or lowfat frozen yogurt.

(a) Frozen lowfat yogurt or lowfat frozen yogurt is the food which is prepared by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in § 39.12 (relating to ice cream and frozen custard), except that a sweetener that has been affirmed as generally recognized as safe or has been approved as a food additive for this use by the FDA may be used in place of, or in combination with, nutritive carbohydrate sweeteners.

(1) The ingredients are cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*.

(2) Fruit, nuts or other flavoring materials may be added before or after the mix is pasteurized and cultured.

(3) The standard plate count requirement for frozen desserts applies only to the mix prior to culturing.

(4) The food, exclusive of flavoring, contains at least 0.5% but not more than 2% milkfat and at least 8.25% milk solids not fat, and has a titratable acidity of at least 0.3% expressed as lactic acid. If the titratable acidity of the frozen yogurt mix is less than 0.3%, the manufacturer may establish compliance with this section by disclosing to the Department quality control records that demonstrate as a result of bacterial culture fermentation at least a 0.15% increase in titratable acidity, calculated as lactic acid, above the apparent titratable acidity of the uncultured dairy ingredients in the frozen yogurt mix. This characteristic acidity is developed as a result of the bacterial activity, and no heat or bacteriostatic treatment, other than refrigeration, which results in destruction or partial destruction of the organisms, shall be applied to the product after the culturing.

(5) The finished food shall weigh at least 5 pounds per gallon. The name of the food is frozen lowfat yogurt or lowfat frozen yogurt.

(b) The label on a package of this food, in addition to all other required information shall:

(1) Contain a complete list of ingredients, in accordance 21 CFR 101.4 (relating to food; designation of ingredients).

(2) Contain nutrition information as required by 21 CFR 101.9 (relating to nutrition labeling of food).

(3) Comply with 21 CFR 101.22(h) and (i) (relating to foods; labeling of spices, flavorings, colorings and chemical preservatives).

(c) On the label, the strains of bacteria may be collectively referred to as yogurt culture.

Source

The provisions of this § 39.24 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial pages (89860) to (89861).

§ 39.25. Frozen nonfat yogurt or nonfat frozen yogurt.

(a) Frozen nonfat yogurt or nonfat frozen yogurt is the food which is prepared by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in § 39.12 (relating to ice cream and frozen custard), except that a sweetener that has been affirmed as generally recognized as safe or has been approved as a food additive for this use by the FDA may be used in place of, or in combination with, nutritive carbohydrate sweeteners.

(1) The ingredients are cultured after pasteurization by one of more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*.

(2) Fruit, nuts or other flavoring materials may be added before or after the mix is pasteurized and cultured.

(3) The standard plate count requirement for frozen desserts applies only to the mix prior to culturing.

(4) The food, exclusive of flavoring, contains less than 0.5% milkfat, not less than 8.25% milk solids not fat and has a titratable acidity of at least 0.3% expressed as lactic acid. If the titratable acidity of the frozen yogurt mix is less than 0.3%, the manufacturer may establish compliance with this section by disclosing to the Department quality control records that demonstrate as a result of bacterial culture fermentation at least a 0.15% increase in titratable acidity, calculated as lactic acid, above the apparent titratable acidity of the uncultured dairy ingredients in the frozen yogurt mix. This characteristic acidity is developed as a result of the bacterial activity, and no heat or bacteriostatic treatment, other than refrigeration, which results in destruction or partial destruction of the organisms, may be applied to the product after culturing.

(5) The finished food shall weigh at least 5 pounds per gallon. The name of the food is "Frozen Nonfat Yogurt or Nonfat Frozen Yogurt."

(b) The label on a package of this food in addition to other information shall:

(1) Contain a complete list of ingredients, in accordance with 21 CFR 101.4 (relating to food; designation of ingredients).

(2) Contain nutrition information required by 21 CFR 101.9 (relating to nutritional labeling of food).

(3) Comply with 21 CFR 101.22(h) and (i) (relating to foods; labeling of spices, flavorings, colorings and chemical preservatives).

(c) On the label, the strains of bacteria may be collectively referred to as yogurt culture.

Source

The provisions of this § 39.25 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial pages (89861) to (89862).

§ 39.26. Quiescently frozen confection.

Quiescently frozen confection is the frozen product made from a sweetening agent, harmless natural or artificial flavoring and water. It may contain milk solids, harmless coloring, organic acids, and any safe and suitable functional ingredient approved by the Department. The finished product shall contain not less than 17% by weight of total solids. The name of the food is quiescently frozen confection. In the manufacture of this product, freezing has not been accomplished by stirring or agitation—generally known as quiescent freezing. In the production of this quiescently frozen confection, no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%. This confection must be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, properly labeled and purveyed to the customer in its original factory filled package. The individually wrapped confection need not be labeled if it is contained in a multiple package which is properly labeled and is purveyed unopened to the consumer. In addition to all other required information, the label shall contain a complete list of ingredients, in accordance with 21 CFR 101.4 and 101.22 (relating to food; designation of ingredients and foods; labeling of spices, flavorings, colorings and chemical preservatives).

Source

The provisions of this § 39.26 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1514).

§ 39.27. Quiescently frozen dairy confection.

Quiescently frozen dairy confection is the frozen product made from milk products, sweetening agents, harmless natural or artificial flavoring and water. It may contain harmless coloring, and any safe and suitable functional ingredient approved by the Department. The finished product contains not less than 13% by weight of total milk solids and not less than 33% by weight of total solids. The name of the food is quiescently frozen dairy confection. In the manufacture of this product, freezing has not been accomplished by stirring or agitation—generally known as quiescently freezing. In the production of this quiescently frozen dairy confection, no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%. This confection must be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, properly labeled and purveyed to the consumer in its original factory filled package. The individually wrapped confection need not be labeled if it is contained in a multiple package which is properly labeled and is purveyed unopened to the consumer. In addition to all other required information, the label shall contain a complete list of ingre-

dients, in accordance with 21 CFR 101.4 and 101.22 (relating to food; designation of ingredients and foods; labeling of spices, flavorings, colorings and chemical preservatives).

Source

The provisions of this § 39.27 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1514) to (1515).

§ 39.28. Frozen dietary dairy dessert.

(a) Frozen dietary dairy dessert is a frozen dessert prepared for persons who wish to restrict their intake of ordinary sweetening ingredients. It is produced by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in § 39.12 (relating to ice cream and frozen custard). The minimum fat content shall be 3.0%, and it shall contain no sugars other than those naturally present in the milk solids or flavoring agents which have been added. It may contain edible carbohydrates other than sugars. The edible carbohydrates must be approved by the Department.

(b) The name of the food is frozen dietary dairy dessert.

(c) The label on a package of frozen dietary dairy dessert in addition to other required information shall:

(1) Contain a complete list of ingredients, in accordance with 21 CFR 101.4 (relating to food; designation of ingredients).

(2) Contain a statement as follows: "Diabetics: This product may be useful in your diet on the advice of a physician. This food is not a reduced calorie food."

(3) Immediately preceding or following the name of the product contain a statement as follows: "Contains ____ % milkfat." The blank shall be filled in with the percentage of milkfat in the product.

(4) Comply with 21 CFR 101.9 and 101.22(h) and (i) (relating to nutrition labeling of food and foods; labeling of spices, flavorings, colorings and chemical preservatives).

(d) The product shall be sold in only sealed or unbroken packages or containers except that it may be sold from a dispensing freezer or dipped from a properly labeled bulk container. The container in which it is served shall contain the information required in subsection (c), or identical information shall be supplied in printed form to the customer at the time of service.

Source

The provisions of this § 39.28 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1515).

§ 39.29. Dietary frozen dessert or low fat frozen dairy dessert.

(a) Dietary frozen dessert or lowfat frozen dairy dessert is a food prepared by freezing while stirring, a pasteurized mix consisting of the ingredients permitted

for ice cream in § 39.12 (relating to ice cream and frozen custard). The finished product contains less than 2.0% by weight of either extractable fat, and its content of total milk solids consists of ingredients listed in § 39.12(b) and is not less than 7.0% by weight. The product weighs no less than 4.5 pounds per gallon, and the total solids per gallon is not less than 1.1 pounds nor more than 1.9 pounds, exclusive of any microcrystalline cellulose used as an ingredient.

(b) One or more vitamins or minerals listed in 21 CFR 101.9(c)(7)(iv) (relating to nutrition labeling of food) may be added to the product. If vitamins or minerals are added, the name of the food on the principal display panel shall be immediately preceded or followed by the word “fortified” in the same style and at least one-half the size of the type used for the name dietary frozen dessert or lowfat frozen dairy dessert and on the same contrasting background. If vitamins or minerals are added, each 4 fluid ounce serving of finished product shall provide no less than 8.0% nor more than 20% of the United States Recommended Daily Allowance of such vitamins or minerals.

(c) The name of the food is dietary frozen dessert or lowfat frozen dairy dessert. In addition to all other required information, it shall:

(1) Contain a complete list of ingredients, in accordance with 21 CFR 101.4 (relating to food, designation of ingredients).

(2) Comply with 21 CFR 101.9 and 101.22(h) and (i) (relating to nutrition labeling of food and foods; labeling of spices, flavorings, colorings and chemical preservatives).

(d) Dietary frozen dessert or lowfat frozen dairy dessert may be sold only in properly labeled factory filled containers, except that dietary frozen dessert or lowfat frozen dairy dessert may be sold from a dispensing freezer. When dietary frozen dessert or lowfat frozen dairy dessert is sold from a dispensing freezer, a sign or menu board shall be displayed in a location where it can be easily read by customers under normal conditions of sale. When items containing dietary frozen dessert or lowfat dairy dessert are listed on a sign or menu board, the statement “Dietary Frozen Dessert Served Here” or “Lowfat Frozen Dairy Dessert Served Here” shall be included in reasonable proximity to the items containing dietary frozen dessert or lowfat frozen dairy dessert. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing dietary frozen dessert or lowfat frozen dairy dessert and shall be on a contrasting background. No sign or menu board declaration shall be required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such case the menu shall contain the statement “Dietary Frozen Dessert Served Here” or “Lowfat Frozen Dairy Dessert Served Here.” Such statement shall be in reasonable proximity to the menu items containing dietary frozen dessert or lowfat frozen dairy dessert and the letters on such statement shall be bold face capitals at least as large as the letters used in listing items containing dietary frozen dessert or lowfat frozen dairy des-

sert. Any menu listing dietary frozen dessert or lowfat dairy dessert items prepared with dietary frozen dessert or lowfat frozen dairy dessert shall conform with this subsection.

(e) Dietary frozen dessert or lowfat frozen dairy dessert may be dipped from a properly labeled bulk container. If dietary frozen dessert or lowfat frozen dairy dessert is served in this manner, a sign shall be displayed where it can be easily read by customers under normal conditions of purchase stating "Dietary Frozen Dessert Served Here" or "Lowfat Frozen Dairy Dessert Served Here." The letters on the sign shall be bold face capitals at least 3 inches in height and on a contrasting background.

(f) If items containing dietary frozen dessert or lowfat frozen dairy dessert are listed on a menu board, the statement "Dietary Frozen Dessert Served Here" or "Lowfat Frozen Dairy Dessert Served Here" shall be included on the menu board in reasonable proximity to the items containing dietary frozen dessert or lowfat frozen dairy dessert. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing dietary frozen dessert or lowfat frozen dairy dessert. No sign or menu board declaration shall be required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such a case, the menu shall contain the statement "Dietary Frozen Dessert Served Here" or "Lowfat Frozen Dairy Dessert Served Here." This statement shall be in reasonable proximity to the menu items containing dietary frozen dessert or lowfat frozen dairy dessert, and the letters on the statement shall be bold face capitals at least as large as the letters used in listing items containing dietary frozen dessert or lowfat frozen dairy dessert. Any menu listing dietary frozen dessert or lowfat frozen dairy dessert or items prepared with dietary frozen dessert or lowfat frozen dairy dessert shall conform to this subsection.

Source

The provisions of this § 39.29 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1515).

§ 39.30. Manufactured desserts mix.

(a) Manufactured desserts mix, whipped cream confections and bisque tortoni are frozen desserts made with milk products, sweetening agents and flavoring agents, with or without harmless coloring or any other safe and suitable ingredients approved by the Secretary. The product must contain not less than 18% by weight of milkfat, and not more than 12% of milk solids not fat, and may be packaged with harmless gas causing it to fluff upon ejection from the package or container.

(b) In addition to other required information, the label shall contain a complete list of ingredients in accordance with 21 CFR 101.4 (relating to food; designation of ingredients).

Source

The provisions of this § 39.30 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1515).

§ 39.31. Freezer-made shakes, freezer-made milk shakes and freezer-made lowfat milk shakes.

(a) A freezer-made milk shake is a pure, clean, wholesome semi-viscous drink prepared by stirring while freezing a pasteurized mix consisting of the ingredients prescribed for ice milk in § 39.15 (relating to ice milk) except that:

- (1) It shall contain not less than 3.25% and not more than 6.0% milkfat.
- (2) Its content of milk solids not fat shall not be less than 10%.
- (3) It may contain a sweetner that has been affirmed as generally recognized as safe or has been approved as a food additive for this use by the FDA in place of, or in combination with, nutritive carbohydrate sweeteners.

(b) Freezer-made lowfat milk shake means the same product as that described in subsection (a) except that it shall contain at least 0.5% and not more than 2% milkfat.

(c) Other freezer-made shakes including jumbo shake, thick shake, T.V. shake, or any coined or trade name containing the word “shake” shall meet the requirements of subsection (a), except that the minimum percent of milkfat may be less than 3.25%.

(d) “Shakes” not meeting the requirements for “milk shake” shall not be advertised, sold or served as milk shakes.

(e) When any freezer-made milk shake or other freezer made shake is represented for special dietary use by man, it shall be sold only in a container, the label on which shall contain the name of the food, a complete list of ingredients in accordance with 21 CFR 101.4 (relating to food; designation of ingredients) and nutrition information required by 21 CFR 101.9 (relating to nutrition labeling of food).

Source

The provisions of this § 39.31 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial page (89866).

§ 39.32. Parevine.

(a) Parevine is the food which is prepared by freezing while stirring a pasteurized mix composed of all of the following:

- (1) One or more edible vegetable oils or fats.
- (2) Protein and carbohydrate food ingredients from other than milk or meat sources.
- (3) Nutritive sweeteners other than lactose.
- (4) Characterizing ingredients except any containing meat or milk.

- (5) Any other safe and suitable ingredient which is not milk or meat or a product or derivative of milk or meat. This product shall not contain any milk, milk product, meat or meat products or any of their derivatives of any kind.
- (b) Its fat content shall not be less than 10%, except that when bulky optional characterizing ingredients are used, the fat content may be reduced, as a result of the addition of such ingredients, but shall in no case be less than 8.0%.
- (c) Its total solids shall not be less than 1.3 pounds per gallon of the finished product.
- (d) The name of the food is parevine.
- (e) Parevine may be sold, held or offered for sale by any manufacturer, wholesaler, retailer, or any other seller only in properly labeled factory filled containers, except under paragraphs (1) and (2).
- (1) Parevine may be sold from a dispensing freezer. When parevine is sold from a dispensing freezer, a sign or menu board shall be displayed in a location where it can be easily read by customers under normal conditions of sale, stating "Parevine Served Here." When items containing parevine are listed on a sign or menu board, the statement "Parevine Served Here" shall be included in reasonable proximity to the items containing parevine. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing parevine and on a contrasting background. No sign or menu board declaration shall be required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such a case, the menu shall contain the statement "Parevine Served Here." The statement shall be in reasonable proximity, and the letters of the statement shall be bold face capitals at least as large as the letters used in listing items containing parevine. Any menu listing parevine or items prepared with parevine shall conform to this paragraph.
- (2) Parevine may be dipped from a properly labeled bulk container. If parevine is served in this manner, a sign or menu board shall be displayed where it can be easily read by customers under normal conditions of sale stating "Parevine Served Here." When items containing parevine are listed on a menu board, the statement "Parevine Served Here" shall be included in reasonable proximity to the items containing parevine. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing parevine. No sign or menu board declaration shall be required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such a case the menu shall contain the statement "Parevine Served Here." This statement shall be in reasonable proximity to the menu items containing parevine, and the letters on the statement shall be bold face capitals at least as large as the letters used in listing items containing parevine. Any menu listing parevine or items prepared with parevine shall conform to this paragraph.

Source

The provisions of this § 39.32 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1516).

Cross References

This section cited in 7 Pa. Code § 39.33 (relating to lowfat parevine).

§ 39.33. Lowfat parevine.

- (a) Lowfat parevine is a food which meets the requirements of § 39.32 (relating to parevine) except that its fat content shall be not more than 6.0%.
- (b) The name of the product is lowfat parevine.
- (c) Section 39.32(e)(1) and (2) applies.

Source

The provisions of this § 39.33 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1516).

§ 39.34. Frozen pudding.

- (a) Frozen pudding is a product made from a pasteurized mix, intended to be eaten in the frozen state. The mix may be composed of the following:
 - (1) Milk and milk products.
 - (2) Modified or unmodified food starch.
 - (3) Sweetening agents.
 - (4) Harmless natural or artificial flavoring.
 - (5) Harmless natural or artificial color.
 - (6) Any other safe or suitable functional ingredient approved by the Secretary.
- (b) The finished product shall contain the following:
 - (1) Not less than 5.0% by weight of milk solids not fat.
 - (2) Not less than 25% total solids.
- (c) The weight of the finished product shall be not less than 4.5 pounds per gallon.
- (d) If not frozen promptly after pasteurization, it shall be cooled to 45°F or lower and maintained there.
- (e) The name of the product is frozen pudding.
- (f) The label on packages of frozen pudding shall, in addition to all other required information, include a complete list of all ingredients in accordance with 21 CFR 101.4 and 101.22 (relating to food; designation of ingredients and foods; labelling of spices, flavorings, colorings and chemical preservatives).
- (g) Frozen pudding may be sold, held or offered for sale by any manufacturer, wholesaler, retailer, or any other seller only in properly labeled factory filled containers, except for the following:
 - (1) Frozen pudding may be sold from a dispensing freezer. When frozen pudding is sold from a dispensing freezer, a sign or menu board shall be dis-

played in a location where it can be easily read by customers under normal conditions of sale, stating "Frozen Pudding Served Here." When items containing frozen pudding are listed on a menu board, the statement "Frozen Pudding Served Here" shall be included in reasonable proximity to the items containing frozen pudding. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing frozen pudding and on a contrasting background. A sign or menu board declaration is not required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such a case the menu shall contain the statement "Frozen Pudding Served Here." This statement shall be in reasonable proximity to the menu items containing frozen pudding, and the letters on the statement shall be bold face capitals at least as large as the letters used in listing items containing frozen pudding. A menu listing frozen pudding or items prepared with frozen pudding shall conform to this paragraph.

(2) Frozen pudding may be dipped from a properly labeled bulk container. If frozen pudding is served in this manner, a sign or menu board shall be displayed where it can be easily read by customers under normal conditions of sale stating "Frozen Pudding Served Here." When items containing frozen pudding are listed on a sign or menu board, the statement, "Frozen Pudding Served Here" shall be included in reasonable proximity to the items containing frozen pudding. The letters in the statement shall be bold face capitals at least as large as the letters used in listing items containing frozen pudding. A sign or menu board declaration is not required if the only method of advising customers on what items are being offered for sale is a menu furnished to the customer. In such case the menu shall contain the statement "Frozen Pudding Served Here." This statement shall be in reasonable proximity to the menu items containing frozen pudding, and the letters on the statement shall be bold face capitals at least as large as the letters used in listing items containing frozen pudding. A menu listing frozen pudding or items prepared with frozen pudding shall conform to this paragraph.

Source

The provisions of this § 39.34 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1517).

§ 39.35. Lo-mel.

(a) Lo-mel is a pure, clean wholesome semi-viscous drink prepared by stirring while freezing a pasteurized mix composed of milk solids not fat, water, and edible fats or oils other than milkfat. It may contain optional sweetening ingredients and any other safe and suitable ingredients approved by the Department.

(b) The content of milk solids not fat shall not be less than 10%.

(c) When lo-mel is sold, a sign or menu board must be prominently and conspicuously displayed where it can be clearly read by customers under normal condition of purchase, stating "Lo-Mel Served Here," in bold face capitals at least as large as the letters used in listing items containing lo-mel and in contrasting color to the background. A sign or menu board is not required if the only method of advising the customers on what items are being offered for sale is a menu furnished to the customer. In such a case, the menu shall contain the statement "Lo-Mel Served Here." A menu advertising lo-mel shall conform with this subsection.

(d) When lo-mel is represented for special dietary use by man, it shall be sold in a labeled container. The label shall include the name of the food, a complete list of ingredients in accordance with 21 CFR 101.4 (relating to food; designation of ingredients) and nutrition information as required by 21 CFR 101.9 (relating to nutrition labeling of food).

Source

The provisions of this § 39.35 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1517).

§ 39.36. [Reserved].

Source

The provisions of this § 39.36 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1517).

§ 39.37. [Reserved].

Source

The provisions of this § 39.37 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1517).

§ 39.38. Generic frozen dessert.

(a) *Description.* A generic frozen dessert is a food that in its unfrozen form or state, is recognized by consumers by an established common or usual name or in the absence thereof, by an appropriate descriptive term. The unfrozen food becomes a frozen dessert when it is frozen with or without agitation, and when the food, in its frozen form is designed and intended to be consumed in a frozen state. A generic frozen dessert shall be made from safe and suitable ingredients. A generic frozen dessert, whose unfrozen counterpart is subject to a definition and standard of identity, shall comply with that definition and standard of identity, and ingredient provisions, except that safe and suitable ingredients may additionally be used that are necessary in the manufacture of the frozen dessert.

(b) *Nomenclature.* The name of the frozen dessert shall be “Frozen _____.” The blank shall be filled in with the common or usual name of the unfrozen counterpart of the food, or in the absence thereof, an appropriate descriptive term.

(c) *Labeling.*

(1) The label of the food shall comply with the requirements in 21 CFR Chapter 1, Subchapter B (relating to food for human consumption).

(2) A complete list of ingredients shall be presented in descending order of predominance by weight of the ingredient.

Source

The provisions of this § 39.38 adopted June 2, 1989, effective June 3, 1989, 19 Pa.B. 2352.

§ 39.39. Nonfat frozen dessert or frozen dairy dessert.

(a) *Description.* Nonfat frozen desserts and frozen dairy desserts are the foods prepared from the same ingredients and in the same manner prescribed for ice cream in § 39.12 (relating to ice cream and frozen custard). These products shall comply with § 39.12, including the requirements for label statement of optional ingredients, except that:

(1) Sweetening agents and fat substitutes that are “safe and suitable,” as that term is defined by the FDA and published at 21 CFR 103.3(d) (relating to definitions), may be used.

(2) Its content of milk fat is less than 0.5%.

(3) Its content of total milk solids per gallon before the addition of bulky flavors is at least 0.45 pounds.

(4) Caseinates may be added when the content of total milk solids per gallon before the addition of bulky flavors is at least 0.45 pounds.

(5) The quantity of food solids per gallon is at least 1.3 pounds.

(6) The weight per gallon is at least 4 pounds.

(b) *Nomenclature.* The name of the frozen dessert shall be nonfat frozen dessert or frozen dairy dessert.

(c) *Labeling.* In addition to meeting the requirements of § 39.4 (relating to contents of labels), the food shall be labeled in accordance with 21 CFR Part 101 (relating to food labeling) and the label shall contain:

(1) A complete list of ingredients, in accordance with 21 CFR 101.4 (relating to food, designation of ingredients).

(2) Nutritional information as described at 21 CFR 101.9 (relating to nutrition labeling of food).

Source

The provisions of this § 39.39 adopted October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019.

§ 39.40. Other standards of identity.

If no comparable frozen dessert standard of identity described in this chapter applies, the frozen dessert standard of identity as adopted or amended by the FDA and published at 21 CFR (relating to food and drugs) applies.

Source

The provisions of this § 39.40 adopted October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019.

SPECIFIC REQUIREMENTS FOR RETAIL MANUFACTURERS OF FROZEN DESSERTS**§ 39.41. Operation.**

Operations where frozen desserts are prepared from an approved mix purchased from a permit holding source and sold only on the premises where manufactured shall comply with 7 Pa. Code Chapter 78 (relating to food establishments).

Source

The provisions of this § 39.41 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1518) to (1519).

§ 39.42. [Reserved].**Source**

The provisions of this § 39.42 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1519) to (1520).

SANITATION**§ 39.51. General.**

- (a) Sinks shall be provided and be of suitable size to accommodate the equipment and utensils to be washed.
- (b) Equipment shall be designed, installed, and operated in accordance with the criteria set forth by the National Sanitation Foundation, the Committee for 3-A Sanitary Standards for Dairy Equipment or as otherwise approved by the Department.
- (c) Fixtures, furnishings, machinery, apparatus, implements, utensils, receptacles and equipment used to produce, store, keep, handle, distribute or serve frozen desserts shall be maintained, operated and stored in a clean and sanitary manner.
- (d) The temperature of the mix may not exceed 45°F.

Source

The provisions of this § 39.51 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1521).

§ 39.52. Intermediate containers.

Intermediate containers such as pails or pouring containers in which mix comes in contact shall be washed, rinsed and sanitized before use.

Source

The provisions of this § 39.52 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1521).

§ 39.53. Mix cans.

Immediately after mix cans are emptied, they shall be washed, rinsed and drained.

Source

The provisions of this § 39.53 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.54. Dispensing freezers.

(a) Dispensing freezers shall be rinsed and disassembled after each day's use. Use of clean-in-place installation approved by the Department is acceptable.

(b) Dispensing freezers shall be washed, rinsed and sanitized before the close of each working day on which they are used.

(c) Dispensing freezers shall be sanitized prior to use on each day on which they are used.

(d) Dispensing freezers shall be left unassembled or partially assembled with adequate ventilation when not in use.

(e) Dispensing freezers are exempt from subsections (a)—(d) if the following conditions are met:

(1) They are listed under the applicable standards of the National Sanitation Foundation and utilize a heat treatment process which heats all of the frozen dessert ingredients contained therein to a temperature of at least 150°F for at least 30 minutes each day, or they employ another heat treatment process that has been approved by the Department and either the National Sanitation Foundation or the Committee for 3-A Sanitary Standards for Dairy Equipment.

(2) They are disassembled, cleaned and sanitized at intervals of no greater than 14 days.

(3) They contain a lockout mechanism to prevent the dispensing of frozen dessert products if the heat treatment process utilized by the dispensing freezers fails or the dispensing freezer is not disassembled, cleaned and sanitized at intervals of no greater than 14 days.

Source

The provisions of this § 39.54 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1993, effective October 10, 1993, 23 Pa.B. 5019. Immediately preceding text appears at serial page (137934).

§ 39.55. Suggested procedure for cleaning and sanitizing equipment.

The following cleaning procedure is recommended:

- (1) Thoroughly rinse equipment used during the operation with lukewarm water.
- (2) Completely disassemble and thoroughly scrub every part which comes in contact with the product. Use a suitable brush and a dairy cleanser dissolved in hot, 110—120°F, water.
- (3) Rinse washed parts thoroughly with clean hot water and sanitize.
- (4) Reassemble and sanitize equipment before use. Effective concentrations and temperatures of suitable agents approved by the Department shall be used for sanitizing.
- (5) Prior to use, do not handle any portion of equipment or containers which have been sanitized.

Source

The provisions of this § 39.55 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.56. Clearing lines and equipment.

- (a) When the same equipment is used for the processing, pasteurizing and packaging of frozen desserts made with dairy products and frozen desserts made with vegetable fats, oils or proteins, any remaining product shall be completely removed from the lines and equipment. The equipment shall be rinsed with potable water and sanitized before introducing the other product into the lines and equipment.
- (b) Equipment and lines shall be sanitized at the end of each day's operations or before the beginning of the following day's operations.

Source

The provisions of this § 39.56 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.57. Water testing.

- (a) Samples for bacteriological testing of individual water supplies shall be taken upon the initial approval of the supply, a frequency of not less than once every 6 months thereafter and when any repair or alteration of the water supply system has been made. Bacteriological examinations shall be conducted in a laboratory acceptable to the Secretary.
- (b) Records of water tests shall be kept on file at each frozen dessert plant for at least 1 year.

Source

The provisions of this § 39.57 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

Cross References

This section cited in 7 Pa. Code § 39.72 (relating to operating from depot required).

LABORATORY TESTS OF FROZEN DESSERTS**§ 39.61. Sampling and testing.**

(a) The sampling and testing required in this section is the responsibility of the frozen dessert licensee.

(b) Test samples shall be collected by an approved sampler. Sample collection shall be unannounced and shall be randomly scheduled by the laboratory.

(c) Representative samples of each type of product shall be tested at least monthly. In case of new or seasonally produced frozen desserts, bacteriological tests shall be made at least weekly until three samples are analyzed, followed by monthly testing as applicable. Exemption from initial weekly testing of seasonally produced frozen desserts may be granted if reports of the last four analyses during the previous season are on file with the frozen dessert licensee for review by the Department, to determine conformity with § 39.66(1) (relating to penalty for violation of standards).

(d) In the case of nonpermit holders, samples shall be collected from each barrel of each machine. In the case of new or seasonally produced frozen desserts, bacteriological tests shall be made at least weekly until three samples are analyzed, followed by monthly testing as applicable. Exemption from initial weekly testing of seasonally produced frozen desserts may be granted if the reports of the last four analyses during the previous season are on file with the frozen dessert licensee for review by the Department and the last four analyses during the previous season are in compliance with § 39.65 (relating to test standards).

(e) For nonpermit holders with multi-barrel machines, an identification system approved by the Department shall be used to identify the barrels and machines and the individual products.

Source

The provisions of this § 39.61 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial page (89872).

Cross References

This section cited at 7 Pa. Code § 39.63 (relating to monthly laboratory reports).

§ 39.62. Filing test results.

The results of required bacteriological and chemical test results shall be kept on file at each frozen dessert plant for at least 1 year. Reports shall be maintained in chronological order on forms approved by the Department, and they shall be available for inspection by the Department.

Source

The provisions of this § 39.62 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (7311) and (3680).

§ 39.63. Monthly laboratory reports.

(a) Pennsylvania Approved Dairy Laboratories shall report all required analytical test results to the Department at least weekly.

(b) The approved laboratory shall immediately notify the Department of non-conforming adulteration test results.

(c) A report shall contain the following information:

- (1) Time, date, and temperature of product when collected.
- (2) Name of approved sampler.
- (3) Identification of the frozen dessert licensee where samples were collected.
- (4) Identification of the sample as to the barrel and machine sampled from nonpermit holders as required in § 39.61(e) (relating to sampling and testing).
- (5) Required analytical information.
- (6) Name of the laboratory performing the work.
- (7) Signature of the Pennsylvania Approved Dairy Laboratory Director.

Source

The provisions of this § 39.63 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial pages (89872) to (89873).

§ 39.64. Copies of test results.

The licensee and those exempt from licensing under section 7(d) of The Frozen Dessert Law (31 P. S. § 417-7(d)) shall be provided with copies of all sample results reported by the Pennsylvania Approved Dairy Laboratory within 10 days of the date of sampling.

Source

The provisions of this § 39.64 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242.

§ 39.65. Test standards.

(a) *Standard plate count.* The count may not exceed 50,000 per gram. Cultured products are exempt from this requirement.

(b) *Coliform group count.* The count may not exceed 10 per gram except in products to which fruit, nuts or bulky flavor is added after pasteurization when the count may not exceed 20 per gram.

Source

The provisions of this § 39.65 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial page (89873).

Cross References

This section cited at 7 Pa. Code § 39.61 (relating to sampling and testing).

§ 39.66. Penalty for violation of standards.

Frozen dessert licensees and those exempt from licensing shall be liable for punitive action under section 10 of The Frozen Dessert Law (31 P. S. § 417-10) for the following reasons:

- (1) If the standard for the same flavor of the same type product is exceeded by three out of the last five bacteria counts or coliform determinations.
- (2) In the case of nonpermit holders, if the standard for the same barrel of the same machine is exceeded by three out of the last five bacteria counts or coliform determinations.
- (3) If The Frozen Dessert Law (31 P. S. §§ 417-1—417-14) or this chapter are violated.

Source

The provisions of this § 39.66 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5019. Immediately preceding text appears at serial page (89873).

Cross References

This section cited in 7 Pa. Code § 39.61 (relating to sampling and examination).

MOBILE UNITS AND DEPOTS

§ 39.71. Minimum standards.

Mobile units shall comply with this chapter except that the absence of toilet facilities on units shall be permitted. Mobile units shall comply with this section.

- (1) *Water supply.* A potable water supply shall be provided and kept in a supply tank having a capacity of at least 20 gallons. The tank shall be installed to permit complete drainage, and a suitable drain cock shall be provided. The water inlet pipe shall be of removable flexible copper or other approved tubing, with the nozzle for hose connection capped when not being used. A hose for connection to the potable water supply shall be provided, and it shall be equipped with an approved backflow prevention device.

(2) *Personnel sanitation.* A hand wash sink, with running hot and cold water, soap and single service or individual towels or mechanical hand dryer shall be provided.

(3) *Waste-water tank.* A suitable waste-water tank with a capacity of at least 5 gallons greater than the water supply tanks shall be provided. The tank shall be installed to permit complete drainage and shall be provided with a suitable drain, emptied and flushed as often as necessary, and shall be maintained in a sanitary condition.

(4) *Refrigeration.* A refrigerated box capable of maintaining a temperature not exceeding 45°F shall be provided for holding the various ingredients or frozen desserts mix. The box shall be of ample capacity and of stainless steel or other non-corrosive material. It shall be provided with metal racks or platforms or shelves on which to store products or ingredients and shall be equipped with an indicating thermometer.

(5) *Partition.* There shall be a partition or self-closing doors between the driver's seat and the manufacturing and serving area, unless an air conditioner is operating.

(6) *Sticker.* In addition to the licensing requirements of section 7 of The Frozen Dessert Law (31 P. S. § 417-7), each mobile unit shall bear a sticker that contains the Pennsylvania Frozen Dessert License number. This sticker shall be provided by the Department and shall be placed on the serving window of the mobile unit.

(7) *Return to depot.* Mobile units that do not return to a depot each evening shall be equipped with hot and cold water and a sink large enough to accommodate the largest piece of equipment to be cleaned.

Source

The provisions of this § 39.71 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (7312).

§ 39.72. Operating from depot required.

(a) All mobile units, except those operated exclusively at fairs, outings, carnivals and other affairs of short duration, shall operate from depots. The depots shall be large enough to accommodate one or more mobile units for cleaning and sanitizing.

(b) Units shall return to their respective depots at least once a day for cleaning and sanitizing.

(c) Depots shall comply with the requirements in this subsection.

(1) *Walls.* Walls shall be reasonably smooth and clean. There shall be no openings in the walls or at the base of doors where vermin or rodents may enter.

(2) *Floors.* The floors shall be constructed of impervious materials and shall be provided with a drain and sloped to the drain. The juncture of the floor and walls shall be covered.

(3) *Ventilation.* Adequate ventilation facilities shall be provided and shall be screened or otherwise protected to prevent the entrance of flies, other insects, vermin or rodents.

(4) *Personnel sanitation.* Suitable toilet facilities, hand washing facilities equipped with hot and cold running water, soap, single service towels or air dryers, clothes lockers and garbage cans shall be provided.

(5) *Sink.* A sink large enough to accommodate the largest piece of equipment to be washed, drain boards of impervious material and a sufficient supply of hot and cold running water shall be provided.

(6) *Lighting.* Adequate lighting shall be provided.

(7) *Hoses.* Hoses shall be equipped with a backflow prevention device to eliminate possible contamination from return flow, and hoses shall be stored to permit complete drainage and to avoid contamination.

(8) *Drying rack.* A metal pipe drying rack or its equivalent for drying utensils and equipment shall be provided.

(9) *Storage of wastes.* Suitable covered storage facilities or containers for all refuse and waste shall be provided. Refuse and waste shall be removed daily from each depot.

(10) *Separation of areas.* A physical separation between the area where the trucks are located and the area where food is stored shall be required.

(11) *Storage of food.* If frozen desserts, frozen desserts mix, flavors, syrups, fruit and other edible materials are stored at a depot, they shall be stored in rooms completely separated from rooms where cleaning and sanitizing are done. Food materials shall be kept at temperatures necessary to prevent spoilage and under conditions which will prevent contamination.

(12) *Water supply.* Depots shall be equipped with an adequate supply of potable, hot and cold water.

(13) *Depots.* Depots shall comply with § 39.57 (relating to water testing).

Source

The provisions of this § 39.72 adopted March 25, 1970; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (7313).

§§ 39.73 and 39.74. [Reserved].

Source

The provisions of these §§ 39.73 and 39.74 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (7313) to (7314).

§§ 39.81—39.91. [Reserved].

Source

The provisions of these §§ 39.81—39.91 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (7315) to (7318).

§§ 39.101—39.108. [Reserved].

Source

The provisions of these §§ 39.101—39.108 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (7318) to (7322).

§§ 39.111 and 39.112. [Reserved].

Source

The provisions of these §§ 39.111 and 39.112 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1535).

§§ 39.121—39.123. [Reserved].

Source

The provisions of these §§ 39.121—39.123 adopted March 25, 1970; amended October 13, 1972, effective October 14, 1972, 2 Pa.B. 1928; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (7323).

§§ 39.131—39.133. [Reserved].

Source

The provisions of these §§ 39.131—39.133 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (7324).

§§ 39.141—39.147. [Reserved].

Source

The provisions of these §§ 39.141—39.147 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1538) to (1539).

§§ 39.151—39.154. [Reserved].

Source

The provisions of these §§ 39.151—39.154 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1539) to (1540).

§§ 39.161—39.163. [Reserved].**Source**

The provisions of these §§ 39.161—39.163 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1542) to (1543).

§§ 39.171 and 39.172. [Reserved].**Source**

The provisions of these §§ 39.171 and 39.172 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1543) to (1544).

§§ 39.181—39.183. [Reserved].**Source**

The provisions of these §§ 39.181—39.183 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1544) to (1545).

§§ 39.191—39.193. [Reserved]**Source**

The provisions of these §§ 39.191—39.193 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1545).

§ 39.201. [Reserved].**Source**

The provisions of these § 39.201 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1546).

§§ 39.211—39.215. [Reserved].**Source**

The provisions of these §§ 39.211—39.215 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1546) to (1547).

§§ 39.221—39.224. [Reserved].**Source**

The provisions of these §§ 39.221—39.224 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (1548).

§§ 39.231 and 39.232. [Reserved].

Source

The provisions of these §§ 39.231 and 39.232 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial page (7325).

§§ 39.241—39.244. [Reserved].

Source

The provisions of these §§ 39.241—39.244 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1551) to (1552).

§§ 39.251—39.253. [Reserved].

Source

The provisions of these §§ 39.251—39.253 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1552) to (1553).

§§ 39.261—39.263. [Reserved].

Source

The provisions of these §§ 39.261—39.263 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1553) to (1554).

§§ 39.271—39.273. [Reserved].

Source

The provisions of these §§ 39.271—39.273 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1554) to (1555).

§§ 39.281—39.285. [Reserved].

Source

The provisions of these §§ 39.281—39.285 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1555) to (1556).

§§ 39.291—39.293. [Reserved].

Source

The provisions of these §§ 39.291—39.293 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1556) to (1557).

§§ 39.301—39.304. [Reserved].**Source**

The provisions of these §§ 39.301—39.304 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1557) to (1558).

§§ 39.311 and 39.312. [Reserved].**Source**

The provisions of these §§ 39.311 and 39.312 adopted March 25, 1970; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (1558) and (7326).

§§ 39.321—39.325. [Reserved].**Source**

The provisions of these §§ 39.321—39.325 adopted October 13, 1972, effective October 14, 1972, 2 Pa.B. 1928; reserved June 29, 1984, effective June 30, 1984, 14 Pa.B. 2242. Immediately preceding text appears at serial pages (32374) to (32375).

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