

**Title 20. Public Health and Welfare**  
**Chapter I. Generally, Department of Health**  
**Subchapter F. Food**  
**Part 173. Frozen Desserts**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"AUTHORITY

The following Rules Pertaining to Frozen Desserts are duly promulgated and adopted by the Arkansas State Board of Health pursuant to the authority expressly conferred by Laws of the State of Arkansas including, without limitation, Act 96 of 1913, as amended (Ark. Code. Ann. § 20-7-109), Act 114 of 1941 (Ark. Code. Ann. § 20-59-201 et seq.), Act 416 of 1953 (Ark. Code Ann. § 20-59-201), and Act 27 of 1989 (Ark. Code Ann. § 20-59-205)."

"CERTIFICATION

This will certify that the foregoing Rules Pertaining to Frozen Desserts were duly adopted by the Arkansas Department of Health at a regular session of the Board of Health held in Hot Springs, Arkansas on the 4th day of May, 1990.

M. Joycelyn Elders, M.D., Director Arkansas Department of Health

Dated at Hot Springs, Arkansas on the 5th day of May, 1990.

I hereby approve the foregoing Rules Pertaining to Frozen Desserts as adopted by the Arkansas State Board of Health on the 29th day of June, 1990.

Bill Clinton Governor"

**Subpart 1. Generally**

**20 CAR § 173-101. Definitions.**

For the purpose of this part, its interpretation, and its application, the following definitions and standards shall apply:

(1)(A) "Frozen dessert" means any frozen substance, mixture, or compound as defined in 20 CAR § 173-102 or any frozen substance, mixture, or compound:

(i) Made in semblance of any item set forth herein, but which does not conform in each and every particular to one of the stated definitions; and

(ii) That may be made from ingredients listed in the definitions herein and/or other safe and suitable ingredients.

(B) The substance, mixture, or compound before freezing shall be known as a mix for the respective frozen dessert that results when the mix is frozen;

(2) "Health authority" means the Secretary of the Department of Health, or his or her designated representative;

(3) "Novelties" means frozen desserts, either alone or in combination with other foods such as cookies, wafers, cones, coating, confections, etc., which are packaged in single-serving units;

(4)(A) "Overrun" means the trade expression used to refer to the increase in volume of the frozen product over the volume of the mix.

(B) This increase in volume is due to air being whipped into the product during the freezing process.

(C) It is expressed as percent increase of the volume of the mix;

(5) "Pasteurization" means the process of heating, in approved and properly operated equipment, every particle of mix to the following temperature and holding for the specified time:

(A) One hundred fifty-five degrees Fahrenheit (°551) F for thirty (30) minutes;

(B) One hundred seventy-five degrees Fahrenheit (°571) F for twenty-five (25) seconds; or

(C) Other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction; and

(6) "Safe and suitable" means ingredients approved by the United States Food and Drug Administration for use in food for human consumption, which:

(A) Perform an appropriate function in the food in which they are used;

and

(B) Are used at a level no higher than necessary to achieve their intended purpose in the food.

**Authority.** Arkansas Code § 20-59-204.

**20 CAR § 173-102. Definitions and standards of identity for frozen desserts.**

As used in this part:

(1) "Frozen dietary dessert" and "frozen dietary dairy dessert" means a food for any special dietary use prepared by freezing, with or without agitation, composed of a pasteurized mix which may contain:

(A) Milk fat and/or edible vegetable fats or oils;

(B) Protein;

(C) Carbohydrates;

(D) Flavoring;

(E) Stabilizers;

(F) Emulsifiers;

(G) Vitamins; and

(H) Minerals;

(2)(A) "Frozen yogurt" means freezing while stirring a product resulting from the fermentation by specific lactic acid-producing bacteria of a pasteurized or ultra-pasteurized mixture of milk and other optional ingredients approved for use in ice cream or ice milk.

(B) Frozen yogurt, before the addition of fruit or other bulky flavors, shall not contain less than:

(i) Three and twenty-five hundredths percent (3.25%) milk fat; and

(ii) Eight and twenty-five hundredths percent (8.25%) milk solids not fat.

(C) After the addition of fruit or other bulky flavors, it shall contain not less than two and three-tenths percent (2.3%) milk fat.

(D) All ingredients used shall be safe and suitable.

(E) If produced for freezing in soft serve machines, the product shall be frozen yogurt mix;

(3) "Ice cream and frozen custard" means the foods defined in the most recent edition of 21 C.F.R. § 135.110;

(4) "Ice milk" means the food defined in the most recent edition of 21 C.F.R. § 135.120;

(5)(A) "Low-fat frozen yogurt" means freezing while stirring a product resulting from the fermentation by specific lactic acid producing bacteria of a pasteurized ultra-pasteurized mixture of low-fat milk and other optional ingredients approved for use in ice cream or ice milk, containing not less than one-half percent (1/2%) nor more than two percent (2%) milk fat, with not less than eight and twenty-five hundredths percent (8.25%) milk solids not fat.

(B) All ingredients used shall be safe and suitable.

(C) If produced for freezing in soft serve machines, the product shall be low-fat frozen yogurt mix;

(6) "Mellorine" means the food defined in the most recent edition of 21 C.F.R. § 135.130;

(7)(A) "Nondairy frozen dessert" means a clean and wholesome frozen product which may contain vegetable fat and/or oil, corn syrup solids, sodium caseinate, and emulsifiers, pasteurized prior to spray drying and blending with other safe and suitable ingredients.

(B) The dry mix is reconstituted with potable cold water in cleaned and sanitized equipment and refrigerated or frozen immediately.

(C) Repasteurization following reconstitution of nondairy frozen dessert shall not be required.

(D) A nondairy frozen dessert shall contain no dairy ingredients and all packaged nondairy frozen desserts shall be clearly labeled in legible and clearly readable print "NONDAIRY FROZEN DESSERT".

(E) Sodium caseinate is not considered as a dairy ingredient for the purposes of this part;

(8)(A) "Nonfat frozen yogurt" means freezing while stirring a product resulting from the fermentation by specific lactic acid producing bacteria of a pasteurized or ultra-pasteurized mixture of nonfat milk and other optional ingredients approved for use in ice cream or ice milk, containing less than one-half percent (1/2%) milk fat, with not less than eight and twenty-five hundredths percent (8.25%) milk solids not fat.

(B) All ingredients used shall be safe and suitable.

(C) If produced for freezing in soft serve machines, the product shall be nonfat frozen yogurt mix;

(9) "Other frozen desserts" means foods prepared by freezing, with or without agitation, of a pasteurized mix composed of dairy products and other safe and suitable ingredients, but which food does not conform to any definition or standard set forth in this section;

(10)(A) "Quiescently frozen confection" means a clean and wholesome frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing).

(B) This confection may:

(i) Be acidulated with food-grade acid;

(ii) Contain water;

(iii) Be made with or without added natural or artificial flavoring, with or without added harmless coloring.

(C) The finished product shall contain not less than seventeen percent (17%) by weight of total food solids.

(D) In the production of this food, no processing or mixing shall be used that develops in the finished food mix any physical expansion (overrun) in excess of ten percent (10%);

(11)(A) "Quiescently frozen dairy confections" means a clean and wholesome frozen product:

(i) Made from water, milk products, and sugar, with added harmless natural or artificial flavoring, with or without added coloring, with or without added stabilizer, and with or without added emulsifier; and

(ii) In the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing).

(B) It contains not less than thirteen percent (13%) by weight of total milk solids, not less than thirty-three percent (33%) by weight of total food solids.

(C) In the production of quiescently frozen dairy confections, no processing or mixing shall be used that develops in the finished confection mix any physical expansion (overrun) in excess of ten percent (10%);

(12) "Sherbet" means the food defined in the most recent edition of 21 C.F.R. § 135.140; and

(13) "Water ices" means the food defined in the most recent edition of 21 C.F.R. § 135.160.

**Authority.** Arkansas Code § 20-59-204.

### **20 CAR § 173-103. Labeling.**

(a) All frozen desserts produced or offered for sale within the State of Arkansas shall be labeled in accordance with the:

(1) Food, Drug, and Cosmetic Act, Arkansas Code § 20-56-201 et seq. (Acts 1953, No. 415));

(2) Fair Packaging and Labeling Act of 1966, 15 U.S.C. §§ 1451 et seq., as amended; and

(3) United States Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. § 301 et seq., as amended.

(b) When any frozen dessert is provided to consumers from soft-serve machines, the name of the type of frozen dessert in conjunction with the serving selections offered shall be conspicuously provided to the consumer.

**Authority.** Arkansas Code § 20-59-204.

**20 CAR § 173-104. Sampling and examination of frozen dessert mix and frozen desserts.**

Samples of frozen dessert mix and frozen desserts shall be taken at a frequency determined by the health authority and examined in the Department of Health laboratory for bacterial quality, adulteration, and compliance with the definitions and standards set forth in this part and conformity with label statements.

**Authority.** Arkansas Code § 20-59-204.

**20 CAR § 173-105. Inspection of frozen dessert plants.**

(a)(1) Prior to the issuance of a permit, and at least once each calendar quarter, the health authority shall inspect each frozen dessert plant within the State of Arkansas, such inspection to include a check of all pasteurization equipment for proper operation.

(2) As many additional inspections as are deemed necessary for the enforcement of this part may be made.

(3) If the health authority discovers the violation of any sanitation requirement, they shall make a second inspection after lapse of such time as they may deem necessary for the violation to be corrected, but not before the lapse of three (3) days.

(b) The original copy of the inspection report shall be:

(1) Given by the health authority to the apparent person in charge; and

(2) Retained at the plant location.

(c) Every processor of mix or frozen desserts shall:

(1) Upon request of the health authority, permit them access to all parts of the frozen dessert or mix establishment during normal business hours; and

(2) Furnish the health authority upon their request, for official use only, a true statement of the:

- (A) Actual quantities of mix or frozen desserts used or produced;
- (B) Sources of such frozen dessert ingredients or mix;
- (C) Records of health authority inspection and tests;
- (D) Pasteurization time and temperature records, if applicable; and
- (E) Pertinent information as to persons employed.

**Authority.** Arkansas Code § 20-59-204.

**20 CAR § 173-106. Permit or license required.**

(a)(1) Prior to the production or offer for sale of any frozen dessert mix or frozen dessert within the State of Arkansas, each plant or distributor of frozen dessert mix or frozen dessert must apply for and be issued a permit as required by the Arkansas Dairy Law, Acts 1941, No. 114, as amended.

(2) Procedures for the suspension and/or revocation of a permit shall be in accordance with the administrative procedures for the State Board of Health and the Department of Health.

(b)(1) Retail establishments complying with the requirements of and permitted in accordance with the State Board of Health Rules Pertaining to Retail Food Establishments, 20 CAR pt. 170, are not required to obtain a separate dairy permit.

(2) These operations may freeze, package, and serve frozen desserts from a soft-serve machine using a prepackaged mix, for direct retail sale to the final consumer.

**Authority.** Arkansas Code § 20-59-204.

**Codification Notes.** 1941, No. 114, is codified at Arkansas Code § 20-59-201 et seq.

**20 CAR § 173-107. Sanitation standards for frozen dessert plants.**

**(a) Floors.**

(1) The floors of all rooms in which mix, frozen desserts, or their ingredients are manufactured, processed, or frozen, or in which containers and utensils are washed, shall be:

(A) Constructed of concrete or other equally impervious and easily cleaned material; and

(B) Smooth, properly drained, provided with trapped drains, and kept clean and in good repair.

(2) Provided that cold storage rooms used for storing frozen desserts and cold storage rooms used for storing milk, cream or milk products, frozen fruits, frozen eggs, and comparable ingredients need not be provided with floor drains but the floors shall be sloped to drain to one (1) or more exits, and shall be kept clean and in good repair, provided that dry storage rooms need not be drained.

**(b) Walls and ceilings.** Walls and ceilings of rooms in which mix, frozen desserts, or their ingredients are manufactured, processed, or frozen, or in which containers or utensils are washed, shall:

(1) Have easily cleanable, washable light-colored surfaces; and

(2) Be kept clean and in good repair.

**(c) Doors and windows.** Unless other effective means are provided to prevent the access of flies, all openings to the outer air shall be effectively screened, and all doors shall be tight fitting and self-closing.

**(d) Lighting and ventilation.**

(1) All rooms shall be well lighted.

(2) All rooms shall be well ventilated.

**(e) Miscellaneous protection from contamination.**

(1) The various frozen dessert plant operations shall be located and conducted so as to prevent any contamination of the:

(A) Frozen desserts;

(B) Frozen dessert mix or their ingredients; or

(C) Cleaned equipment.

(2) All milk, milk products, cream, mix or frozen desserts that have been spilled, overflowed, or leaked shall be discarded.

(3) All milk, milk products, cream, or mix drained from equipment at the end of a run shall be:

(A) Handled in a sanitary manner; and

(B) Repasteurized.

(4) All necessary and appropriate means shall be used for the prevention and elimination of:

(A) Flies;

(B) Other insects; and

(C) Rodents.

(5) There shall be separate rooms for all processing operations, to include pasteurization, mixing, cooling, freezing, and packaging operations from the washing and bactericidal treatment of multiuse containers.

(6) Unless all milk, cream, mix, or milk products are received in bulk transport tanks, a receiving room separate from rooms as defined in subdivision (e)(10)(A) shall also be required, provided that the requirement in subdivision (e)(10)(A)(i) shall be satisfied when a frozen dessert manufacturer blends, freezes, and packages in such a manner to prevent contamination, provided further that frozen desserts, milk, milk products, and ingredients shall not be unloaded directly into the room or rooms used for pasteurizing.

(7) Pasteurized mix or frozen desserts shall not be permitted to come in contact with equipment or containers with which unpasteurized mix, cream, milk, or milk products have been in contact, unless such equipment has first been:

(A) Thoroughly cleaned; and

(B) Subjected to a bactericidal treatment.

(8) Milk or milk products, cream, mix, or frozen desserts shall be handled or stored in accordance with good manufacturing practices (GMP).

(9) The milk plant, frozen dessert plant, containers, utensils, and equipment shall be used for no purpose other than the processing of milk, cream, milk products, mix, and frozen desserts, and the operation incident thereto, except as may be approved by the health authority.

(10)(A) The pump-out of the transport tank shall be done in an area:

(i) Where a cover extends over the complete transport tank; or

(ii) Where climatic and operating conditions require, in a completely enclosed area.

(B) Pump-out operations must be protected in such a manner as to prevent product contamination.

(C) If the area is not completely enclosed or doors of the unloading area are open during unloading, a suitable filter is required for the manhole or the air inlet vent.

(11)(A) The agitating and sampling of the transport tank milk shall be accomplished in such a manner as to provide maximum protection against product contamination.

(B) In no instance shall this be done at a place other than an approved unloading station.

(12) The following information shall be recorded for each load of milk received and these records shall be maintained for a period of not less than ninety (90) days:

(A) Date the load was received;

(B) Time received;

(C) Number of pounds in the load;

(D) Temperature of the milk or milk products;

(E) The permit number of the truck delivering the milk; and

(F) The name of the station operator receiving the milk.

(13) The transport tank cleaning tag should be removed and kept with the other records for a period of thirty (30) days.

(14) In no case shall milk or milk products be received from a transport tank that appears to be damaged, dirty, or does not have a cleaning tag attached without the permission of the health authority.

**(f) Toilet facilities.**

(1) Every frozen dessert plant shall be provided with conveniently located toilet facilities, installed in accordance with the Arkansas Plumbing Code, 17 CAR pt. 65.

(2) Toilet rooms shall not open into any room in which mix is processed or handled.

(3) The doors of all toilet rooms shall be self-closing.

(4) Toilet rooms shall be:

(A) Kept in a clean condition;

(B) In good repair; and

(C) Well ventilated.

(5) A sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms used by employees.

**(g) Water supply.**

(1) The water supply shall be easily accessible, adequate, and comply with the United States Public Health Service Safe Drinking Water Standards.

(2) There shall be no connections between potable and nonpotable water supplies.

(3) The water supply shall be protected by the installation of approved back-flow prevention devices at all outlets.

**(h) Hand-washing facilities.**

(1) Convenient hand-washing facilities shall be provided, including:

(A) Hot and cold water through a mixing faucet;

(B) Soap; and

(C) Approved sanitary towels or hand drying devices.

(2)(A) Hand-washing facilities shall be kept clean and in good repair.

(B) The use of a common towel is prohibited.

(C) No employee shall resume work after using the toilet room, taking a break, or eating without having washed their hands.

(D) No steam mixing valve shall be allowed at a hand-washing facility.

**(i) Sanitary piping and fittings.**

(1) All piping and fittings used to conduct milk, cream, milk products, mix, or frozen desserts shall be of sanitary design and construction which meets 3-A sanitary standards and accepted procedures.

(2) Mix, frozen desserts, fluid milk products, and ingredients shall be conducted from one (1) piece of equipment to another only by sanitary piping and fittings.

**(j) Construction and repair of containers, utensils, and equipment.**

(1) All multiuse containers, utensils, and equipment with which mix, frozen desserts, milk, cream, and milk products and ingredients come in contact shall be:

(A) Of smooth, impervious, noncorrodible, nontoxic, relatively low absorbent material;

(B) Easily cleanable; and

(C) Kept in good repair.

(2) All equipment shall meet 3-A sanitary standards.

(3) All single-service containers, closures, gaskets, and other articles shall be manufactured, packaged, transported, stored, and handled in a sanitary manner.

**(k) Disposal of wastes.**

(1) All wastes shall be disposed of in a sanitary manner.

(2) All plumbing and appurtenances thereto shall be so designed and installed as to prevent the contamination of frozen desserts or any ingredient, utensil, container, or equipment by:

(A) Drip;

(B) Condensation; or

(C) Backflow.

**(l) Cleaning and bactericidal treatment of multiuse utensils, containers, and equipment.**

(1) All multiuse utensils, containers, and equipment shall be thoroughly cleaned before each usage.

(2) All product-contact surfaces of multiuse utensils, containers, and equipment shall be subjected effectively to an approved bactericidal process prior to use.

(3) Multiuse containers used for the transportation of mix shall be thoroughly rinsed immediately after use.

(4) Storage tanks and silos shall be emptied, cleaned, and sanitized within each seventy-two-hour period.

(5) If processing equipment is in continuous twenty-four-hour operation, it should be shut down, drained, cleaned, and sanitized daily.

(m) **Storage of multiuse utensils, containers, and equipment.** After cleaning, all multiuse utensils, containers, and equipment shall be stored:

(1) To drain dry; and

(2) In such a manner as not to be contaminated before usage.

(n) **Storage of single-service containers, utensils, and materials.**

(1) Caps, parchment papers, wrappers, liners, gaskets, and single-service sticks, spoons, covers, and containers for frozen desserts, mix, or their ingredients shall be:

(A) Purchased and stored only in sanitary tubes, wrappings, or cartons;

(B) Kept therein in a clean, dry place until used; and

(C) Handled in a sanitary manner.

(2) Reuse of single-service articles is prohibited.

(o) **Handling of containers and equipment.**

(1) Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such a manner as to permit contamination of:

(A) The mix;

(B) Frozen desserts; or

(C) Their ingredients.

(2) Pasteurized mix and frozen desserts shall not be permitted to come into contact with equipment with which unpasteurized mix, milk, cream, or milk products have been in contact, unless the equipment has been thoroughly cleaned and effectively subjected to an approved bactericidal process.

(p) **Pasteurization of mix.**

(1) Every particle of the combined milk, cream, milk product, or other ingredients used in the manufacture of a frozen dessert mix shall be heated and held at temperatures of:

(A) Not less than one hundred and fifty-five degrees Fahrenheit (°551) F) for not less than thirty (30) minutes, or one hundred seventy-five degrees Fahrenheit (F°571) for not less than twenty-five (25) seconds; or

(B) Any other equally efficient time/temperature process which has been approved and accepted by the health authority.

(2)(A) Dry frozen dessert mix which is reconstituted on premises with potable water prior to freezing for retail sale shall not require repasteurization.

(B) Fruits, nuts, and confections for flavoring may be added to mix either before or after pasteurization.

(3)(A) All pasteurization equipment and related appurtenances shall meet construction and operational requirements outlined in the latest edition of the United States Public Health Service Pasteurized Milk Ordinance.

(B) Pasteurization equipment shall be tested for proper operation by the health authority:

(i) Quarterly; and

(ii) When any incident occurs which could affect the operation of the equipment.

(q) **Cooling and handling.**

(1) All milk, cream, milk products in fluid form received at the frozen desserts plant for use in frozen desserts mix shall be:

(A) Cooled to a temperature of forty-five degrees Fahrenheit (°54) F) or less; and

(B) Maintained at that temperature until pasteurized.

(2) All pasteurized mix shall be cooled in approved equipment to a temperature of forty-five degrees Fahrenheit (°54) F) or less and shall be maintained thereat until frozen, unless otherwise provided for by the health authority.

(r) **Packaging and dispensing.**

(1) Packaging, cutting, molding, dispensing, and other preparation of mix, frozen desserts, or other ingredients shall be done in a sanitary manner.

(2) Containers shall be completely covered immediately after filling unless dispensed to a patron.

(3) Closures, covers, and wrappers shall be handled in such a manner as to prevent contamination of the package content.

(s) **Returns.** Mix or frozen desserts in broken and opened containers may, after delivery, be returned to the plant for inspection, but shall not be sold or used for making mix or frozen desserts.

(t) **Overflow and spillage.** Product drip or overflow, or spilled mix or frozen desserts or their ingredients, shall not be sold for human consumption.

(u) **Personnel health.** No person affected by disease in a communicable form that can be transmitted by foods, or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall work in a food plant in any capacity in which there is a reasonable possibility of food or food ingredients becoming contaminated by such person, or of disease being transmitted by such person to other individuals.

(v) **Personnel cleanliness.** All persons who come in contact with milk, cream, milk products, mix, frozen desserts, containers, or equipment, shall:

(1) Wear clean outer garments, effective hair restraints; and

(2) Keep their hands clean at all times while engaged in such work.

(w) **Vehicles.**

(1)(A) All vehicles used for the transportation of mix, frozen desserts, cream, milk, and milk products shall be constructed and operated so as to protect their contents from the sun and contamination.

(B) Such vehicles shall be kept clean, and no substance capable of contaminating mix, frozen desserts, cream, milk, and milk products shall be transported therein.

(C) Such vehicles shall have the name of the distributor or manufacturer prominently displayed thereon.

(2) Tank cars and tank trucks used for transporting mix, cream, milk, and milk products shall comply with the construction, cleaning, bactericidal treatment, storing, and handling requirements of this part.

(3) Each shipment shall be sealed and labeled in an approved manner.

(x) **Ingredients.** All mix and frozen desserts ingredients shall be safe and suitable and obtained from an approved source.

**Authority.** Arkansas Code § 20-59-204.

#### **20 CAR § 173-108. Plans required for future construction.**

Plans and specifications for all frozen desserts plants from which mix or frozen desserts are manufactured in the State of Arkansas, which are hereafter constructed, reconstructed, or extensively altered shall be submitted to the health authority for approval before work is begun and signed approval shall be obtained from the health authority.

**Authority.** Arkansas Code § 20-59-204.

#### **20 CAR § 173-109. Severability.**

Should any section, paragraph, sentence, clause, or phrase of this part be declared unconstitutional or invalid for any reason, the remainder of this part shall not be affected thereby.

**Authority.** Arkansas Code § 20-59-204.