

CHAPTER 503

FROZEN DESSERTS

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503.011 Definitions.—The following definitions shall apply in the interpretation and enforcement of this chapter:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Frozen desserts" means the foods which conform to the provisions of "definitions and standards of identity for frozen desserts," United States Food and Drug Administration, 21 C.F.R. part 135 (1990), and foods, defined by rule of the department, which resemble but do not conform to federal definitions. The term also includes, but is not limited to, "quiescently frozen confection," "quiescently frozen dairy confection," and "frozen dietary dairy dessert and frozen dietary dessert."

(3) "Quiescently frozen confection" means a clean and wholesome frozen, sweetened, flavored product that, while being frozen, was not stirred or agitated (generally known as quiescent freezing). This confection may be acidulated with food grade acid, may contain milk solids or water, or may be made with or without added harmless pure or imitation flavoring and with or without harmless coloring. The finished product may contain not more than 0.5 percent by weight of stabilizer composed of wholesome edible material. The finished product shall contain not less than 17 percent by weight of total food solids. In the production of this 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 percent.

(4) "Quiescently frozen dairy confection" means a clean and wholesome frozen product made from water, milk products, and sugar, with added harmless pure or imitation flavoring, with or without added harmless coloring, with or without added stabilizer, with or without added emulsifier, which, while being frozen, was not stirred or agitated (generally known as quiescent freezing). It contains not less than 13 percent by weight of total milk solids, not less than 33 percent by weight of total food solids, not more than 0.5 percent by weight of stabilizer, and not more than 0.2 percent of weight by emulsifier. Stabilizer and emulsifier must be composed of wholesome, edible material. In the production of quiescently frozen dairy confections, no processing or mixing prior to quiescently freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10 percent.

(5) "Frozen dietary dairy dessert and frozen dietary dessert" means a food for any special dietary use, prepared by freezing, with or without agitation, and com-

posed of a pasteurized mix which may contain fat, protein, carbohydrates, natural or artificial sweeteners, flavoring, stabilizers, emulsifiers, vitamins, and minerals.

(6) "Frozen desserts manufacturer" means any person who manufactures, processes, converts, partially freezes, or freezes any mix or frozen desserts for distribution or sale.

(7) "Frozen desserts plant" means any place or premises where frozen desserts or mix are manufactured, processed, or frozen for distribution or sale at wholesale.

(8) "Frozen desserts retail establishment" means any place or premises, including retail stores, stands, hotels, boardinghouses, restaurants, and vehicles or mobile units, where frozen desserts are frozen or partially frozen or dispensed for sale at retail.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 188, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 3, ch. 79-38; ss. 2, 3, ch. 81-318; ss. 1, 5, 6, ch. 83-12; s. 1, ch. 91-190; ss. 1, 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.021 Legislative intent.—It is the intent of this chapter to encourage the sanitary production of frozen desserts in order to ensure that they are made from safe, suitable ingredients and are palatable and properly labeled.

History.—s. 2, ch. 69-398; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 2, 5, 6, ch. 83-12; s. 2, ch. 91-190; ss. 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.031 Powers of department.—The department may:

(1) Adopt rules necessary to administer and enforce this chapter. The rules must, to the extent possible, conform to applicable federal requirements.

(2) Inspect frozen desserts and frozen dessert plants and license frozen dessert plants to handle and process mix and to manufacture frozen desserts. Inspections must be based on the frequency and severity of a violation. However, the department must comply with all federal requirements governing inspections.

(3) Require a licensee to keep appropriate books and records.

(4) Issue stop-sale orders on any frozen dessert when sold or offered for sale in violation of this chapter or applicable rules. It is unlawful to remove any stop-sale order or dispose of a product to which a stop-sale order is attached without authority of the department or order of court.

(5) Require frozen desserts to be labeled with an accurate ingredient legend and appropriate designated terminology.

(6) Prohibit any person from advertising, packaging, labeling, selling, or offering for sale, or causing to be advertised, packaged, labeled, sold, or offered for sale, any frozen dessert the advertising, packaging, or labeling of which contains any assertion, representation, or statement that is untrue, deceptive, or misleading.

(7) Issue temporary marketing permits for frozen desserts that resemble but do not conform to the provisions of "definition and standards of identity for frozen desserts," United States Food and Drug Administration, 21 C.F.R. part 135 (1990).

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; ss. 1, 2, ch. 73-318; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 3, 5, 6, ch. 83-12; s. 3, ch. 91-190; ss. 2, 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.041 License fee; report required; penalty.—

(1) Each frozen dessert plant that manufactures frozen desserts or other products defined in this chapter, or offers these products for sale in this state must hold a valid license.

(2) The department shall furnish an application form that requires the applicant to state that he will comply with all provisions of this chapter and applicable rules. The application must be signed by the owner, a partner if the plant is a partnership, or an authorized officer or agent if the plant is a corporation. All licenses expire June 30 of each year. The initial application must be accompanied by a license fee of \$200. The annual license renewal fee is \$100.

(3) Each licensee must report monthly, quarterly, semiannually, or annually, as required by the department, the number of gallons of frozen dessert, or frozen dessert mix, sold or manufactured by the licensee in this state.

(4) If the report is not filed when due, a penalty equal to 10 percent of the license fee or \$100, whichever is greater, shall be assessed.

(5) The department shall mail a copy of the license to the licensee to signify that administrative requirements have been met.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 4, 5, 6, ch. 83-12; s. 3, ch. 85-94; s. 4, ch. 91-190; ss. 3, 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.0415 Fees.—All license fees, fines, or other moneys collected under this chapter shall be deposited into the General Inspection Trust Fund and used to administer this chapter.

History.—ss. 4, 7, ch. 93-67; s. 15, ch. 94-92.

503.051 Suspension or revocation of license.—

The department may for good cause suspend or revoke certifications and licenses issued hereunder.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-95; ss. 2, 3, ch. 81-318; ss. 5, 6, ch. 83-12; ss. 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.071 Penalty, injunction, and administrative fines.—

(1) Any person, firm, or corporation that willfully violates any provision of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and each and every violation shall constitute a separate offense.

(2) In addition to any penalty imposed under subsection (1), and notwithstanding whether any administrative action is pending, any such person or persons may also be enjoined by the circuit courts of this state on complaint of the department from continuing such violations, and injunction shall issue without bond.

(3) In addition to any penalty imposed under subsection (1) or action taken under subsection (2), the department may, if it finds that one or more grounds exist for suspending or revoking a license issued under this chapter, in lieu of or in addition to the suspension or revocation, impose on the licensee a fine in an amount not to exceed \$10,000 per violation.

(4) If a person has violated this chapter by engaging in the business of manufacturing, processing, packaging, holding, or selling any frozen dessert without first obtaining the required certificate, license, or permit, the department, in addition to any other applicable remedies, may impose an administrative fine in an amount not to exceed \$10,000 per violation.

(5) A penalty imposed under this section must be commensurate with the risk of harm posed to the public by the violation.

History.—s. 2, ch. 69-398; ss. 14, 35, ch. 69-106; s. 461, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 5, 6, ch. 83-12; s. 5, ch. 91-190; ss. 5, 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.081 Preemption.—This chapter and all rules and regulations promulgated hereunder preempt all municipal or county laws pertaining to frozen desserts that are in conflict herewith.

History.—s. 2, ch. 69-398; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 5, 6, ch. 83-12; ss. 6, 7, ch. 93-67; s. 15, ch. 94-92.

503.091 Exemptions.—Frozen dessert retail establishments as defined in s. 503.011(8) are exempt from the provisions of this chapter.

History.—s. 2, ch. 69-398; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 5, 6, ch. 83-12; s. 6, ch. 91-190; ss. 6, 7, ch. 93-67; s. 15, ch. 94-92.