

SUBPART 14-2**TEMPORARY FOOD SERVICE ESTABLISHMENTS****(INCLUDES AMENDMENTS EFFECTIVE JANUARY 8, 1997****(Statutory authority: Public Health Law, section 225)**

Sec.

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14-2.1 DEFINITION OF TEMPORARY FOOD SERVICE ESTABLISHMENT AND FROZEN DESSERTS.

(a) A "temporary food service establishment" means a place where food is prepared or handled and served to the public, with or without charge, and which operates at a fixed location in conjunction with a single event or celebration of not more than 14 consecutive days duration.

(b) "Frozen desserts" are ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice cream, ice milk, artificially sweetened ice milk, fruit sherbet, non-fruit sherbet, water ices, non-fruit water ices, confection frozen without stirring, dairy confection frozen without stirring, manufactured dessert mix, frozen confection, melloreum frozen dessert, parevine, frozen yogurt, freezer made shakes, freezer made milk shakes, dietary frozen dessert, whipped cream confection and bisque tortoni, as all such products are commonly known, together with any mix used in making 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 and frozen, whether made with dairy products or non-dairy products.

Any operation producing chips or flakes of ice made from water with or without additives, served to the consumer with or without flavorings added by the operator or consumer, is included as a retail frozen dessert within this definition. This operation is commonly known as a slush operation.

(c) Retail frozen desserts are to be manufactured from ingredients and are to be identified in conformance with the applicable requirements of Part 39 of the rules and regulations of the State Department of Agriculture and Markets (1 NYCRR Part 39).

14-2.2 PERMIT.

(a) A temporary food service establishment shall obtain and display a valid permit from an issuing official authorized by the State Commissioner of Health. At establishments that serve retail frozen desserts the \$25 permit fee imposed by Public Health Law Section 225(5)(s) shall be paid at the time any other permit fees related to the operation of the food service establishment are collected by the permit-issuing official and the establishment's permit shall indicate that the facility can manufacture and sell retail frozen desserts.

(b) The term permit-issuing official means the health commissioner or health officer of a city of 50,000 population or over, the health commissioner or health officer of a county or part-county health district, the State regional health director or area director having jurisdiction, a grade I or grade II public health administrator qualified and appointed pursuant to Part 11 of this Title, a public health director or any county health director having all the powers and duties prescribed in section 352 of the Public Health Law. The health commissioner or health officer of a city of 50,000 population or over, or the health commissioner or health officer of a county or part-county health district, or such grade I or grade II public health administrator or public health director or county health director may designate the director of environmental health of such district; and the State regional health director, or area director may designate the district, or area director may designate the district director as additional persons authorized to issue the permits required by this Subpart.

(c) A permit will be issued subject to the temporary food service establishment being constructed, maintained and operated in compliance with this subpart and not presenting a danger to the health of the consumer or to the public. An applicant's past history of compliance or non-compliance will be a consideration in evaluating each of the previously mentioned criteria. The condition of the establishment, its equipment, utensils, personnel, mode of operation, surroundings, water supply, sewage disposal, waste handling, furnishings, food and appurtenances are all factors in determining whether its continued operation may affect public health.

14-2.3 DEFINITION AND COOKING OF POTENTIALLY HAZARDOUS FOODS; PRODUCT THERMOMETERS.

(a) All food used by a temporary food service establishment is to be wholesome, safe for human consumption, and obtained from sources that comply with laws relating to food and food labeling. Fluid milk and milk products used or served are to be pasteurized and obtained from sources that comply with laws relating to milk processing and labeling. All foods which are not readily identifiable are to be labeled to identify the food by common name. Only clean, whole eggs, with shell intact and free from cracks or checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products are to be used. All containers in which shell eggs are received must identify the source.

(b) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, cooked rice or other ingredients including synthetic ingredients, in a form capable of supporting: (1) rapid and progressive growth of infectious or toxigenic microorganisms; or (2) the slower growth of *C. botulinum*. The term does not include foods with a water activity (A_w) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below.

(c) Temporary food service establishments may only serve food which requires limited preparation requiring only seasoning and cooking. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited except if prepared under approved conditions, transported and stored at a temperature of 45 degrees Fahrenheit (7.2 degrees Celsius) or below, or at a temperature of 140 degrees Fahrenheit (60 degrees Celsius) or above, in approved facilities, and served without contamination to the consumer. Intact shell egg temperatures shall be considered acceptable if ambient storage temperature is 45 degrees Fahrenheit (7.2 Celsius) or less. The permit issuing official, or his designated representative, may require that food be served directly in the unopened container in which it was packaged unless the equipment and operations are adequate to protect food from contamination.

(d) Food is to be protected from contamination in the establishment at all times including storage, preparation, and display to patrons. Food is to be prepared and served with no bare hand contact unless the food will be subsequently heated to 140 degrees Fahrenheit (60 degrees Celsius) or greater for foods that were not previously heated or to 165 degrees Fahrenheit (73.9 degrees Celsius) or greater for foods that are being heated for a second or subsequent time. Convenient and suitable utensils and/or sanitary gloves are to be provided and used to prepare or serve food to eliminate bare hand contact and prevent contamination. Waxed

paper, napkins or equivalent barrier to prevent hand contact can also be used to serve food.

(e) All parts of potentially hazardous foods requiring cooking are to be heated to at least 140 degrees Fahrenheit (60 degrees Celsius), except:

(1) poultry, poultry stuffing, stuffed meats and stuffing containing meat are to be heated in an uninterrupted manner so all parts are at least 165 degrees Fahrenheit (73.9 degrees Celsius);

(2) pork and food containing pork are to be heated so all parts of the food are at least 150 degrees Fahrenheit (65.6 degrees Celsius);

(3) rare roast beef and/or rare beef steaks are to be heated to an internal temperature of at least 130 degrees Fahrenheit (54.5 degrees Celsius), unless otherwise ordered by the consumer. When meat or fish are served raw, the consumer is to be so notified;

(4) shell eggs or foods containing shell eggs are to be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater unless an individual consumer requests preparation of a shell egg or food containing shell eggs in a style such as raw, poached or fried which must be prepared at a temperature less than 145 degrees Fahrenheit in order to comply with the request.

(5) every part of ground meat or foods containing ground meat are to be heated to at least 158 degrees Fahrenheit (69.4 degrees Celsius), unless a consumer requests preparation of a single order of ground meat or food containing ground meat which must be prepared at a temperature less than 158 degrees Fahrenheit in order to comply with the request.

(f) Metal stem-type, numerically scaled indicating thermometers, accurate to plus or minus two degrees Fahrenheit (1.1 degrees Celsius) are to be provided and used to determine that proper internal cooking, holding or refrigeration temperatures of all potentially hazardous foods are achieved and maintained.

14-2.4 DEFINITION OF CONTAMINATION. "Contamination" means exposing food to filth, toxic substances, manual contact during service or preparation if such food will not be subsequently cooked prior to service, rodent or insect contact or infestation, or any condition which permits introduction of pathogenic microorganisms or foreign matter. Potentially hazardous foods held at temperatures between 45 degrees Fahrenheit (7.2 degrees Celsius) and 140 degrees Fahrenheit (60 degrees Celsius) for a period of time beyond that required for preparation are considered to be contaminated. Sufficient hot and cold storage facilities are to be provided and used to maintain potentially hazardous foods at required temperatures during storage. Each facility is to have a thermometer, accurate to plus or minus two degrees Fahrenheit, indicating the temperature therein.

14-2.5 Ice. Ice that is consumed or that touches food is to be made from potable water from approved sources in a manner that protects it from contamination. Such ice is to be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice is to be held in these bags until it is dispensed in a way that protects it from contamination.

14-2.6 EQUIPMENT.

(a) Equipment is to be constructed, located, and installed in a way that prevents food contamination and facilitates cleaning the establishment.

(b) Food-contact surfaces are to be smooth and free from cracks or pits and are to be easily cleanable. All food contact surfaces are to be kept clean and sanitized immediately prior to and during use as needed to prevent food contamination.

(c) Non-food-contact surfaces are to be kept free of built-up soil, grease, food encrustations or similar deposits.

(d) Single-service articles are to be furnished consumers at all temporary food service establishments which do not have effective facilities for cleaning and sanitizing tableware.

(e) When food operations are conducted in other than daylight hours, artificial light is to be installed to at least 20 footcandles of light at all food-contact and food preparation surfaces. Artificial lighting fixtures located over or by food preparation and food service facilities are to be protected to prevent broken glass from falling into food or onto food-contact surfaces.

14-2.7 DEFINITION OF SANITIZATION. Sanitization means effective bactericidal treatment by heat or chemical means, acceptable to the permit issuing official, which destroys pathogens on surfaces treated.

14-2.8 HANDWASHING FACILITIES. Handwashing facilities are to be provided at each establishment. This facility is to be at least potable warm water, soap and individual paper towels.

14-2.9 WATER. Enough potable water from an approved source is to be available in the establishment for food preparation, cleaning and sanitizing utensils and equipment, and handwashing. If not otherwise readily available, a heating facility capable of producing enough hot water for these purposes shall be provided in the establishment.

14-2.10 WET STORAGE. Packaged food is not to be stored in contact with water or undrained ice. Wrapped sandwiches are not to be stored in direct contact with ice.

14-2.11 WASTE.

(a) All sewage, including liquid waste, is to be disposed of in a sanitary sewer, an approved subsurface disposal system, or in a holding tank.

(b) Temporary food service establishments and the immediate vicinity of the operation are to be kept clean and free from litter. Trash and rubbish containers with plastic bag liners are to be provided for garbage and refuse disposal.

14-2.12 TOILET FACILITIES. Toilet facilities serving temporary food service establishments are to include warm running water, soap and individual paper towels for handwashing by employees.

14-2.13 FLOORS. Floors in food preparation areas are to be constructed of concrete, asphalt, tight wood or other similar cleanable material kept in good repair. Dirt or gravel, when graded to drain, may be used as subflooring, when covered with clean removable platforms or duckboards, or covered with wood chips, shavings, or other suitable materials effectively treated to control dust.

14-2.14 WALLS AND CEILINGS OF FOOD PREPARATION AREAS.

(a) Ceilings are to be made of wood, canvas, or other materials that protect the interior of the establishment from the weather. Walls and ceilings of food preparation areas are to be constructed in a way that prevents the entrance of insects. Screening material used for walls, doors or windows is to be at least 16 mesh to the inch. Doors to food preparation areas are to be solid or screened and are to be self-closing.

(b) Counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings are to be kept closed except when in actual use.

(c) Where other effective methods of fly control, acceptable to the permit-issuing official are employed, or at a time of the year when there is no insect problem, the screening requirements of subdivisions (a) and (b) of this section will not apply.

14-2.15 TRANSPORTATION. During transportation, food is to be protected from contamination, including maintenance of hot or cold temperature requirements.

14-2.16 PERSONNEL. All persons handling food are to be free from infectious disease which can be transmitted by foods, and are not to have a boil, infected cut or sore, or respiratory disease. They are to wear clean clothing, not smoke or use tobacco while handling food or in food preparation areas, and use hair restraints to minimize hair contact with hands, food and food-contact surfaces. All personnel handling food are to wash their hands with soap and water after using the toilet, smoking, eating, or when soiled. Living and sleeping quarters are to be separate from food operation areas.

14-2.17 ENFORCEMENT PROVISIONS.

(a) It is unlawful for any temporary food service establishment to be operated without a permit. Failure to obtain a permit is cause for immediate closure. Only an individual, partnership, corporation, association or similar legal entity complying with requirements of this Subpart, after making application on forms provided by the permit-issuing official, is entitled to receive and retain such a permit.

(b) The application for permit is to be fully completed.

(c) The permit-issuing official or his authorized representative may suspend a permit and order a temporary food service establishment closed and all food operations discontinued immediately when, in his judgment, continued operation is a danger to public health and it appears prejudicial to the public interest to delay action. The permit-issuing official may order immediate closure for deliberate refusal to correct a violation. The permit-issuing official is to provide the operator of any establishment ordered closed an opportunity for a hearing within 15 days of such an action.

(d) The permit-issuing official or his representative is to be permitted access for purposes of inspection at all times while the temporary food service establishment is in operation, whether open to the public for service of food or not. Refusal of admittance is cause for permit revocation and order to close.

(e) Embargo.

(1) The permit-issuing official or his designated representative may, by written order, place an embargo order on food which he determines or has reason to believe to be contaminated, unfit for human consumption, or from an unapproved source. Such food may not be used, sold, donated, discarded, repackaged or otherwise disposed of until such embargo is lifted by the permit-issuing official, his designated representative, or court of competent jurisdiction. The permit-issuing official shall provide the owner of the food embargoed, or the representative of the owner, an opportunity to be heard within 15 calendar days after the date of the order of embargo. The hearing officer, based on the evidence produced at such hearing, will make a recommendation to the permit-issuing official that he vacate the order of embargo, or may, by written order, direct the embargoed food, or any part of it, (i) to be continued to be held under embargo pending further testing, analysis or court action, (ii) to be destroyed, (iii) to be denatured and rendered inedible, (iv) to be released for return to a food processing plant for further processing, (v) to be released to another regulatory agency, or (vi) to other appropriate action. The permit-issuing official will consider the hearing officer's recommendation in determining the disposition of the embargoed food. The owner of the food embargoed shall be deemed to have received notice of embargo and hearing at the time the notice of embargo and hearing is delivered to any of his employees or agents.

(2) The permit-issuing official or his designated representative may take representative samples of the suspected food for analysis upon payment of the retail value of the sample taken.

14-2.18 WAIVER. The permit issuing official may waive any requirements under sections 14-2.13 and 14-2.14 of this Subpart when, in his opinion, it does not endanger the public health.

14-2.19 REPORTING OF FOODBORNE DISEASE. Any food service operator having actual or constructive knowledge of the occurrence of illness allegedly due to the consumption of food served at the establishment, shall report the same within 24 hours by telephone, telegram or in person to the permit-issuing official.

14-2.20 SEPARABILITY. If any provision of this Subpart is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provisions.