

P-5-16



NATIONAL LABELING COMMITTEE

MODEL REGULATION
AND LAW

**FAIR PACKAGING
AND LABELING REGULATIONS
for
FLUID MILK
AND FLUID MILK PRODUCTS**

NLC No. 2 (Amended)

August, 1968

Additional copies of this document may be obtained at no charge by contacting the Office of the Secretary, National Labeling Committee, 910 Seventeenth Street, N. W., Washington, D. C. 20006.

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FOREWORD

Model Fair Packaging and Labeling Regulation for Milk and Fluid Milk Products is the outgrowth of a long felt need to work toward uniform labeling in the industry.

The suggested model represents two years of consideration of many problems involved. Seven drafts of the regulation have preceded this final recommendation, one of which was sent to state regulatory officials for comment. Many suggestions were received and have been included in this document.

The project has been carried out under the direction of the Fair Packaging and Labeling Committee Chairman, Mr. M. W. Jefferson, Virginia State Department of Agriculture, and Vice Chairman, Mr. Shelby Johnson, Kentucky Department of Agriculture. Serving on the Committee have been representatives of state and local boards of health and state departments of agriculture, milk industry representatives designating the Milk Industry Foundation, and representatives of suppliers of containers to the milk industry.

The Committee in its deliberations necessarily had to take account of the provisions of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act of 1966, the provisions of the 1965 U. S. Public Health Service Pasteurized Milk Ordinance, and existing state and local regulations bearing on standards and labeling. At the same time, both industry and regulatory representatives recognized the importance of framing the regulation in such a way as not to unnecessarily detract from the image of the container as a prime mover in the sale of milk and milk products consumed.

The National Labeling Committee

The National Labeling Committee was founded in 1962 by a group of regulatory officials and industry representatives whose purpose was the drafting and implementation of uniform labeling regulations to keep pace with the growth of the industry. The primary function of this Committee then, as it is now, was the elimination of unnecessary and costly proliferation of labeling requirements which impeded efficient distribution of milk and its products and required the carrying of burdensome multiple inventories. This is a wasteful and cost-increasing practice which the dairy industry can no longer afford.

The first undertaking by the Committee was the preparation and distribution of the NLC Uniform Coding System. Adoption of this model regulation has been accomplished in 34 states and has allowed processors to purchase containers in larger quantities while at the same time identifying for the regulatory official the plant in which the product was processed.

The Committee is especially appreciative of the generous amount of time and effort many regulatory officials have contributed toward making this model a reality. Those involved directly with the drafting of this document, as well as others in the states, are well aware that uniformity in labeling can only come about through continued regulatory-industry cooperation. To this end, copies of this model regulation are being forwarded to all state regulatory officials and state and regional dairy industry trade associations.

Acknowledgements

In addition to the individuals who served on the National Labeling Committee, several regulatory officials represented national associations. The committee is proud to list these organizations and their representatives who have endorsed the provisions of this model regulation.

<i>National Association of State Departments of Agriculture—Dairy Division</i>	<i>M. W. Jefferson</i>
<i>International Association of Milk, Food, and Environmental Sanitarians</i>	<i>Shelby Johnson</i>
<i>National Conference on Interstate Milk Shipments</i>	<i>Harold J. Barnum</i>
<i>Association of Food and Drug Officials of the U. S.</i>	<i>Evan Wright</i>
<i>Northeast Labeling Committee</i>	<i>L. L. Clough</i>

The Committee is also indebted to Mr. Harold E. Thompson and other staff members of the U. S. Public Health Service, to Mr. Floyd E. Fenton, Dairy Division, U. S. Department of Agriculture, and staff personnel of the Federal Food and Drug Administration whose advice and counsel were readily available during the preparation of this model regulation.

Those serving on the National Labeling Committee are as follows:

<i>M. W. Jefferson,</i> <i>Chairman</i>	<i>Virginia Department of Agriculture</i>
<i>Shelby Johnson,</i> <i>Vice Chairman</i>	<i>Kentucky Department of Health</i>
<i>John F. Speer, Jr.,</i> <i>Secretary</i>	<i>Milk Industry Foundation</i>
<i>Frank W. Barber</i>	<i>National Dairy Products Corporation</i>
<i>Harold J. Barnum</i>	<i>Denver Department of Health & Hospitals</i>
<i>Don Campbell</i>	<i>Dean Milk Company</i>
<i>L. L. Clough</i>	<i>New York Department of Agriculture and Markets</i>
<i>J. Hoffman Erb</i>	<i>The Borden Company</i>
<i>Floyd E. Fenton</i>	<i>U. S. Department of Agriculture</i>
<i>Harold Findlay</i>	<i>Carnation Company</i>
<i>Charles M. Fistere</i>	<i>Counsel, Milk Industry Foundation</i>
<i>William V. Hickey</i>	<i>Plate, Cup and Container Institute</i>
<i>Clarence R. Jones</i>	<i>Arkansas State Board of Health</i>
<i>Paul Kennedy</i>	<i>International Paper Company</i>
<i>Ben Luce</i>	<i>Washington Department of Agriculture</i>
<i>Harold E. Thompson</i>	<i>U. S. Public Health Service</i>
<i>Max Weimer</i>	<i>Ohio Department of Agriculture</i>
<i>Evan Wright</i>	<i>Kansas State Department of Health</i>

HOW TO USE THE SUGGESTED RECOMMENDATIONS

In some states, authority now resides in the Department or Board of Agriculture or Public Health to promulgate regulations such as are embodied in the accompanying recommendation, whereas in other states legislation is necessary. Accordingly, the proposed document is presented first as a model regulation for consideration by the State agency or official having authority to promulgate labeling requirements. This model regulation consists of 5 sections with illustrations of fluid milk and fluid milk containers which are a part of the regulation.

In addition, following the regulation itself there is a policy statement adopted by the National Labeling Committee. The intent and effect of adopting the policy is to preserve the substance of the regulation itself as an aid in maintaining uniformity, thereby avoiding the necessity for separate container inventories for different jurisdictions.

The policy statement is followed in the pamphlet by a model bill for consideration in those states where it is desired or required that the labeling requirements be statutory in nature. The first five sections of the bill are identical to the text of the regulation. The remaining four sections of the bill are either necessary or appropriate in a legislative enactment but neither necessary nor appropriate in a regulation issued by an executive department or official.

PART I — REGULATION

FAIR PACKAGING AND LABELING REGULATIONS FOR FLUID MILK AND FLUID MILK PRODUCTS FOR THE STATE OF _____

(Proposed for Adoption by State Agencies)

The _____ (fill blank with name of promulgating agency or officer) hereby promulgates the following regulations under authority of the _____ (fill blank with citation to statutory authority):

Section 1

For the purposes of this regulation:

- (a) The term "label" means any written, printed, or graphic matter affixed to or appearing upon a consumer package containing a fluid milk or fluid milk product.
- (b) The term "package" means any container or wrapping in which fluid milk and fluid milk products are offered for retail sale.
- (c) The term "fluid milk and fluid milk products" shall mean those categories of products which are regulated under the provisions of the Pasteurized Milk Ordinance and comparable state regulation. A partial listing of these products appears in Appendix A.
- (d) "Modifying Term" means the word or words used to describe the various optional forms in which fluid milk or fluid milk products are marketed. For the purpose of product identification, the following shall be considered to be modifying terms: cultured, reconstituted, concentrated, recombined, flavored, acidified, homogenized, vitamin _____ (the blank being filled in with the specific added vitamin(s)), fortified, chocolate (or other characterizing flavor names such as strawberry or vanilla).

- (e) The term "Principal Display Panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale as shown by illustration in Sec. 2.
- (f) The term "Product Identification Panel" means those parts of a label shown by illustration in Sec. 2, which shall bear the statement of identity including modifying terms describing the product.
- (g) The term "Required Information Panel" means that part of a label which shall bear all of the mandatory labeling information required by this regulation.

Section 2

Any milk or milk product shall be deemed to be misbranded unless the package or container is labeled as to location of required information in accordance with the illustrations contained in this Section. Other printed matter may appear on any of the described panels provided such other label information is not misleading or does not render the required information inconspicuous. For the purpose of this regulation the specified panels are defined as follows:

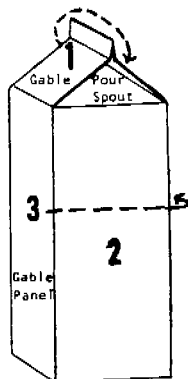
- (a) The **PRINCIPAL DISPLAY PANEL**, which shall contain the name of the product and a quantity of contents declaration is, in the case of:
 - (1) Gable top rectangular fluid milk cartons—The two (2) opposite vertical side panels immediately below the slanted portions of the top, except that for containers of less than one pint, each gable and the gable panel immediately below it, taken together, shall constitute the Principal Display Panel. (Fig. I).
 - (2) "Flat top" rectangular fluid milk cartons—Any two (2) opposite vertical side panels. (Fig. II).
 - (3) Glass bottles and plastic fluid milk containers—The cap or outer closure except that the quantity declaration may, in lieu thereof, be blown into or permanently applied to the glass or plastic container. (Fig. III).

- (4) Cylindrical and nearly cylindrical cartons (straight sidewall or nested) and cups—The lid or sidewall. (Fig. IV).
 - (5) Tetrahedral paper containers—Any two (2) sides. (Fig. V).
- (b) The **REQUIRED INFORMATION PANEL**, which shall contain all the required information set forth in this regulation, is, in the case of:
- (1) Gable top rectangular fluid milk cartons—The vertical front spout panel immediately below the pour spout. (Fig. I).
 - (2) “Flat top” rectangular fluid milk cartons—Any one vertical side panel or, in the case of Style D, the top, in lieu of a vertical panel. (Fig. II).
 - (3) Glass bottles and plastic fluid milk containers—The cap or outer closure except that the quantity declaration may, in lieu thereof, be blown into or permanently applied to the glass or plastic container. (Fig. III).
 - (4) Cylindrical and nearly cylindrical cartons (straight sidewalls or nested) and cups—The lid or sidewall (Fig. IV).
 - (5) Tetrahedral paper containers—Any two (2) sides. (Fig. V).
- (c) The **PRODUCT IDENTIFICATION PANEL**, which shall contain the name of the product, is, in the case of:
- (1) Gable top rectangular fluid milk cartons—The two (2) gables forming the slanted top of the carton.
 - (2) “Flat top” rectangular fluid milk cartons—If the top panel contains any printed matter (other than code number) the name of the product shall also appear.

FIGURE 1

Paper Cartons—Styles A & B

Style A



PRINCIPAL DISPLAY PANELS

One Pint and Larger

Both Gable Panels 3 shall constitute the Principal Display Panel and contain the name of the product and the quantity of contents.

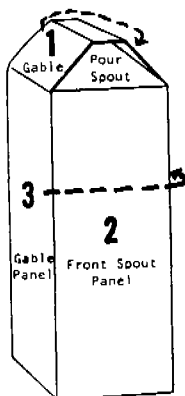
Less Than One Pint

Each Gable and the Gable Panel immediately below it, taken together, shall constitute the Principal Display Panel and contain the name of the product and the quantity contents. (No illustration shown)

PRODUCT IDENTIFICATION PANELS

For all sizes both gables 1 shall contain the name of the product (e.g., "homogenized MILK", "CREAM", etc.).

Style B



REQUIRED INFORMATION PANEL

The Front Spout Panel 2 of the carton (all sizes) shall contain all the required information set forth in this regulation.

PROCESSING PLANT CODE NUMBER

The plant code number, where applicable, shall appear on the immediate container or closure so as to be capable of being seen by the regulatory official under customary conditions of inspection.

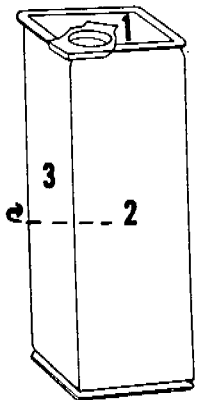
ALTERNATIVE

The information required to appear on the Required Information Panel 2 may, in lieu thereof, appear on both Principal Display Panels 3.

FIGURE II

Paper Cartons—Styles C & D

Style C



PRINCIPAL DISPLAY PANELS

Side Panels—Two opposite side panels 2 in addition to the “Required Information Panel” shall contain the name of the product (e.g., “MILK”, “LOWFAT MILK”, “HALF AND HALF”, etc.) and the quantity of contents.

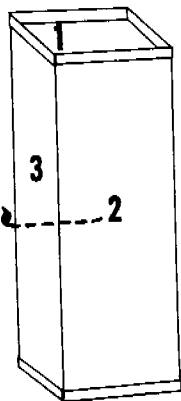
PRODUCT IDENTIFICATION PANEL

Top Flange—If the top flange 1 or lid 1 contains any printed or written matter other than code number, the name of the product (e.g., “MILK”, “LOWFAT MILK”, “Vitamin D MILK”, etc.) must appear. Abbreviation of product name is acceptable on the flange.

REQUIRED INFORMATION PANEL

Any one side panel 3 other than the Principal Display Panels shall contain all required information set forth in this regulation except in the case of Style D, the top 1 may be designated the Required Information Panel in lieu of a side panel.

Style D



PROCESSING PLANT CODE NUMBER

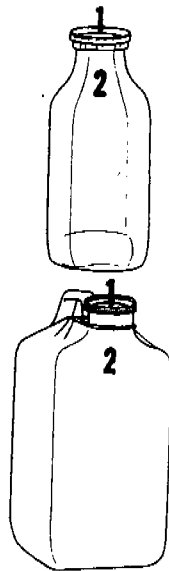
The plant code number, where applicable, shall appear on the immediate container or closure so as to be capable of being seen by the regulatory official under customary conditions of inspection.

ALTERNATIVE

The information required to appear on the Required Information Panel 3 may, in lieu thereof, appear on both Principal Display Panels 2.

FIGURE III

Glass and Plastic Containers



REQUIRED INFORMATION PANEL and PRINCIPAL DISPLAY PANEL

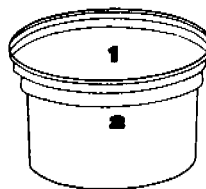
All required information shall appear on the outside closure 1; however, the quantity declaration may be blown into or permanently applied to the container in close proximity to the cap or crown 2 ("close proximity" is defined as at or above the shoulder of the container) [Sec. 3(c)(5)]. When blown or applied to the container, the quantity of declaration need not appear on the lid or outside closure.

PROCESSING PLANT CODE NUMBER

The plant code number, where applicable, shall appear on the immediate container or closure so as to be capable of being seen by the regulatory official under customary conditions of inspection.

FIGURE IV

Cup Containers



REQUIRED INFORMATION PANEL and PRINCIPAL DISPLAY PANEL

The lid 1 or sidewall 2 may be designated the Required Information Panel and Principal Display Panel and contain all mandatory information. When the lid 1 or sidewall 2 is used as a Principal Display Panel (name of food and quantity of contents declaration) only, the quantity of contents need not be repeated on the Required Information Panel.

PROCESSING PLANT CODE NUMBER

The plant code number, where applicable, shall appear on the immediate container or lid so as to be capable of being seen by the regulatory official under customary conditions of inspection.

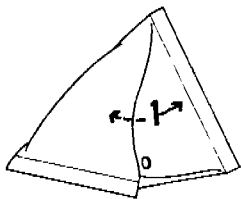
FIGURE V

Tetrahedral Paper Containers

REQUIRED INFORMATION PANEL and PRINCIPAL DISPLAY PANEL

Any two sides **1** may be combined to carry the required labeling information.

PROCESSING PLANT CODE NUMBER
The plant code number, where applicable, shall appear on the immediate container or closure so as to be capable of being seen by the regulatory official under customary conditions of inspection.



Section 3

In every case any fluid milk or fluid milk product shall be deemed to be misbranded unless on the Required Information Panel, and with respect to the quantity of contents declaration the Principal Display Panel if it is other than the Required Information Panel, it bears the following information:

- (a) The defined, or common or usual name of the fluid milk or fluid milk product.
- (b) The corporate name and place of business of the manufacturer, packer, or distributor which may be preceded or followed by the name of the particular division of the corporation. The statement of the place of business shall contain the city, state, and ZIP Code. The NLC plant code number, when required, may appear elsewhere on the container.
- (c) A statement of the Quantity of Contents—
 - (1) The declaration shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and (by at least a space equal to twice the width of the letter "N" of the style of type used in the quantity of contents statement) from other printed label information appearing to the left or right of the declaration.

- (2) It shall be placed within the bottom 30 percent of the panel in lines generally parallel to the base on which the package rests as it is designed to be displayed: Provided, That on packages having a principal display panel of 5 square inches or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply.
- (3) The declaration shall appear in conspicuous and easily legible boldface print or type in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package.
- (4) Requirements of conspicuousness and legibility shall include the specifications that:
- The ratio of height to width (of the letter) shall not exceed a differential of 3 units to 1 unit (no more than 3 times as high as it is wide).
Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.
- (5) The declaration of quantity of contents on the Required Information Panel and the Principal Display Panel shall be in letters and numerals in a type size complying with the following specifications:

<i>Square Inch Area of Required Information Panel and Principal Display Panel</i>	<i>Minimum Height of Numbers and Letters</i>
5 square inches or less	1/16 inch
more than 5 square inches but less than 25 square inches	1/8 inch
more than 25 square inches but less than 100 square inches	3/16 inch
more than 100 square inches but less than 400 square inches	1/4 inch
greater than 400 square inches	1/2 inch

Where the declaration is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified above shall be increased by 1/16 of an inch.

- (6) In the case of glass and plastic containers when other label information is displayed on the cap or outside closure, the required quantity declaration may be blown, formed or molded into or permanently applied to, that part of the glass or plastic container that is in close proximity to the cap or outside closure in sizes specified in Sec. 3(c)(5).
- (7) For quantities, the following abbreviations and none other may be employed (periods and plural forms are optional):

weight	wt.	pint	pt.
ounces	oz.	quart	qt.
pound	lb.	fluid	fl.
gallon	gal.		

- (8) The quantity of contents declaration firmly established by general consumer usage and trade custom for milk products shall be used and are: gallon, half gallon, quart, pint, one third quart, and half pint. When the above quantities are declared, they shall be employed without qualifying words such as "liquid" and "fluid" and the terms "net" or "net contents" are optional. For containers less than half pint, the quantity declaration shall be expressed in ounces and include the term fluid ounce, e.g. "2 fl. oz.". With the exception of those products set forth in paragraph 9 of this section, the preceding quantity statements are sufficient for fluid milk and fluid milk products. An additional declaration in total ounces is not required.
- (9) In the case of cottage cheese, creamed cottage cheese and yoghurt, the quantity of contents declaration shall be expressed both in ounces, (fluid or avoirdupois as the case may be) and, if applicable (1 pound or 1 pint or more) followed in parentheses by a declaration in pounds for weight units, with any remainder in terms of ounces or common or decimal fractions of the pound, or in the case of liquid measure, in the largest whole units (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or

quart (see examples). The declaration may appear in more than one line. The term "net weight" shall be used when stating the net quantity of contents in terms of weight. Use of the terms "net" or "net contents" in terms of fluid measure or numerical count is optional. It is sufficient to distinguish avoirdupois ounce from fluid ounce through association of terms; for example, "Net wt. 6 oz." or "6 oz. Net wt." and "6 fl. oz." or "Net contents 6 fl. oz."

Examples: (cottage cheese, creamed cottage cheese and yoghurt only)

A declaration of 1½ pounds weight shall be expressed as "Net Wt. 24 oz. (1 lb., 8 oz.)" "Net Wt. 24 oz. (1.5 lb.)".

A declaration of ¾ pound avoirdupois weight shall be expressed as "Net Wt. 12 oz."

A declaration of 1 quart liquid measure shall be expressed as "Net 32 fl. oz. (1 qt.)."

A declaration of 1¾ quarts liquid measure shall be expressed as "Net contents 56 fluid ounces (1 quart 1½ pints)" or as "Net 56 fluid oz. (1 qt. 1 pt. 8 oz.)," but not in terms of quart and ounce such as "Net 56 fluid oz. (1 quart 24 ounces)."

Section 4

Where any one of the declarations specified in subparagraphs (a) (i) inclusive is applicable to a fluid milk or fluid milk product, such fluid milk or fluid milk product shall also be deemed to be misbranded if the Required Information Panel fails to bear such of the following supplementary declarations as may be applicable:

- (a) the "grade" of contents if a grade has been established;
- (b) the word "pasteurized" if the contents are pasteurized;
- (c) the word "raw" if the contents are raw;
- (d) when Vitamin D is added the declaration:

"400 USP Units Vitamin D Added Per Quart"

or

"400 USP Units Vit. D Added Per Qt."

A statement of vitamin source shall not be required. The word vitamin may be abbreviated where the Required Information Panel represents a small labeling area. The declaration of added Vitamin A shall be similar to that for Vitamin D, i.e. USP units per quart;

- (e) the volume or proportion of water to be added for recombining in the case of concentrated milk or milk products;
- (f) the words "nonfat milk solids added" and the percentage if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk or milk products;
- (g) the words "artificially sweetened" if non-nutritive and/or artificial sweeteners are used. Such products shall comply with the applicable labeling requirements promulgated under the Federal Food, Drug, and Cosmetic Act;
- (h) in the case of milk and milk products to which vitamins other than A and D have been added and/or to which minerals have been added, the labeling required by the applicable regulations promulgated under the Federal Food, Drug, and Cosmetic Act;
- (i) where stabilizers, distillates and other optional ingredients are added, the common or usual name of each in the order of their predominance by weight as required under the Federal Food, Drug, and Cosmetic Act.

Section 5

A fluid milk or fluid milk product shall be deemed to be misbranded by reason of a lack of prominence and conspicuousness of the required information on the label; provided however, that the required information on a label of a fluid milk or fluid milk product shall be deemed to be prominent and conspicuous under the following conditions:

- (a) If there is a modifying term as provided for in Sec. 1 used to describe an optional form of the product, such modifying term(s) either immediately precedes or follows other components of the product identification wherever it appears on the label with no intervening written or pictorial matter.

Such modifying terms (e.g. cultured, homogenized, chocolate, Vitamin D, etc.) are not less than one-half the height of the letters used in the word or words which it precedes or follows. (See Appendix A).

- (b) On the Required Information Panel the grade of contents and the word "pasteurized" are not less than one-quarter the height of the largest word or words used in the product identification statement.
- (c) In the case of Styles A, B, C, D, and Tetrahedral containers, on the Required Information Panel:
 - (1) **INGREDIENT STATEMENT** — when it is necessary to declare added vitamins, minerals, stabilizers, flavors, and other optional ingredients, the size of the container determines the height of the letters, but in no case shall the added ingredient declaration be less than:
 - 4 pt. type— $\frac{1}{2}$ pint or less
 - 6 pt. type—more than $\frac{1}{2}$ pint and less than a $\frac{1}{2}$ gallon
 - 8 pt. type—one-half gallon or larger
 - (2) **NAME AND PLACE OF BUSINESS** — the minimum height of letters set forth in (c)(1) above, shall apply to the declaration of the name and place of business of the manufacturer, packer, or distributor.
 - (3) **QUANTITY OF CONTENTS** — the minimum height of numbers and letters and other requirements regarding the declaration of the quantity statement shall be those prescribed in Sec. 3(c)(5).
 - (4) **REQUIRED INFORMATION** — the required information prescribed herein appears in lines generally parallel to the base on which the package rests as it is designed to be displayed with no intervening written, printed, or obscuring graphic matter.

Appendix A

The following is a partial listing of milk and milk products to be covered by this regulation. "Modifying terms" are shown in letters not less than one-half the height of the letters forming the other components of the statement of identity. (See Section 1(d) and Section 5(a) of Model Regulation)

MILK
CREAM
LIGHT CREAM, COFFEE CREAM,
TABLE CREAM
WHIPPING CREAM
LIGHT WHIPPING CREAM
HEAVY CREAM, HEAVY WHIPPING CREAM
WHIPPED CREAM
WHIPPED LIGHT CREAM, COFFEE CREAM,
TABLE CREAM
SOUR CREAM, CULTURED SOUR CREAM
HALF-AND-HALF
CULTURED HALF-AND-HALF
RECONSTITUTED MILK, RECOMBINED MILK
CONCENTRATED MILK
SKIM MILK, SKIMMED MILK
LOWFAT MILK
VITAMIN D MILK
FORTIFIED MILK
HOMOGENIZED MILK
CHOCOLATE MILK OR CHOCOLATE FLAVORED MILK
FORTIFIED LOWFAT MILK
BUTTERMILK
CULTURED BUTTERMILK

N.L.C. Policy Respecting Uniformity

It is recommended by the National Labeling Committee that the provisions of any regulation governing the labeling of fluid milk and fluid milk products be confined to the foregoing regulation and that no regulation or interpretation be issued which would:

- (a) prescribe type sizes or styles, other than those prescribed in this regulation;
- (b) prescribe or require a declaration of the milk fat or butterfat content of the product, unless such product is represented or purports to be a food for special dietary use;
- (c) prescribe or require a declaration of the total milk solids content of the product, unless such product is represented or purports to be a food for special dietary use;
- (d) preclude the use of the processor's or distributor's name or trademarks, recipes, vignettes, pictorials, or other promotional communications which are not misleading;
- (e) prescribe or require the declaration "standardized";
- (f) where the NLC Uniform Coding System is used, prescribe or require that the plant code number appear at any particular place on the label or container, or require a statement as to the code number location;
- (g) require the NLC code number to be applied at any place other than at the plant of filling;
- (h) require the date on which the product was packaged, or expiration date;
- (i) require the processor's name to appear if the distributor's name and principal place of business appear on the required information panel, and if the processor's plant code number appears on the immediate container or closure so as to be capable of being seen by the regulatory official under customary conditions of inspections;
- (j) preclude the continued use of returnable or reusable containers in inventory or with the trade as of the effective date of this regulation;
- (k) require the plant permit or license number to appear on the package.

PART II — LEGISLATION

How To Prepare The Suggested Model Bill For Introduction in The State Legislature

There are some states where legislation is necessary to effect the type of labeling requirements embodied in the recommendations of the National Labeling Committee.

In view of the differences existing among the 50 states no single uniform bill could be drafted which in all respects would be appropriate for immediate introduction, "as is." Those persons in the states who are interested in State legislation in this field should regard the form of the model bill as a guide. The precise form of any bill should result only after it is first checked carefully against the constitution and laws of the states in which consideration is being given to introduce the bill. State requirements should be checked particularly with respect to (1) the title or heading of the bill; (2) proper enacting clause; (3) its general form; (4) penalties; (5) methods of enforcement; (6) jurisdiction of the courts and (7) existing laws relating to the same subject which may need to be repealed or modified.

FAIR PACKAGING AND LABELING LAW FOR FLUID MILK AND MILK PRODUCTS

(Proposed for adoption only in those states
where regulation cannot be effected by action
of the executive department or official)

A LAW PRESCRIBING TERMS AND MANNER OF LABEL- ING OF FLUID MILK AND FLUID MILK PRODUCTS, PRO- VIDING FOR ITS ENFORCEMENT AND PRESCRIBING PENALTIES.

Be it enacted by the as
follows:

[NOTE TO DRAFTERS]

At this point incorporate the entire text of the preceding regulation including use of section numbers (Sections 1 through 5 with illustrations and Appendix A). There then should be added the following four sections (Sections 6, 7, 8 and 9) to complete the bill:

Section 6

No regulation or interpretation shall be issued by the
..... (name agency) which purports to:

- (a) prescribe type sizes or styles, other than those prescribed in this law;
- (b) prescribe or require a declaration of the milk fat or butterfat content of the product;
- (c) prescribe or require a declaration of the total milk solids content of the product;
- (d) preclude the use of the processor's or distributor's name or trademark, recipes, vignettes, pictorials, or other promotional communications which are not misleading;
- (e) prescribe or require the declaration "standardized";
- (f) where the NLC Uniform Coding System is used, prescribe or require that the plant code number appear at any particular place on the label or container, or require a statement as to the code number location;
- (g) require the NLC code number to be applied at any place other than at the plant of filling;
- (h) require the date on which the product was packaged, or expiration date;
- (i) require the processor's name to appear if the distributor's name and principal place of business appear on the required information panel, and if the processor's plant code number appears on the immediate container or closure so as to be capable of being seen by the regulatory official under customary conditions of inspections;
- (j) preclude the continued use of returnable or reusable containers in inventory or with the trade as of the effective date of this regulation;
- (k) require the plant permit or license number to appear on the package.

Section 7

It is hereby declared that it is the express intent of the legislature to supersede any and all regulations, ordinances, or other enactments of any political subdivision of the state insofar as they may now or hereafter contain requirements different from the requirements of this Act.

Section 8

It shall be unlawful for any person, firm or corporation to sell, transport, exchange, possess or offer for sale or exchange any fluid milk or fluid milk product which is misbranded within the meaning of this Act.

Section 9

The (fill blank with name of enforcement agency or officer) is authorized and directed to supervise the enforcement of this Act and to provide for the institution and prosecution of civil or criminal actions or both. The provisions of this Act may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and misbranded fluid milk and fluid milk products illegally held or otherwise involved in a violation of the Act shall be subject to embargo, seizure, and disposition in accordance with an appropriate court order.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R. DOUGLASS
COMMISSIONER

August 29, 1975

The Honorable James McCartney
Secretary of State
State Capitol, Room 151-W
Charleston, West Virginia 25305

Dear Secretary McCartney:

Enclosed are two (2) copies of Standards pertaining to Article 11, West Virginia Milk and Milk Products Law. These standards are promulgated by me under authority granted by Chapter 19, Article 11, Section 4, Code of West Virginia, as amended.

I hereby certify that the enclosed standards are true and accurate copies of official standards adopted by this Department on September 2, 1975.

Sincerely yours,

Gus R. Douglass
Agriculture Commissioner

D/A/s

Enclosures

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE SEP 2 1975

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Department of Agriculture

Chapter 19- 2,
Series IV
1975

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE SEP 2 1975

Subject: MILK AND MILK PRODUCTS

Section 1. GENERAL.

1.01 Scope - These regulations define and establish product standards and set procedures for enforcement of the West Virginia Milk and Milk Products Law.

1.02 Authority - These regulations are issued under authority of Chapter 19, Article 11, Code of West Virginia.

1.03 Effective Date - These regulations were promulgated on September 2, 1975 and became effective on October 1, 1975.

1.04 Filing Date - These regulations were filed in the Office of the Secretary of State on September 2, 1975.

1.05 Certification - These regulations are certified authentic by the Secretary of State by certification number 33.

Section 2. DECLARATION OF POLICY

2.01 The following regulations are intended to result in uniformity of product standards and to conform as closely as possible to Federal product standards and to allow movement of milk and milk products in inter and intrastate commerce with a minimum of economic barriers. Enforcement of the Milk and Milk Products Law and Regulations is hereby assigned to the Consumer Protection Division of this Department.

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2.02 By virtue of authority vested in me by Article 11, Chapter 19, Code of West Virginia, I, Gus R. Douglass, Commissioner of Agriculture, do hereby promulgate and declare in effect the following standards for milk and milk products.

Section 3. STANDARDS

3.01 It shall be unlawful for any person to manufacture, offer or expose for sale or exchange, or have in his possession with intent to sell, offer or expose for sale or exchange, any milk or milk products that do not conform to rules and regulations promulgated by the State Board of Health and to the following standards or definitions:

(a) Milk is hereby defined to be the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows which contains not less than three and one-quarter per cent milk fat and not less than eight and one-quarter per cent milk solids not fat: Provided: however, that the standard set out in this sub-section shall not be construed to include persons producing milk and selling the same on a wholesale basis to dairies and receiving plants;

(a-1) Goat milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats. The word "milk" shall be interpreted to include goat milk.

(b) Vitamin D milk is milk the Vitamin D content of which has been increased by an approved method to at least 400 International Units per quart;

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(c) Skimmed milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to less than five-tenths per cent, and shall contain not less than eight and one-quarter per cent milk solids not fat. Vitamin A shall be present in such quantity that each quart contains not less than 2000 International Units thereof within limits of good manufacturing practice. Optional ingredients such as Vitamin D, bacterial cultures, safe and suitable milk derived ingredients, stabilizers, emulsifiers, natural and artificial food flavors may be added;

(d) Lowfat milk is milk from which a sufficient portion of milk fat has been removed to produce a food having, within limits of good manufacturing practice, one of the following milk fat contents: $\frac{1}{2}$, 1, $1\frac{1}{2}$ or 2 per cent and contains not less than eight and one-quarter per cent milk solids not fat. Vitamin A shall be present in such quantity that each quart contains not less than 2000 International Units. Optional ingredients such as Vitamin D, bacterial cultures, safe and suitable milk derived ingredients, stabilizers, emulsifiers, natural and artificial food flavors may be added;

(e) Flavored milk and milk products shall mean milk and milk products as defined in the standards to which has been added a flavor and/or sweetener;

(f) Manufacture or sale of imitation milk. No person or persons shall manufacture, offer or expose for sale any product in imitation or semblance of milk branded or labeled as milk or imitation milk;

(g) Buttermilk is a fluid product resulting from the churning of milk or cream. It contains not less than eight per cent milk solids not fat;

(h) Cultured buttermilk is a fluid product resulting from the souring or treatment by a lactic acid or other culture of pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It contains not less than eight per cent milk solids not fat;

(i) Condensed milk, evaporated milk, concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, and contains, all tolerances being allowed for, not less than twenty-five and five-tenths per cent total solids and not less than seven and one-half per cent milk fat;

(j) Sweetened condensed milk, sweetened evaporated milk, sweetened concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk to which sugar has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent total milk solids and not less than seven and one-half per cent milk fat;

(k) Condensed skimmed milk, evaporated skimmed milk, concentrated skimmed milk, is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and contains, all tolerances being allowed for, not less than twenty per cent milk solids;

(l) Sweetened condensed skimmed milk, sweetened evaporated skimmed milk, sweetened concentrated skimmed milk, is the product

resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar has been added. It contains, all tolerances being allowed for, not less than twenty-eight per cent milk solids;

(m) Dried milk is the product resulting from the removal of water from milk, and contains, all tolerances being allowed for, not less than twenty-six per cent milk fat, and not more than five per cent moisture;

(n) Dried skimmed milk is the product resulting from the removal of water from skimmed milk, and contains, all tolerances being allowed for, not more than five per cent moisture;

(o) Cream is a fresh, clean portion of milk which contains not less than eighteen per cent milk fat. Whipping cream is cream which shall contain not less than thirty per cent milk fat. Cream for buttermaking shall be clean and contain no foreign matter and shall be free from filth, putrefaction, mold or decomposition;

(p) Light cream, coffee cream or table cream means cream which contains not less than eighteen per cent, but less than thirty per cent milk fat;

(q) Light whipping cream means cream that contains not less than thirty per cent, but less than thirty-six per cent milk fat;

(r) Heavy cream or heavy whipping cream means cream which contains not less than thirty-six per cent milk fat;

(s) Whipped cream means whipping cream into which air or gas has been incorporated;

(t) Whipped light cream, whipped coffee cream or whipped table cream means light cream, coffee cream or table cream, respectively, into which air or gas has been incorporated;

(u) Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than eighty per cent milk fat. The addition of vegetable butter coloring is permitted;

(v) Cheese is the sound solid and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning and contains, in the water-free substance, not less than fifty per cent milk fat. The addition of harmless coloring matter is permitted;

(w) Ice cream is a frozen substance made from pure, wholesome milk products sweetened with sugar and may contain not to exceed one half of per cent gelatin, vegetable gum or other wholesome stabilizers and emulsifiers. When wholesome and harmless flavoring extracts are used, ice cream shall contain not less than ten per cent milk fat and twenty per cent total milk solids. When eggs, fruits, nuts, chocolate or cake are used, such reduction in the percentage of milk fat and milk solids not fat shall be allowed as may be caused by the addition of such ingredients. The finished ice cream shall weigh not less than four and one-half pounds to the gallon;

of cream with milk or skimmed milk or both. Such cream or mixture is used in such quantity that the milk fat added thereby is not less than four per cent by weight of the finished cottage cheese. The finished cottage cheese contains not more than eighty per cent moisture;

(dd) Lowfat cottage cheese is a mixture of the drained curd of cheese with a creaming mixture added and contains not more than two per cent and not less than five-tenths per cent milk fat and not more than eighty-two and five-tenths per cent moisture;

(ee) Grade A cottage cheese, lowfat cottage cheese or cottage cheese curd shall be made from pasteurized Grade A dairy products;

(ff) Egg nog is a milk product consisting of a mixture of milk or milk products containing at least six per cent milk fat, at least one per cent egg yolk solids, sweetener and flavoring. Emulsifier and not over five-tenths per cent stabilizer may be added;

(gg) Egg nog drink is a milk product consisting of a mixture of milk and milk products containing less than six per cent milk fat and shall contain at least five-tenths per cent egg yolk solids, sweetener and flavoring. Emulsifier and not over five-tenths per cent stabilizer may be added;

(hh) Milk shake or similar drink, by whatever name called, is a product consisting of wholesome dairy products containing not less than three per cent milk fat, with or without the addition of ice cream, with or without the addition of wholesome and harmless coloring and flavoring, and shall contain not to exceed one-half per cent stabilizer;

(x) Ice milk is a frozen substance made from pure, wholesome milk products sweetened with sugar and may contain not to exceed one-half of one per cent gelatin, vegetable gum or other wholesome stabilizers and emulsifiers. Ice milk shall contain not less than two nor more than seven per cent milk fat and not less than eleven per cent total milk solids. When ice milk is packaged in containers of greater than three gallon capacity, it shall not contain color or any of the optional flavoring ingredients;

(y) Frozen dietary food, artificially sweetened, is a frozen milk product intended for special dietary use. It may contain accepted non-nutritive sweeteners or any other harmless polyhydric alcohol, and/or any other accepted harmless ingredient. Frozen dietary food shall contain not less than three nor more than ten per cent milk fat;

(z) Half and half is a product consisting of a mixture of milk and cream which contains not less than ten and one-half per cent milk fat;

(aa) Sour cream is cream with acidity of not less than five-tenths of one per cent, expressed as lactic acid, which contains not less than eighteen per cent milk fat;

(bb) Cottage cheese curd is the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria, with or without enzymatic action, to pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It contains not more than eighty per cent moisture;

(cc) Cottage cheese is the soft uncured cheese prepared by mixing cottage cheese with pasteurized cream or a pasteurized mixture

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(ii) All fluid milk and fluid milk products moving in interstate commerce shall be labeled to conform with the Fair Packaging and Labeling Regulations of the National Labeling Committee (NLC No. 2 (Amended), August, 1967) and the regulations for the enforcement of the Fair Packaging and Labeling Act of the Federal Food and Drug Administration as promulgated on January 19, 1975.

These standards shall be in force and effect as of the 1st day of October, 1975.

Executed in the Office of the Commissioner of Agriculture,
State Capitol Building, Charleston, West Virginia, this the 2nd day
of September, 1975.