

New York State Consolidated Laws

Agriculture & Markets

ARTICLE 4-A

Frozen Desserts

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§ 71-a. Declaration of policy. 1. It is hereby declared that the dairy industry is a paramount industry of the state and the production, processing, packaging, distribution and sale of frozen desserts is an important segment of the dairy industry and is of vast economic importance to the state and of vital importance to the consuming public of the state, and which should be encouraged and promoted in the public interest. It is further declared to be in the interest of the dairy industry and of the consuming public that there be uniformity of standards for frozen desserts as between the various states and the federal government to the end that there may be free movement of frozen desserts between the states and to the end that the inefficiency, needless expense, and confusion caused by differences in products sold under the same name, and differences in labeling of identical products may be eliminated. Regulations pertaining to sanitary requirements, production, processing, all labeling requirements, and distribution of frozen desserts products which are uniform and uniformly enforced are essential for the protection of consumers and the economic well being of the dairy industry. It is further declared that advances in food technology have resulted in the development of products similar to frozen desserts, including such products having a lower butterfat content and products made with oils or fats other than butterfat and with solids not fat from sources other than dairy products and that such products are recognized as wholesome and nutritious articles of food; that such products are similar in appearance, odor or taste and are difficult to differentiate from frozen desserts made with dairy products. It is further declared to be the purpose of this article to promote honesty and fair dealing in the interest of consumers, to insure fair competition as between the manufacturers and distributors of the different products and to prevent confusion and deception in the sale of all such products by establishing definitions and standards of identity for such products, to eliminate needless duplication of inspection and conflicting and diverse requirements by various agencies, and by providing for rules and regulations which will effect their orderly marketing and insure uniform sanitary standards and enforcement.

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

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

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

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

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

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

(d) Any person who desires to manufacture, distribute or sell in this state, any frozen dessert for which a definition and standard has not been promulgated by the commissioner pursuant to this section, shall first make application to the commissioner for the promulgation of a definition and standard for such proposed frozen dessert. Such application shall include the essential details of such proposed definition and standard. Upon the receipt of such an application, the commissioner shall call a public hearing for the purpose of considering

such proposed definition and standard. In determining whether or not such proposed definition and standard shall be promulgated, the commissioner shall consider, among other things, the following:

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

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

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

4. Will the promulgation of such proposed definition and standard be advantageous to consumers and not result in a lowering of health standards or promote fraud and deception? Following the hearing to consider any such proposed definition and standard, the commissioner shall issue a recommended decision as provided pursuant to paragraph (b) of subdivision four of this section, either adopting, modifying, or denying the proposed definition and standard, giving interested parties an opportunity to file exceptions, within thirty days, to such recommended decision based upon the facts in the hearing record, and after full consideration has been given to any such exceptions, a final decision shall be made.

§ 71-b. Application for license. 1. Every wholesale manufacturer of frozen desserts produced for sale, and every person who sells, offers or exposes for sale, or has or possesses for sale other than exclusively at retail, any frozen dessert, shall, not later than the first day of February of every other year, file with the commissioner an application for a license upon a form prescribed by the commissioner, which application shall state such facts concerning the applicant's circumstances and the nature of business to be conducted as in the opinion of the commissioner are necessary for the administration of this article. The license period shall be for twenty-four months, beginning March first following.

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

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

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

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

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

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

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

§ 71-d. Issuance of License. No license shall be granted unless the commissioner is satisfied that the applicant is qualified by character and experience, and is equipped to conduct the proposed business properly. Prior to the issuance of a license to manufacture frozen desserts, to satisfy himself that the applicant is equipped to conduct the proposed business properly, as hereinabove required, and at any other time when, in his discretion, he shall deem such action necessary, the commissioner may inspect the plant and equipment of the applicant. The commissioner may enter into and effectuate reciprocal agreements with other states, covering regulation and inspection of frozen dessert plants, as will insure inhabitants of this state frozen desserts substantially complying with the requirements herein enacted or promulgated in rules and regulations hereunder and as part of such agreements may approve or accept inspections and regulation of other states covering frozen desserts plants. The commissioner may inspect a plant beyond the boundary of the state, and when he does, the applicant shall, prior to such inspection, pay, in addition to the license fee set forth in section seventy-one-c of this article, fees for inspection of the plant by the department. Such fees shall be twenty-five dollars for each day consisting of seven hours or part thereof during which an employee of the department spends traveling to and from and inspecting the plant. In addition, the applicant shall pay all necessary expenses including but not limited to expenses for traveling, lodging and meals. The commissioner, if satisfied with the qualifications of the applicant as hereinabove stated and if satisfied that the equipment, the vehicles used for transporting frozen desserts and the premises named in the application and used by the applicant for the manufacture, storage or sale of frozen desserts are maintained in accordance with the standards of sanitation prescribed in the rules and regulations promulgated under the authority of this article, shall issue a license for the handling of frozen desserts. No license shall be issued if any statement in the application is false or misleading, or if the brand name or any label or advertisement of the frozen dessert involved in the application gives a false indication of origin, character, composition or place of manufacture, or is otherwise false or misleading in any particular.

§ 71-e. Revocation or suspension of license. Any license may be revoked by the commissioner, after notice to the licensee by mail or otherwise and opportunity to be heard, when and if it appears that any statement upon which it was issued was false or misleading, or that any frozen dessert manufactured, sold, offered or exposed for sale, or held for sale, by the licensee is adulterated or misbranded, or is manufactured in a plant, or transported in a vehicle, or stored in equipment not maintained in accordance with the standards of sanitation

prescribed in the rules and regulations promulgated under the authority of this article, or that the brand name of any label or advertising of any frozen dessert manufactured, sold, offered or exposed for sale, or held for sale, by the licensee gives a false indication of origin, character, composition or place of manufacture, or is otherwise false or misleading in any particular.

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

Where the commissioner has denied, revoked or suspended a license, an order to that effect may be issued and service thereof may be made either by personal delivery of a copy, or by mailing a copy in a sealed envelope with postage prepaid to such applicant or licensee, or, in case such applicant or licensee is a corporation, then to any officer or agent of such corporation upon whom a summons may be served in accordance with the provisions of the civil practice law and rules.

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

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

The foregoing prohibition shall not apply

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

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

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

§ 71-h. Vehicles used for transportation of frozen desserts. All vehicles used for the transportation and distribution of frozen desserts shall be constructed of impervious material capable of being cleaned, shall be kept clean and sanitary, shall be so operated as to protect their contents from contamination, and shall have prominently displayed thereon the name and address of the licensee who sells, offers or exposes for sale, or holds with intent to sell, such frozen desserts.

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

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

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

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

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

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

§ 71-k. Violations; remedies. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this article or of the rules and regulations promulgated thereunder, and, in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county as provided in the civil practice law and rules, or to the supreme court in the third judicial district.