



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 9, 2019

Via Statutorily Required Email

To: The Honorable John Alario, President, Louisiana Senate
The Honorable Taylor Barras, Speaker, Louisiana House of Representatives
The Honorable Fred H. Mills, Jr. Chairman, Senate Health & Welfare Committee
The Honorable Frank A. Hoffmann, Chairman, House Health & Welfare Committee

From: Rebekah E. Gee, MD, MPH
Secretary

By Cindy Reese for

Re: First Report. Proposed Amendments to LAC 51.VII.2707

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Chapter 6 of Title 36 of the Louisiana Revised Statutes of 1950, and with the Administrative Procedure Act, La. R.S. 49:950 *et seq.*, the secretary hereby gives notice that rulemaking procedures have been initiated to promulgate amendments to the rules governing the Dairy Products Frozen Dessert Regulations – LAC 51:VII.2707.

- I. Copy of the rule as it is proposed after amendment, with new proposed language indicated by the underscored text.

See attachment.

- II. A Statement of the proposed action.

The department proposes to amend the requirements for sampling of products from firms that are producing frozen desserts for wholesale using mixes that were pasteurized, ultra-pasteurized or aseptically processed at another facility to eliminate the requirement to sample the mixes and reduce the required sample count for finished products.

- III. Specific citation of law authorizing promulgation of the rule.

R.S. 40:4 and 40:5.

Circumstances which require the amendment of the rule.

Existing sampling requirements place an undue and onerous burden on small businesses in the state of Louisiana while not providing additional protections for public health.

IV. Statement of Fiscal and Economic Impact.

See attachment.

Please contact Michael Vidrine at Michael.Vidrine@la.gov or (225) 342-7542, if you have any questions or require additional information about this matter.

Attachments (2)

cc: Jimmy Guidry, MD, State Health Officer
Alexander Billioux, MD, DPhil, Assistant Secretary, Office of Public Health
Michael Vidrine, Chief Sanitarian, Bureau of Sanitarian Services, Office of Public Health
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Rhea Davis, Rulemaking Liaison, Office of Public Health
Allen Enger, Rulemaking Coordinator, Louisiana Department of Health
Catherine Brindley, Editor, *Louisiana Register*, Office of State Register

NOTICE OF INTENT

Department of Health Office of Public Health

Dairy Products Frozen Dessert Regulations (LAC 51:VII.2707)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 *et seq.*, the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to amend Part VII (Dairy Products Regulations) of Title 51 (Public Health—Sanitary Code). These amendments are proposed to update sampling requirements for certain dairy product businesses that freeze or partially freeze and repackage frozen desserts made from frozen dessert mixes that were pasteurized, ultra-pasteurized or aseptically processed at another plant for wholesale. The state health officer has reviewed the current regulatory scheme and is in agreement with the regulated entities that the currently adopted sampling schedule is excessively onerous on these entities without providing a substantive additional public health benefit. Therefore, the state health officer desires to revise the current regulatory language to adopt a more rational approach to the regulation of these particular dairy product facilities.

Title 51 PUBLIC HEALTH—SANITARY CODE

Part VII. Dairy Products Regulations

Chapter 27. Frozen Desserts

Subchapter A. Supplemental Requirements for Dairy Plants that Manufacture Frozen Desserts

§2707. Additional Requirements for Frozen Dessert Manufacturing Plants that Have Been Authorized by the State Health Officer to Freeze or Partially Freeze and Package Frozen Desserts Made from Frozen Dessert Mixes that were Pasteurized, Ultra-pasteurized or Aseptically Processed at Another Plant

A. — B.4. ...

5. ~~The frozen dessert manufacturing plant shall:~~

~~a. obtain a representative sample of each batch of frozen desserts packaged by the plant. Normally, this shall be done by collecting a closed final container of product, randomly selected, and perform or have a standard plate count and a coliform count performed on the sample;~~

~~b. perform the sampling procedures and laboratory examination in compliance with the procedures contained in the *Standard Methods for the Examination of Dairy Products*;~~

~~c. record the results of each test and retain the record for a period of one year after the date that the product, from which the sample was collected, was packaged. These records shall be made available for review by the state health officer;~~

~~d. immediately take steps to determine and eliminate the cause when the coliform count of a sample of product exceeds 10 per gram or the standard plate count exceeds 50,000 cfu per gram (unless a cultured product); and,~~

e. ~~maintain a record, for review by the state health officer, of action taken to correct the cause of each elevated coliform count or elevated standard plate count. Such records shall be retained for a period of one year after the date the product was packaged.~~

C. ~~During any consecutive six months, at least four samples of pasteurized or ultra-pasteurized frozen dessert mix to be used in the manufacture of frozen desserts shall be taken by the state health officer at the frozen dessert manufacturing plant. The container in which it was packaged by the plant shall be opened and the frozen dessert mix tested for standard plate count and coliform count. The state health officer shall take appropriate regulatory action based on violative sample results as prescribed in §331 of this Part.~~

DC. During any consecutive six 6 months at least four one samples of each flavor and fat level of product packaged by the plant shall be taken by the state health officer and tested for standard plate count and coliform count. The state health officer shall take appropriate regulatory action on violative sample results as prescribed in §331 of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(A)(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2721 (September 2011), amended by the Department of Health, Office of Public Health, LR 46:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a family impact statement on the rule proposed for adoption, amendment or repeal. * 1. Will the proposed rule affect the stability of the family? No. 2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No. 3. Will the proposed rule affect the functioning of the family? No. 4. Will the proposed rule affect family earnings and family budget? No. 5. Will the proposed rule affect the behavior and personal responsibility of children? No. 6. Is the family or a local government able to perform the function as contained the proposed rule? The proposed rule does not require either the family or local government to perform any function.

Poverty Impact Statement

The proposed rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on: 1. the effect on household income, assets, and financial security; 2. the effect on early childhood development and preschool through postsecondary education development; 3. the effect on employment and workforce development; 4. the effect on taxes and tax credits; or 5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Regulatory Flexibility/Small Business Analysis

The proposed rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2 – 965.8.

Provider Impact Statement

The proposed rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Session. Per HCR 170, "provider" means an organization that provides services for individuals with developmental disabilities. In particular, there should be no known or foreseeable effect on the: 1. staffing level requirements or qualifications required to provide the same level of service; 2. total direct and indirect effect on the cost to the providers to

provide the same level of service; or 3. overall ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on the proposed rule. Such comments must be received no later than Friday, January 24, 2020 at COB, 4:30 pm, and should be addressed to Michael Vidrine, Director, Sanitarian Services, P.O. Box 4489, Baton Rouge, LA 70821.

Public Hearing

Interested persons may submit a written request to conduct a public hearing either by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on January 10, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:00 a.m. on Tuesday, January 28, 2020, in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after January 13, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Jimmy Guidry, MD
State Health Officer
and
Rebekah E. Gee, MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement:

Brian R. Warren

Dept.: Louisiana Department of Health

Phone:

225-342-7514

Office: Office of Public Health

Return
Address:

628 N. 4th Street
Baton Rouge, LA 70802

Rule Title: Dairy Products Frozen Dessert
Regulations

Date Rule Takes Effect: Upon Promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to increase expenditures for the Office of Public Health (OPH) by approximately \$426 in FY 20 for the publication of the proposed and final rule in the Louisiana Register. It is not anticipated that any other state or local governmental units will incur costs or savings as a result of this rule change.

The proposed rule updates product testing requirements for frozen dessert manufacturing plants that freeze or partially freeze and repackage frozen desserts. The current rule provides that during any consecutive six month period that four samples of each flavor and fat level of the frozen dessert product shall be tested by the state health officer for standard plate and coliform counts. The proposed rule amends the current rule and provides that only one sample of each fat level is tested during the six month period.

This change is being proposed to update the administrative rule to reflect current practice.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is not anticipated to have any effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule is not anticipated to have any costs or economic benefit to frozen dessert manufacturing plants, given that the rules are being updated to reflect current practice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on employment or competition.


Signature of Agency Head or Designee

Alexander Billioux, MD, DPhil
Assistant Secretary, Office of Public Health
Typed Name & Title of Agency Head or Designee

12/21/19
Date of Signature


Legislative Fiscal Officer of Designee

12/6/2019
Date of Signature