

*Rescinded
April 29, 1992*

**TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE**

**SERIES 4
RULES AND REGULATIONS DEALING WITH MILK AND MILK PRODUCTS
STANDARDS, DISTRIBUTION
AND ENFORCEMENT POLICY**

§61-4-1. General.

1.1. Scope. -- These legislative regulations amend, repromulgate and recodify administrative regulations governing milk and milk products from the manufacturing plant to the consumer. They establish definitions and standards for milk and milk products; prohibit the manufacture and sale of imitation milk; provides for the manufacture and sale of ice milk; establishes requirements for labeling and production standards for soft serve manufacturers; and provides for milk fat analysis by Light Transmission and the Roesse-Gottlieb (Mojonnier) Fat Extraction Method.

1.2. Authority. -- W. Va. Code §19-11

1.3. Filing Date. -- November 19, 1981

1.4. Effective Date. -- January 25, 1982

§61-4-2. Declaration Of Policy.

2.1. The following regulations are intended to result in uniformity of product standards and to conform as near as practicable to milk and milk product standards established for these same items by the Food and Drug Administration of the Federal Department of Health and Human Services, and to allow movement of milk and milk products in inter and intrastate commerce with a minimum of economic barriers.

2.2. It shall be unlawful for any person to sell, offer or expose for sale, or have in his possession with intent to sell, any milk produced by a cow which has reacted to a tuberculin test, or is affected with a dangerously transmissible disease, as food for human beings or for animals, unless it has been previously heated to at least one hundred and seventy-eight degrees Fahr-

enheit (178 degrees F.), or heated to one hundred forty degrees Fahrenheit (140 degrees F.) and held at that point for at least twenty (20) minutes, except when a special examination has been made under the direction of the Commissioner of Agriculture and State Director of Health and written permission to use such milk has been given by them.

2.3. Milk and milk products may contain any safe and suitable optional ingredients permitted by Federal standards.

2.4. 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, either in bulk or in containers, sealed or unsealed, under any name whatever, any condensed, evaporated, concentrated, powdered, dried or desiccated milk, cream or skimmed milk to which has been added or which has been blended or compounded, any fats or oils other than milk fats, producing what is known as "filled milk."

§61-4-3. Definitions And Standards.

3.1. Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows. Milk that is in final package form for beverage use shall contain not less than eight and one-fourth percent (8 1/4%) milk solids-not-fat and not less than three and one-fourth percent (3 1/4%) milk fat.

If added, vitamin D shall be present in such quantity that each quart of the food contains four hundred (400) International Units thereof within limits of good manufacturing practices, and the product shall be called "Vitamin D Milk" or "Milk, Vitamin D Added."

The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

3.2. Pasteurization, pasteurized, and similar terms mean that every particle of such product shall have been heated in properly operated equipment to one (1) of the temperatures specified in the table in the appendix (See Appendix 1), and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction).

3.3. Ultrapasteurized means that such product shall have been thermally processed at or above two hundred eighty degrees Fahrenheit (280° F.) for at least two (2) seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

3.4. Flavored milk and flavored milk products shall mean milk and milk products as defined in the standards to which have been added a characterizing flavor, with or without added sweetener. The flavor shall be appropriately included as part of the name of the food (e.g. chocolate milk). Any egg nog flavor product shall contain not less than five-tenths percent (0.5%) milk fat and at least five-tenths (0.5%) percent egg yolk solids.

3.5. Acidified products. -- Milks, sour cream, sour half and half and cottage cheese products may be prepared by the addition of one or more safe and suitable acidifying ingredients, including glucono-delta-lactone, with or without the addition of enzymes or characterizing microbial organisms. The names of such "acidified" or "directly set" products shall be appropriately modified to distinguish them from their cultured counterparts.

3.6. Skimmed milk, also known as skim milk or non-fat milk, is milk from which sufficient milkfat has been removed to reduce its milkfat content to less than five-tenths percent (0.5%). Skim milk that is in final package form for beverage use shall contain not less than eight and one-fourth percent (8 1/4%) milk solids-not-fat, and added Vitamin A in such quantity that each quart of the product contains not less than two thousand (2,000) International Units thereof within limits of good manufacturing practices.

If added, Vitamin D shall be present in such quantity that each quart of the food contains four hundred (400) International Units thereof within limits of good manufacturing practices.

3.7. Lowfat milk is milk from which sufficient milkfat has been removed to produce a food having, within limits of good manufacturing practices, one (1) of the following milkfat contents: one-half (1/2), one (1), one and one-half (1 1/2) or two (2) percent. Lowfat milk shall contain not less than eight and one-fourth percent (8 1/4%) milk solids-not-fat, and added Vitamin A in such quantity that each quart of the product contains not less than two thousand (2,000) International Units thereof within limits of good manufacturing practices.

If added, Vitamin D shall be present in such quantity that each quart of the food contains four hundred (400) International Units thereof within limits of good manufacturing practices.

3.8. Buttermilk is a fluid product resulting from the churning of milk or cream. It contains not less than eight and one-fourth percent (8 1/4%) milk solids-not-fat.

3.9. Cultured buttermilk is a fluid product resulting from the souring or treatment of cream, milk, partially skimmed milk or skimmed milk, alone or in combination with, characterizing microbial organisms. It contains not less than eight and one-fourth percent (8 1/4%) solids-not-fat.

3.10. Condensed milk, usually known as evaporated milk, is the liquid food obtained by partial removal of water only from milk. It contains not less than seven and five-tenths percent (7.5%), by weight, of milk fat and not less than twenty-five percent (25%), by weight of total milk solids. Evaporated milk contains added vitamin D present in such quantity that each fluid ounce of the food contains twenty five (25) International Units thereof within limits of good manufacturing practices. It is homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.11. Sweetened condensed milk is the food obtained by partial removal of water only from a mixture of milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not less

than eight percent (8%), by weight, of milkfat and not less than twenty-eight percent (28%), by weight, of total milk solids. The quantity of nutritive carbohydrate sweetener used is sufficient to prevent spoilage

3.12. Condensed skimmed milk, usually known as evaporated skimmed milk, is the liquid food obtained by the partial removal of water only from skim milk. It contains not less than twenty percent (20%), by weight, of total milk solids, and not more than five-tenths percent (0.5%), by weight, of milkfat unless otherwise indicated. Evaporated skimmed milk contains added Vitamin A in such quantity that each fluid ounce of food contains not less than one hundred twenty-five (125) International Units thereof within limits of good manufacturing practices, and added Vitamin D in such quantity that each fluid ounce of the food contains twenty-five (25) International Units thereof within limits of good manufacturing practices. It may be homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.13. Sweetened condensed skimmed milk is the food obtained by the partial removal of water only from a mixture of skim milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not more than five-tenths percent (0.5%), by weight, of milkfat unless otherwise indicated, and not less than twenty-four percent (24%), by weight, of total milk solids. The quantity of nutritive carbohydrate sweeteners used is sufficient to prevent spoilage.

3.14. Dried milk or dry whole milk is the product resulting from the removal of water from milk, and contains not less than twenty-six percent (26.0%) milkfat and not more than five percent (5%) moisture.

If added, Vitamin D shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain four hundred (400) International Units thereof.

3.15. Dried skim milk, or nonfat dry milk, is the product resulting from the removal of water from skim milk, and contains not more than one and one-half percent (1 1/2%), by weight, of milkfat unless otherwise indicated, and not more than five percent (5%), by weight, of moisture.

3.16. Nonfat dry milk fortified with Vitamins A and D conforms to the definition for dried skim milk

except that Vitamins A and D are added in such quantity that, when prepared according to label directions, each quart of the reconstituted product contains two thousand (2,000) International Units of Vitamin A and four hundred (400) International Units of Vitamin D.

3.17. Sweet cream or cream means the liquid milk product, high in fat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk or nonfat dry milk. Cream contains not less than eighteen percent (18%) milkfat.

3.18. Whipped cream products means any product made by whipping light whipping cream or heavy whipping cream. If flavoring and/or sweetening is added, the resulting product should be so identified.

3.19. Light cream, coffee cream or table cream is cream which contains not less than eighteen percent (18%), but less than thirty percent (30%) milkfat.

3.20. Light whipping cream or whipping cream is cream which contains not less than thirty percent (30%), but less than thirty-six percent (36%) milkfat.

3.21. Heavy cream or heavy whipping cream is cream which contains not less than thirty-six percent (36%) milkfat.

3.22. Whipped light cream, whipped coffee cream or whipped table cream is light cream into which air or gas has been incorporated.

3.23. 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 percent (80.0%) milkfat. The addition of coloring is permitted.

3.24. 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 percent (50.0%) milkfat. The addition of harmless coloring matter is permitted.

3.25. Ice cream is a food product produced by freezing, while stirring, a mix consisting of pure milk

products, nutritive carbohydrate sweeteners, and other safe and suitable non-milk derived ingredients, and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream contains not less than one and six-tenths (1.6) pounds of total solids to the gallon, and weighs not less than four and five-tenths (4.5) pounds to the gallon. When flavoring extracts are used, ice cream contains not less than ten percent (10.0%) milkfat and twenty percent (20.0%) total milk solids. When one (1) or more bulky flavors are used (e.g. eggs, fruits, nuts, chocolate, cake, etc.) the weights of milkfat and total milk solids are not less than ten percent (10%) and twenty percent (20%), respectively, of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished food; but in no case are such weights less than eight percent (8%) and sixteen percent (16%), respectively, of the weight of the finished food.

When calculating the minimum amount of milkfat and nonfat milk solids required in the finished food, the solids of chocolate or cocoa used shall be considered a bulk flavoring ingredient. In order to make allowance for additionally sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate and cocoa solids used may be multiplied by two and five tenths (2.5); the weight of fruit nuts used may be multiplied by one and four tenths (1.4); and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by one and four-tenths (1.4).

Any whey and modified whey products used shall contribute, singly or in combination, not more than twenty-five percent (25%), by weight, of the total nonfat milk solids content of the finished food. Caseinates may be added to ice cream mix containing not less than twenty percent (20%) total milk solids.

3.26. Ice milk is the food prepared from the same ingredients and in the same manner prescribed in three and twenty-five hundredths (3.25) for ice cream except that: (a) Its content of milkfat is more than two percent (2%) and not more than seven percent (7%); (b) its content of total milk solids is not less than eleven percent (11%); (c) caseinates may be added when the content of total milk solids is not less than eleven percent (11%); (d) the provision for reduction in milkfat and nonfat milk solids content from the ad-

dition of bulky flavors applies except that in no case will the milkfat content be less than two percent (2%), nor the nonfat milk solids content be less than seven percent (7%). The quantity of food solids per gallon is not less than one and three-tenths (1.3) pounds.

3.27. Ice milk mix is the unfrozen combination of ingredients which, when frozen while stirring, will produce a product conforming to the definition and standard for ice milk.

3.28. Frozen dietary dessert is a milk product, frozen while stirring, intended for special dietary use. It may contain accepted non-nutritive sweeteners and/or any harmless polyhydric alcohol, and/or other accepted safe and suitable ingredients. If it contains an artificial sweetener, its name shall include "artificially sweetened."

3.29. Half and half is a product consisting of a mixture of milk and cream which contains not less than ten and five-tenths (10.5) but less than eighteen percent (18%) milkfat.

3.30. Sour cream is cream with an acidity of not less than five-tenths percent (0.5%), expressed as lactic acid, which contains not less than eighteen percent (18.0%) milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than eighteen percent (18%) of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food, but in no case does the food contain less than fourteen and four-tenths percent (14.4%) milkfat.

Sour cream may contain safe and suitable ingredients that improve texture, prevent syneresis or extend the shelf life of the product.

3.31. Cottage cheese curd or dry curd cottage cheese is the soft uncured cheese prepared from the curd obtained by adding lactic-acid producing bacteria, or from adding suitable food grade acids, with or without enzymatic action, to pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It may contain up to eighty percent (80.0%) moisture.

3.32. Cottage cheese is the soft uncured cheese prepared by mixing cottage cheese dry curd with pasteurized cream or a pasteurized mixture of cream with milk or skimmed milk or both. Such cream or mixture is used in such quantity that the milkfat add-

ed thereby is not less than four percent (4.0%), by weight, of the finished cottage cheese. The finished cottage cheese contains not more than eighty percent (80%) moisture.

3.33. Lowfat cottage cheese is the food prepared from the same ingredients and in the same manner prescribed in Section 3.32 of these rules for cottage cheese except that its milkfat content is not less than five-tenths percent (0.5%) and not more than two percent (2.0%), by weight, and its moisture content is not more than eighty-two and five-tenths percent (82.5%).

3.34. Grade A cottage cheese, lowfat cottage cheese or cottage cheese curd shall be made from pasteurized Grade A dairy products.

3.35. Egg nog is a milk product consisting of a mixture of milk or milk products containing not less than six percent (6.0%) milkfat and not less than one percent (1.0%) egg yolk solids. It may contain sweetener, flavoring, safe and suitable sweeteners, flavorings, stabilizers, emulsifiers and color.

3.36. Egg nog drink is a milk product consisting of a mixture of milk and milk products containing less than six percent (6.0%) milkfat and shall contain at least five-tenths percent (0.5%) egg yolk solids, sweetener and flavoring. An emulsifier and not over five-tenths percent (0.5%) stabilizer may be added.

3.37. Milk shake or similar drink, by whatever name called is a product consisting of wholesome dairy products containing not less than three percent (3.0%) milkfat, with or without the addition of ice cream, with or without the addition of coloring and flavoring, and may contain up to five-tenths percent (0.5%) stabilizer.

3.38. Mellorine is a food produced by freezing, while stirring, a mix consisting of safe and suitable ingredients including, but not limited to, milk derived nonfat solids and animal or vegetable fat, or both, only part of which may be milkfat. Mellorine is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of flavoring. Mellorine contains not less than one and six-tenths (1.6) pounds of total solids, and weighs not less than four and five-tenths (4.5) pounds to the gallon. Mellorine contains not less than six percent (6%) fat and two and seven-tenths percent (2.7%) milk protein, by weight, of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the

fat content be less than four and eight-tenths (4.8%) or the protein less than two and two-tenths percent (2.2%). Vitamin A is present at a level equivalent to forty (40) International Units per gram of fat.

3.39. Official standards for any milk or milk product not contained in these regulations must conform to the standards prescribed in current Code of Federal Regulations Title 21, Section 131 and 133 and related sections as promulgated by the Federal Food and Drug Administration.

§61-4-4. Labeling Imitation Milk Products.

4.1. 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.

§61-4-5. Labeling.

5.1. All fluid milk and fluid milk products shall be labeled to conform with the Fair Packaging and Labeling Regulations for the enforcement of the Fair Packaging and Labeling Act promulgated by the Federal Food and Drug Administration and in effect on April 1, 1981, and later amendments.

§61-4-6. Labeling Of Ice Milk.

6.1. All consumer packages and containers of ice milk shall be conspicuously labeled in legible, bold-face type on at least one (1) side, the words, "ICE MILK," also giving the name and address of the manufacturer or distributor thereof, and the net contents of each container in the term of fluid measure.

6.2. Ice milk mix must be legibly labeled "ICE MILK MIX." The label must also identify the manufacturer or distributor thereof, and an accurate statement of the quantity of the contents by fluid measure

§61-4-7. Sanitary Requirements For Counter Freezer Establishments.

7.1. The sale of melted ice cream and other frozen dairy products is prohibited in either liquid or refrozen form.

7.2. Mix shall be stored in a temperature of forty (40) degrees or lower.

7.3. All mix containers shall be code dated using

one (1) of the following terms: "PACKAGING," "SELL BY" or "USE BEFORE" date.

§61-4-8. Freezer Room Requirements.

8.1. Freezer units shall be installed in such a way that they are not subject to contamination by dust, insects, rodents or customers.

8.2. Freezer units shall be cleaned and sanitized at intervals necessary to produce acceptable products.

8.3. Sanitization may be done with steam, quaternary ammonia compounds, chlorine compounds, hot air, light rays or other methods approved by the Commissioner of Agriculture.

8.4. An ample supply of running hot (170 degrees F. for sanitization) and cold water shall be available to the freezer room.

8.5. A hand wash bowl with running hot and cold water shall be adjacent to the freezer.

8.6. Wash tanks adequate to wash and sanitize freezer parts, cans and all utensils shall be provided.

61-4-9. Storage Rooms.

9.1. All storage plants, rooms, walk-in coolers or boxes where ice cream, frozen dairy products and materials for manufacturing the same are stored, must be kept clean and free from odor.

9.2. All materials used in the manufacture of ice cream and any other frozen dairy products shall be kept in closed containers.

9.3. No decomposed, decayed, fermented, contaminated or rancid materials shall be used in the manufacture of ice cream or any other frozen dairy products.

9.4. All supplies such as ice cream cones, package, containers, lids, etc., must be suitably stored to prevent soiling, dust accumulation, moisture damage and other contamination by insects, rodents, etc.

§61-4-10. Testing Of Milk For Butterfat By Light Transmission (Milko-Tester Method).

Definitions. The term "Milko-Tester Method" shall mean the automated light scattering method for

determining the fat content of raw unhomogenized milk as described in the Journal of the Association of Official Analytical Chemists and is approved for the testing of raw, unhomogenized milk. "Tester" shall mean any person who operates the Milko-Tester for determining the percentage of butterfat in milk or cream.

10.2. Licensing requirements. -- No person shall operate a Milko-Tester to determine the butterfat of milk for a basis of payment unless licensed by the Commissioner of Agriculture to perform both this test and the Babcock test. Buyers who want to use the Milko-Tester for producer payment must notify the Commissioner no less than thirty (30) days prior to its use.

10.3. Reference method. -- The Babcock test shall be used as the reference method to maintain the calibration of the Milko-Tester. Other methods may be used as a reference upon approval by the Commissioner. Written notification of the reference method shall be sent to the Commissioner prior to the installation and first use of a Milko-Tester. A subsequent change in the reference method used shall be made only with the specific approval of the Commissioner.

10.4. Preparation of samples. -- All milk samples to be tested are to be tempered to within ninety-five degrees (95°) to one hundred degrees (100°) F. and adequately mixed by pouring from one (1) container into another four (4) times. Each sample must be tested immediately after mixing.

If the sample bottle is not over two-thirds (2/3) full, the sample may be mixed by shaking horizontally back and forth six (6) round trips through a distance of about six (6) inches within a period of three (3) seconds.

10.5. Records. -- Permanent records shall be made and held on file for one (1) year. Printout tapes shall be held for a period of not less than sixty (60) days. These records must show the following:

10.5.1. All calibration results and check tests for initial and subsequent calibrations.

10.5.2. All tests for checking accuracy of calibrations.

10.5.3. Daily and accumulative total of tests

run.

10.5.4. All testing records shall bear the signature of the person performing such test.

§61-4-11. Testing For Butterfat By The Roesse-Gottlieb Fat Extraction (Mojonnier Method, Reference Method).

11.1. The Roesse-Gottlieb Fat Extraction Method of testing for milkfat is adopted as the official referee method for determining milkfat content of dairy products and is approved for all milkfat testing.

§61-4-12. Adulteration Of Milk And Milk Products.

12.1. Milk and milk products shall be considered as adulterated when:

12.1.1. The freezing point of whole raw milk is found to be above minus five hundred thirty thousandths degrees ($-.530^{\circ}$) as determined by the Thermistor Cryoscope Method for determining added water in milk.

12.1.2. The freezing point of processed whole milk is above minus five hundred twenty-five thousandths degrees ($-.525^{\circ}$) as determined by the Thermistor Cryoscope method for determining added water in milk.

12.1.3. Milk and milk products of which the coliform bacteria plate count exceeds ten (10) colonies per milliliter as determined by the standard Agar Plate Method.

12.1.4. Milk and Milk products, excluding cultured products, of which the total bacteria plate count exceeds twenty thousand (20,000) per milliliter as determined by the standard Agar Plate Method.

12.1.5. Ice cream and ice milk of which the coliform bacteria plate count exceeds ten (10) colonies per gram as determined by the standard Agar Plate Method.

12.1.6. Ice cream and ice milk of which the total bacteria plate count exceeds fifty thousand (50,000) per gram as determined by the standard Agar Plate Method.

§61-4-13. Compliance Enforcement.

Whenever two (2) of the last four (4) consecutive bacterial counts and/or coliform or water adulteration counts, or fat content of official regulatory samples taken on two (2) separate production lots fail to meet the standard for named milk and milk products, the Commissioner will cause a written notice to be sent to the person concerned. This notice shall be in effect as long as two (2) of the last four (4) consecutive samples do not meet the standard defined for the product. An additional sample shall be taken within twenty-one (21) days of the sending of such notice.

On receipt of written notice, the person or persons concerned may request the Commissioner of Agriculture to hold a hearing for purposes of discussing laboratory findings and correction of cause of product(s) found not in compliance. Embargo of product and/or action in a court of competent jurisdiction shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts and/or coliform counts, or water adulteration or fat content on official regulatory samples.

If a single confirmed sample finding poses a potential health hazard, immediate regulatory action will be taken against the marketed product or products without consideration of prior product laboratory findings.

§61-4-14. Effective Date.

14.1. Date done. -- Done in the office of the Commissioner, West Virginia Department of Agriculture, Capitol Building, Charleston, West Virginia 25305, this nineteenth day of November 1981, to become effective the twenty-fifth day of January, 1982.

APPENDIX 1

Section 3.2. Pasteurization of milk (from page 2).

TEMPERATURE

TIME

145° F*	30 minutes
161° F*	15 seconds
191° F	1 second
204° F	0.05 second
212° F	0.01 second

If the product has a fat content of ten percent (10%) or more, or if it contains added sweeteners, the specified temperature shall be increased by five degrees Fahrenheit (5° F.).



GUS R. DOUGLASS
COMMISSIONER

STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

November 19, 1981

Honorable A. James Manchin
West Virginia Secretary of State
Charleston, WV 25305

Dear Secretary Manchin:

I am attaching two copies of amended West Virginia Administrative Regulations for the State Department of Agriculture which deals with Milk and Milk Products standards, distribution and enforcement policy and are filed in accordance with Chapter 29A, Article 3, Section 7(a). These regulations are promulgated and issued under authority of Chapter 19, Article 11, Section 4, Code of West Virginia, as amended.

I hereby certify that these are the original regulations to be filed in the office of the Secretary of State on November 19, 1981.

With best regards, I am

Very truly yours,

Gus R. Douglass
Agriculture Commissioner

GRD/G/d

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-19-81
Administrative Law Division



GUS R. DOUGLASS
COMMISSIONER

STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

WILLIAM H. GILLESPIE
ADMINISTRATIVE ASSISTANT

November 19, 1981

Mr. Earl M. Vickers, Director
Legislative Services
Room E-132, Building #1
Charleston, WV 25305

Dear Mr. Vickers:

I am enclosing the required 17 copies of new regulations governing the administration of the Milk and Milk Products Law in West Virginia.

I imagine that a brief explanation is in order. Originally, and presently in effect, are three more or less separate sets of regulations. We see no reason to continue the Cream and Creamery regulations due to the change in business practices within the State. We also have many modifications to the other two sets. Consequently, we have revised all three sets into one new set. The 17 packets that we are sending to you include a copy of the new regulations which have been filed with the Secretary of State and copies of the old regulations which have been abandoned. You will note that we have crossed through the wording that is to be deleted. If there are questions, please let us know.

These regulations have been filed with the Secretary of State on Thursday, November 19, 1981. The effective date will be January 25, 1982. This effective date has been based upon the assumption that the Legislative Rule-Making Review Committee will receive the regulations on December 7 or 8 and they will become effective approximately 45 days after that time. This will give time for the acceptance or rejection at the January meeting.

Sincerely,

William H. Gillespie
Assistant Commissioner

WHG/rkd
Enc.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-19-81
Administrative Law Division



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Gus R. Douglass, Agriculture Commissioner,
Title or Position

W. Va. Department of Agriculture, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (x) proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- () other - specify ()).

This filing pertains to

Chapter 19
Article II
Series IV and VIIa
Section 1 - 17
Page No. (IV-pages 1 - 9) (VIIa - pages 1 - 20)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-19-81
Administrative Law Division

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

November 19, 1981
Date Submitted

G. R. Douglass
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE

Chapter 19-11
1981 (Amended)

GENERAL INDEX

for

SERIES IV

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-19-81
Administrative Law Division

WEST VIRGINIA MILK AND MILK PRODUCTS LAW

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE

Chapter 19-11
1981 (Amended)
SERIES IV

Subject: Rules and Regulations dealing with milk and milk products standards, distribution and enforcement policy.

SECTION 1. General

1.01 Scope - These regulations amend, repromulgate and recodify administrative regulations governing milk and milk products from the manufacturing plant to the consumer. They establish definitions and standards for milk and milk products; prohibit the manufacture and sale of imitation milk; provides for the manufacture and sale of ice milk; establishes requirements for labeling and production standards for soft serve manufacturers; and provides for milk fat analysis by Light Transmission and the Roesse-Gottlieb (Mojonnier) Fat Extraction Method.

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

1.03 Effective Date - These regulations are promulgated on November 19, 1981, and become effective on January 25, 1982.

1.04 Filing Date - These regulations were filed in the Office of the Secretary of State on November 19, 1981.

SECTION 2. Declaration of Policy

2.01 The following regulations are intended to result in uniformity of product standards and to conform as near as practicable to milk and milk product standards established for these same items by the Food and Drug Administration of the Federal Department of Health and Human Services, and to allow movement of milk and milk products in inter and intrastate commerce with a minimum of economic barriers.

2.02 It shall be unlawful for any person to sell, offer or expose for sale, or have in his possession with intent to sell, any milk produced by a cow which has reacted to a tuberculin test, or is affected with a dangerously transmissible disease, as food for human beings or for animals, unless it has been previously heated to at least one hundred and seventy-eight degrees Fahrenheit, or heated to one hundred and forty degrees Fahrenheit and held at that point for at least twenty minutes, except when a special examination has been made under the direction of the commissioner of agriculture and state director of health and written permission to use such milk has been given by them.

2.03 Milk and milk products may contain any safe and suitable optional ingredients permitted by Federal standards.

2.04 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, either in bulk or in containers, sealed or unsealed, under any name whatever, any condensed, evaporated, concentrated, powdered, dried or desiccated milk, cream or skimmed milk to which has been added or which has been blended or compounded, any fats or oils other than milk fats, producing what is known as "filled Milk".

SECTION 3. Definitions and Standards

3.01 Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package

form for beverage use shall contain not less than 8 1/4 per cent milk solids-not-fat and not less than 3 1/4 per cent milk fat.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practice, and the product shall be called "Vitamin D Milk" or "Milk, Vitamin D Added".

The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

3.02 Pasteurization, pasteurized, and similar terms mean that every particle of such product shall have been heated in properly operated equipment to one of the temperatures specified in the table at the end of this paragraph, and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction):

<u>Temperature</u>	<u>Time</u>
145°F*	30 minutes
161°F*	15 seconds
191°F	1 second
204°F	0.05 second
212°F	0.01 second

*If the product has a fat content of 10 per cent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F.

3.03 Ultrapasteurized means that such product shall have been thermally processed at or above 280°F. for at least two seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

3.04 Flavored milk and flavored milk products shall mean milk and milk

products as defined in the standards to which have been added a characterizing flavor, with or without added sweetener. The flavor shall be appropriately included as part of the name of the food (e.g. Chocolate Milk). Any egg nog flavor product shall contain not less than 0.5 per cent milk fat and at least 0.5 per cent egg yolk solids.

3.05 Acidified products - milks, sour cream, sour half and half, and cottage cheese products may be prepared by the addition of one or more safe and suitable acidifying ingredients, including glucono-delta-lactone, with or without the addition of enzymes or characterizing microbial organisms. The names of such "acidified" or "directly set" products shall be appropriately modified to distinguish them from their cultured counterparts.

3.06 Skimmed milk, also known as skim milk or non-fat milk, is milk from which sufficient milkfat has been removed to reduce its milkfat content to less than 0.5 per cent. Skim milk that is in final package form for beverage use shall contain not less 8 1/4 per cent milk solids-not-fat, and added vitamin A in such quantity that each quart of the product contains not less than 2,000 International Units thereof within limits of good manufacturing practice.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practice.

3.07 Lowfat milk is milk from which sufficient milkfat has been removed to produce a food having, within limits of good manufacturing practice, one of the following milkfat contents: 1/2, 1, 1 1/2, or 2 per cent. Lowfat milk shall contain not less than 8 1/4 per cent milk solids-not-fat, and added vitamin A in such quantity that each quart of the product contains not less than 2,000 International Units thereof within limits of good manufacturing practice.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practice.

3.08 Buttermilk is a fluid product resulting from the churning of milk or cream. It contains not less than 8 1/4 per cent milk solids-not-fat.

3.09 Cultured buttermilk is a fluid product resulting from the souring or treatment of cream, milk, partially skimmed milk or skimmed milk, alone or in combination with, characterizing microbial organisms. It contains not less than 8 1/4 per cent milk solids-not-fat.

3.10 Condensed milk, usually known as evaporated milk, is the liquid food obtained by partial removal of water only from milk. It contains not less than 7.5 per cent, by weight, of milk fat and not less than 25 per cent, by weight of total milk solids. Evaporated milk contains added vitamin D present in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practice. It is homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.11 Sweetened condensed milk is the food obtained by partial removal of water only from a mixture of milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not less than 8 per cent, by weight, of milk fat and not less than 28 per cent, by weight, of total milk solids. The quantity of nutritive carbohydrate sweetener used is sufficient to prevent spoilage.

3.12 Condensed skimmed milk, usually known as evaporated skimmed milk, is the liquid food obtained by the partial removal of water only from skim milk. It contains not less than 20 per cent, by weight, of total milk solids, and not more than 0.5 per cent, by weight, of milk fat unless otherwise indicated. Evaporated skimmed milk contains added vitamin A in such quantity that each fluid ounce of the food contains not less than 125 International Units thereof within limits of good manufacturing practice, and added vitamin D in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practice. It may be homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.13 Sweetened condensed skimmed milk is the food obtained by the partial

removal of water only from a mixture of skim milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not more than 0.5 per cent, by weight, of milkfat unless otherwise indicated, and not less than 24 per cent, by weight, of total milk solids. The quantity of nutritive carbohydrate sweeteners used is sufficient to prevent spoilage.

3.14 Dried milk or dry whole milk is the product resulting from the removal of water from milk, and contains not less than 26.0 per cent milk fat and not more than 5 per cent moisture.

If added, vitamin D shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

3.15 Dried skim milk, or nonfat dry milk, is the product resulting from the removal of water from skim milk, and contains not more than 1 1/2 per cent, by weight, of milkfat unless otherwise indicated, and not more than 5 per cent, by weight, of moisture.

3.16 Nonfat dry milk fortified with vitamins A and D conforms to the definition for dried skim milk except that vitamins A and D are added in such quantity that, when prepared according to label directions, each quart of the reconstituted product contains 2,000 International Units of vitamin A and 400 International Units of vitamin D.

3.17 Sweet cream or cream means the liquid milk product, high in fat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Cream contains not less than 18 per cent milkfat.

3.18 Whipped cream products means any product made by whipping light whipping cream or heavy whipping cream.

If flavoring and/or or sweetening is added, the resulting product should be so identified.

3.19 Light cream, coffee cream or table cream is cream which contains not less than 18 per cent, but less than 30 per cent milkfat.

3.20 Light whipping cream or whipping cream is cream which contains not less than 30 per cent, but less than 36 per cent milkfat.

3.21 Heavy cream or heavy whipping cream is cream which contains not less than 36 per cent milkfat.

3.22 Whipped light cream, whipped coffee cream, or whipped table cream is light cream into which air or gas has been incorporated.

3.23 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 80.0 per cent milkfat. The addition of coloring is permitted.

3.24 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 50.0 per cent milkfat. The addition of harmless coloring matter is permitted.

3.25 Ice cream is a food product produced by freezing, while stirring, a mix consisting of pure milk products, nutritive carbohydrate sweeteners, and other safe and suitable non-milk-derived ingredients, and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream contains not less than 1.6 pound of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon. When flavoring extracts are used, ice cream contains not less than 10.0 per cent milkfat and 20.0 per cent total milk solids. When one or more bulky flavors are used (e.g. eggs, fruits, nuts, chocolate, cake, etc.) the weights of milkfat and total milk solids are not less than 10 per cent and 20 per cent, respectively, of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished food; but in no case are such weights less than 8 per cent and 16 per cent, respectively, of the weight of the finished food.

When calculating the minimum amount of milk fat and nonfat milk solids required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional

sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate and cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

Any whey and modified whey products used shall contribute, singly or in combination, not more than 25 per cent, by weight, of the total nonfat milk solids content of the finished food. Caseinates may be added to ice cream mix containing not less than 20 per cent total milk solids.

3.26 Ice milk is the food prepared from the same ingredients and in the same manner prescribed in 3.25 for ice cream except that (1) its content of milkfat is more than 2 per cent and not more than 7 per cent; (2) its content of total milk solids is not less than 11 per cent; (3) caseinates may be added when the content of total milk solids is not less than 11 per cent; (4) the provision for reduction in milkfat and nonfat milk solids content from the addition of bulky flavors applies except that in no case will the milkfat content be less than 2 per cent, nor the nonfat milk solids content be less than 7 per cent. The quantity of food solids per gallon is not less than 1.3 pounds.

3.27 Ice milk mix is the unfrozen combination of ingredients which, when frozen while stirring, will produce a product conforming to the definition and standard for ice milk.

3.28 Frozen dietary dessert is a milk product, frozen while stirring, intended for special dietary use. It may contain accepted non-nutritive sweeteners and/or any harmless polyhydric alcohol, and/or other accepted safe and suitable ingredients. If it contains an artificial sweetener, its name shall include "artificially sweetened".

3.29 Half and half is a product consisting of a mixture of milk and cream which contains not less than 10.5 but less than 18 per cent milkfat.

3.30 Sour cream is cream with an acidity of not less than 0.5 per cent, expressed as lactic acid, which contains not less than 18.0 per cent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than 18 per cent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food, but in no case does the food contain less than 14.4 per cent milkfat.

Sour cream may contain safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

3.31 Cottage cheese curd or dry curd cottage cheese is the soft uncured cheese prepared from the curd obtained by adding lactic-acid producing bacteria, or from adding suitable food grade acids, with or without enzymatic action, to pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It may contain up to 80.0 per cent moisture.

3.32 Cottage cheese is the soft uncured cheese prepared by mixing cottage cheese dry curd with pasteurized cream or a pasteurized mixture of cream with milk or skimmed milk or both. Such cream or mixture is used in such quantity that the milkfat added thereby is not less than 4.0 per cent, by weight, of the finished cottage cheese. The finished cottage cheese contains not more than 80.0 per cent moisture.

3.33 Lowfat cottage cheese is the food prepared from the same ingredients and in the same manner prescribed in 3.32 for cottage cheese except that its milkfat content is not less than 0.5 per cent and not more than 2.0 per cent, by weight, and its moisture content is not more than 82.5 per cent.

3.34 Grade A cottage cheese, lowfat cottage cheese or cottage cheese curd shall be made from pasteurized Grade A dairy products.

3.35 Egg nog is a milk product consisting of a mixture of milk or milk products containing not less than 6.0 per cent milkfat and not less than 1.0 per cent

egg yolk solids. It may contain sweetener, flavoring, safe and suitable sweeteners, flavorings, stabilizers, emulsifiers, and color.

3.36 Egg nog drink is a milk product consisting of a mixture of milk and milk products containing less than 6.0 per cent milkfat and shall contain at least 0.5 per cent egg yolk solids, sweetener and flavoring. An emulsifier and not over 0.5 per cent stabilizer may be added.

3.37 Milk shake or similar drink, by whatever name called, is a product consisting of wholesome dairy products containing not less than 3.0 per cent milkfat, with or without the addition of ice cream, with or without the addition of coloring and flavoring, and may contain up to 0.5 per cent stabilizer.

3.38 Mellorine is a food produced by freezing, while stirring, a mix consisting of safe and suitable ingredients including, but not limited to, milk derived nonfat solids and animal or vegetable fat, or both, only part of which may be milkfat. Mellorine is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of flavoring. Mellorine contains not less than 1.6 pounds of total solids, and weighs not less than 4.5 pounds to the gallon. Mellorine contains not less than 6 per cent fat and 2.7 per cent milk protein, by weight, of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content be less than 4.8 per cent or the protein less than 2.2 per cent. Vitamin A is present at a level equivalent to 40 International Units per gram of fat.

3.39 Official standards for any milk or milk product not contained in these regulations must conform to the standards prescribed in current Code of Federal Regulations Title 21, Section 131 and 133 and related sections as promulgated by the Federal Food and Drug Administration.

SECTION 4. Labeling Imitation Milk Products

4.01 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.

SECTION 5. Labeling

5.01 All fluid milk and fluid milk products shall be labeled to conform with the Fair Packaging and Labeling Regulations for the enforcement of the Fair Packaging and Labeling Act promulgated by the Federal Food and Drug Administration and in effect on April 1, 1981 and later amendments.

SECTION 6. Labeling of Ice Milk

6.01 All consumer packages and containers of ice milk shall be conspicuously labeling in legible, boldface type on at least one side, the words "ICE MILK", also giving the name and address of the manufacturer or distributor thereof, and the net contents of each contents of each container in the terms of fluid measure.

6.02 Ice milk mix must be legibly labeled "ICE MILK MIX". The label must also identify the manufacturer or distributor thereof, and an accurate statement of the quantity of the contents by fluid measure.

SECTION 7. Sanitary Requirements for Counter Freezer Establishments

7.01 The sale of melted ice cream and other frozen dairy products is prohibited in either liquid or refrozen form.

7.02 Mix shall be stored in a temperature of 40 degrees or lower.

7.03 All mix containers shall be code dated using one of the following terms: "Packaging", "Sell By", or "Use Before" date.

SECTION 8. Freezer Room Requirements

8.01 Freezer units shall be installed in such a way that they are not subject to contamination by dust, insects, rodents, or customers.

8.02 Freezer units shall be cleaned and sanitized at intervals necessary to produce acceptable product.

8.03 Sanitization may be done with steam, quaternary ammonia compounds,

chlorine compounds, hot air, light rays, or other methods approved by the commissioner of agriculture.

8.04 An ample supply of running hot (170 degrees F. for sanitization) and cold water shall be available to the freezer room.

8.05 A hand wash bowl with running hot and cold water shall be adjacent to the freezer.

8.06 Wash tanks adequate to wash and sanitize freezer parts, cans, and all utensils shall be provided.

SECTION 9. Storage Rooms

9.01 All storage plants, rooms, walk-in coolers, or boxes where ice cream, frozen dairy products and materials for manufacturing the same are stored, must be kept clean and free from odor.

9.02 All materials used in the manufacture of ice cream and any other frozen dairy products shall be kept in closed containers.

9.03 No decomposed, decayed, fermented, contaminated or rancid materials shall be used in the manufacture of ice cream or any other frozen dairy product.

9.04 All supplies such as ice cream cones, packages, containers, lids, etc. must be suitably stored to prevent soiling, dust accumulation, moisture damage and other contamination by insects, rodents, etc.

SECTION 10. Testing of Milk for Butterfat by Light Transmission (Milko-Tester Method)

10.01 Definitions - The term "Milko-Tester Method" shall mean the automated light scattering method for determining the fat content of raw unhomogenized milk as described in the Journal of the Association of Official Analytical Chemists and is approved for the testing of raw unhomogenized milk. The word "tester" shall mean any person who operates the Milko-Tester for determining the percentage of butterfat in milk or cream.

10.02 Licensing Requirements - No person shall operate a Milko-Tester to determine the butterfat of milk for a basis of payment unless licensed by the commissioner of agriculture to perform both this test and the Babcock test. Buyers who want to use the Milko-Tester for producer payment must notify the commissioner no less than thirty (30) days prior to its use.

10.03 Reference Method - The Babcock test shall be used as the reference method to maintain the calibration of the Milko-Tester. Other methods may be used as a reference upon approval by the commissioner. Written notification of the reference method shall be sent to the commissioner prior to the installation and first use of a Milko-Tester. A subsequent change in the reference method used shall be made only with the specific approval of the commissioner.

10.04 Preparation of Samples - All milk samples to be tested are to be tempered to within 95° to 100°F. and adequately mixed by pouring from one container into another four (4) times. Each sample must be tested immediately after mixing.

If the sample bottle is not over two-thirds full, the sample may be mixed by shaking horizontally back and forth six (6) round trips through a distance of about six (6) inches within a period of three (3) seconds.

10.05 Records - Permanent records shall be made and held on file for one (1) year. Printout tapes shall be held for a period of not less than sixty (60) days. These records must show the following:

- (1) All calibration results and check tests for initial and subsequent calibrations.
- (2) All tests for checking accuracy of calibrations.
- (3) Daily and accumulative total of tests run.
- (4) All testing records shall bear the signature of the person performing such test.

SECTION 11. Testing for Butterfat by the Roese-Gottlieb Fat Extraction (Mojonnier)
Method (Reference Method)

11.01 The Roese-Gottlieb Fat Extraction Method of testing for milk fat is adopted as the official referee method for determining milk fat content of dairy products and is approved for all milk fat testing.

SECTION 12. Adulteration of Milk and Milk Products

12.01 Milk and milk products shall be considered as adulterated when:

(1) the freezing point of whole raw milk is found to be above $-.530^{\circ}$ as determined by the Thermistor Cryoscope Method for determining added water in milk.

(2) the freezing point of processed whole milk is above $-.525^{\circ}$ as determined by the Thermistor Cryoscope Method for determining added water in milk.

(3) milk and milk products of which the coliform bacteria plate count exceeds ten (10) colonies per milliliter as determined by the standard agar plate method.

(4) milk and milk products, excluding cultured products, of which the total bacteria plate count exceeds twenty thousand (20,000) per milliliter as determined by the standard agar plate method.

(5) ice cream and ice milk of which the coliform bacteria plate count exceeds ten (10) colonies per gram as determined by the standard agar plate method.

(6) ice cream and ice milk of which the total bacteria plate count exceeds fifty thousand (50,000) per gram as determined by the standard agar plate method.

SECTION 13. Compliance Enforcement

Whenever two (2) of the last four (4) consecutive bacterial counts and/or coliform or water adulteration counts, or fat content of official regulatory samples taken on two (2) separate production lots fail to meet the standard for named milk and milk products, the commissioner will cause a written notice to be sent to the person concerned. This notice shall be in effect as long as two (2) of the last four (4) consecutive samples do not meet the standard defined for the product. An additional sample shall be taken within twenty-one (21) days of the sending of such notice.

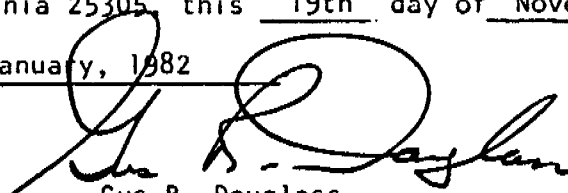
On receipt of written notice, the person or persons concerned may request the commissioner of agriculture to hold a hearing for purposes of discussing laboratory findings and correction of cause of product(s) found not in compliance. Embargo of product and/or action in a court of competent jurisdiction shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts and/or coliform counts, or water adulteration or fat content on official regulatory samples.

If a single confirmed sample finding poses a potential health hazard, immediate regulatory action will be taken against the marketed product or products without consideration of prior product laboratory findings.

SECTION 14. Effective Date

14.01 Date Done

Done in the Office of the Commissioner, West Virginia Department of Agriculture, Capitol Building, Charleston, West Virginia 25305, this 19th day of November, 1981, to become effective the 25th day of January, 1982


Gus R. Douglass
Agriculture Commissioner



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Gus R. Douglass, Agriculture Commissioner,
Title or Position

W. Va. Department of Agriculture, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (x) proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- () other - specify (

This filing pertains to

Chapter 19
Article 11
Series IV and VIIa
Section 1 - 17
Page No. (IV-pages 1 - 9) (VIIa - pages 1 - 20)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-19-81
Administrative Law Division

- (x) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

November 19, 1981
Date Submitted

Gus R. Douglass
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

Chapter 19-11
1981 (Amended)

GENERAL INDEX

for

SERIES IV

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-19-81
Administrative Law Division

WEST VIRGINIA MILK AND MILK PRODUCTS LAW

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SERIES IV

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE _____
Administrative Law Division

Subject: Rules and Regulations dealing with milk and milk products standards distribution and enforcement policy.

SECTION 1. General

1.01 Scope - These regulations amend, repromulgate and recodify administrative regulations governing milk and milk products from the manufacturing plant to the consumer. They establish definitions and standards for milk and milk products; prohibit the manufacture and sale of imitation milk; provides for the manufacture and sale of ice milk; establishes requirements for labeling and production standards for soft serve manufacturers; and provides for milk fat analysis by Light Transmission and the Roesse-Gottlieb (Mojonnier) Fat Extraction Method.

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

1.03 Effective Date - These regulations are promulgated on November 19, 1981, and become effective on January 25, 1982.

1.04 Filing Date - These regulations were filed in the Office of the Secretary of State on November 19, 1981.

SECTION 2. Declaration of Policy

2.01 The following regulations are intended to result in uniformity of product standards and to conform as near as practicable to milk and milk product standards established for these same items by the Food and Drug Administration of the Federal Department of Health and Human Services, and to allow movement of milk and milk products in inter and intrastate commerce with a minimum of economic barriers.

2.02 It shall be unlawful for any person to sell, offer or expose for sale, or have in his possession with intent to sell, any milk produced by a cow which has reacted to a tuberculin test, or is affected with a dangerously transmissible disease, as food for human beings or for animals, unless it has been previously heated to at least one hundred and seventy-eight degrees Fahrenheit, or heated to one hundred and forty degrees Fahrenheit and held at that point for at least twenty minutes, except when a special examination has been made under the direction of the commissioner of agriculture and state director of health and written permission to use such milk has been given by them.

2.03 Milk and milk products may contain any safe and suitable optional ingredients permitted by Federal standards.

2.04 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, either in bulk or in containers, sealed or unsealed, under any name whatever, any condensed, evaporated, concentrated, powdered, dried or desiccated milk, cream or skimmed milk to which has been added or which has been blended or compounded, any fats or oils other than milk fats, producing what is known as "filled Milk".

SECTION 3. Definitions and Standards

3.01 Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package

form for beverage use shall contain not less than 8 1/4 per cent milk solids-not-fat and not less than 3 1/4 per cent milk fat.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practice, and the product shall be called "Vitamin D Milk" or "Milk, Vitamin D Added".

The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

3.02 Pasteurization, pasteurized, and similar terms mean that every particle of such product shall have been heated in properly operated equipment to one of the temperatures specified in the table at the end of this paragraph, and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction):

<u>Temperature</u>	<u>Time</u>
145°F*	30 minutes
161°F*	15 seconds
191°F	1 second
204°F	0.05 second
212°F	0.01 second

*If the product has a fat content of 10 per cent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F.

3.03 Ultrapasteurized means that such product shall have been thermally processed at or above 280°F. for at least two seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

3.04 Flavored milk and flavored milk products shall mean milk and milk

products as defined in the standards to which have been added a characterizing flavor, with or without added sweetener. The flavor shall be appropriately included as part of the name of the food (e.g. Chocolate Milk). Any egg nog flavor product shall contain not less than 0.5 per cent milk fat and at least 0.5 per cent egg yolk solids.

3.05 Acidified products - milks, sour cream, sour half and half, and cottage cheese products may be prepared by the addition of one or more safe and suitable acidifying ingredients, including glucono-delta-lactone, with or without the addition of enzymes or characterizing microbial organisms. The names of such "acidified" or "directly set" products shall be appropriately modified to distinguish them from their cultured counterparts.

3.06 Skimmed milk, also known as skim milk or non-fat milk, is milk from which sufficient milkfat has been removed to reduce its milkfat content to less than 0.5 per cent. Skim milk that is in final package form for beverage use shall contain not less 8 1/4 per cent milk solids-not-fat, and added vitamin A in such quantity that each quart of the product contains not less than 2,000 International Units thereof within limits of good manufacturing practice.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practice.

3.07 Lowfat milk is milk from which sufficient milkfat has been removed to produce a food having, within limits of good manufacturing practice, one of the following milkfat contents: 1/2, 1, 1 1/2, or 2 per cent. Lowfat milk shall contain not less than 8 1/4 per cent milk solids-not-fat, and added vitamin A in such quantity that each quart of the product contains not less than 2,000 International Units thereof within limits of good manufacturing practice.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practice.

3.08 Buttermilk is a fluid product resulting from the churning of milk or cream. It contains not less than 8 1/4 per cent milk solids-not-fat.

3.09 Cultured buttermilk is a fluid product resulting from the souring or treatment of cream, milk, partially skimmed milk or skimmed milk, alone or in combination with, characterizing microbial organisms. It contains not less than 8 1/4 per cent milk solids-not-fat.

3.10 Condensed milk, usually known as evaporated milk, is the liquid food obtained by partial removal of water only from milk. It contains not less than 7.5 per cent, by weight, of milk fat and not less than 25 per cent, by weight of total milk solids. Evaporated milk contains added vitamin D present in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practice. It is homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.11 Sweetened condensed milk is the food obtained by partial removal of water only from a mixture of milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not less than 8 per cent, by weight, of milk fat and not less than 28 per cent, by weight, of total milk solids. The quantity of nutritive carbohydrate sweetener used is sufficient to prevent spoilage.

3.12 Condensed skimmed milk, usually known as evaporated skimmed milk, is the liquid food obtained by the partial removal of water only from skim milk. It contains not less than 20 per cent, by weight, of total milk solids, and not more than 0.5 per cent, by weight, of milk fat unless otherwise indicated. Evaporated skimmed milk contains added vitamin A in such quantity that each fluid ounce of the food contains not less than 125 International Units thereof within limits of good manufacturing practice, and added vitamin D in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practice. It may be homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.13 Sweetened condensed skimmed milk is the food obtained by the partial

removal of water only from a mixture of skim milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not more than 0.5 per cent, by weight, of milkfat unless otherwise indicated, and not less than 24 per cent, by weight, of total milk solids. The quantity of nutritive carbohydrate sweeteners used is sufficient to prevent spoilage.

3.14 Dried milk or dry whole milk is the product resulting from the removal of water from milk, and contains not less than 26.0 per cent milk fat and not more than 5 per cent moisture.

If added, vitamin D shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

3.15 Dried skim milk, or nonfat dry milk, is the product resulting from the removal of water from skim milk, and contains not more than 1 1/2 per cent, by weight, of milkfat unless otherwise indicated, and not more than 5 per cent, by weight, of moisture.

3.16 Nonfat dry milk fortified with vitamins A and D conforms to the definition for dried skim milk except that vitamins A and D are added in such quantity that, when prepared according to label directions, each quart of the reconstituted product contains 2,000 International Units of vitamin A and 400 International Units of vitamin D.

3.17 Sweet cream or cream means the liquid milk product, high in fat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Cream contains not less than 18 per cent milkfat.

3.18 Whipped cream products means any product made by whipping light whipping cream or heavy whipping cream.

If flavoring and/or or sweetening is added, the resulting product should be so identified.

3.19 Light cream, coffee cream or table cream is cream which contains not less than 18 per cent, but less than 30 per cent milkfat.

3.20 Light whipping cream or whipping cream is cream which contains not less than 30 per cent, but less than 36 per cent milkfat.

3.21 Heavy cream or heavy whipping cream is cream which contains not less than 36 per cent milkfat.

3.22 Whipped light cream, whipped coffee cream, or whipped table cream is light cream into which air or gas has been incorporated.

3.23 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 80.0 per cent milkfat. The addition of coloring is permitted.

3.24 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 50.0 per cent milkfat. The addition of harmless coloring matter is permitted.

3.25 Ice cream is a food product produced by freezing, while stirring, a mix consisting of pure milk products, nutritive carbohydrate sweeteners, and other safe and suitable non-milk-derived ingredients, and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream contains not less than 1.6 pound of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon. When flavoring extracts are used, ice cream contains not less than 10.0 per cent milkfat and 20.0 per cent total milk solids. When one or more bulky flavors are used (e.g. eggs, fruits, nuts, chocolate, cake, etc.) the weights of milkfat and total milk solids are not less than 10 per cent and 20 per cent, respectively, of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished food; but in no case are such weights less than 8 per cent and 16 per cent, respectively, of the weight of the finished food.

When calculating the minimum amount of milk fat and nonfat milk solids required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional

sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate and cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

Any whey and modified whey products used shall contribute, singly or in combination, not more than 25 per cent, by weight, of the total nonfat milk solids content of the finished food. Caseinates may be added to ice cream mix containing not less than 20 per cent total milk solids.

3.26 Ice milk is the food prepared from the same ingredients and in the same manner prescribed in 3.25 for ice cream except that (1) its content of milkfat is more than 2 per cent and not more than 7 per cent; (2) its content of total milk solids is not less than 11 per cent; (3) caseinates may be added when the content of total milk solids is not less than 11 per cent; (4) the provision for reduction in milkfat and nonfat milk solids content from the addition of bulky flavors applies except that in no case will the milkfat content be less than 2 per cent, nor the nonfat milk solids content be less than 7 per cent. The quantity of food solids per gallon is not less than 1.3 pounds.

3.27 Ice milk mix is the unfrozen combination of ingredients which, when frozen while stirring, will produce a product conforming to the definition and standard for ice milk.

3.28 Frozen dietary dessert is a milk product, frozen while stirring, intended for special dietary use. It may contain accepted non-nutritive sweeteners and/or any harmless polyhydric alcohol, and/or other accepted safe and suitable ingredients. If it contains an artificial sweetener, its name shall include "artificially sweetened".

3.29 Half and half is a product consisting of a mixture of milk and cream which contains not less than 10.5 but less than 18 per cent milkfat.

3.30 Sour cream is cream with an acidity of not less than 0.5 per cent, expressed as lactic acid, which contains not less than 18.0 per cent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than 18 per cent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food, but in no case does the food contain less than 14.4 per cent milkfat.

Sour cream may contain safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

3.31 Cottage cheese curd or dry curd cottage cheese is the soft uncured cheese prepared from the curd obtained by adding lactic-acid producing bacteria, or from adding suitable food grade acids, with or without enzymatic action, to pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It may contain up to 80.0 per cent moisture.

3.32 Cottage cheese is the soft uncured cheese prepared by mixing cottage cheese dry curd with pasteurized cream or a pasteurized mixture of cream with milk or skimmed milk or both. Such cream or mixture is used in such quantity that the milkfat added thereby is not less than 4.0 per cent, by weight, of the finished cottage cheese. The finished cottage cheese contains not more than 80.0 per cent moisture.

3.33 Lowfat cottage cheese is the food prepared from the same ingredients and in the same manner prescribed in 3.32 for cottage cheese except that its milkfat content is not less than 0.5 per cent and not more than 2.0 per cent, by weight, and its moisture content is not more than 82.5 per cent.

3.34 Grade A cottage cheese, lowfat cottage cheese or cottage cheese curd shall be made from pasteurized Grade A dairy products.

3.35 Egg nog is a milk product consisting of a mixture of milk or milk products containing not less than 6.0 per cent milkfat and not less than 1.0 per cent

egg yolk solids. It may contain sweetener, flavoring, safe and suitable sweeteners, flavorings, stabilizers, emulsifiers, and color.

3.36 Egg nog drink is a milk product consisting of a mixture of milk and milk products containing less than 6.0 per cent milkfat and shall contain at least 0.5 per cent egg yolk solids, sweetener and flavoring. An emulsifier and not over 0.5 per cent stabilizer may be added.

3.37 Milk shake or similar drink, by whatever name called, is a product consisting of wholesome dairy products containing not less than 3.0 per cent milkfat, with or without the addition of ice cream, with or without the addition of coloring and flavoring, and may contain up to 0.5 per cent stabilizer.

3.38 Mellorine is a food produced by freezing, while stirring, a mix consisting of safe and suitable ingredients including, but not limited to, milk derived nonfat solids and animal or vegetable fat, or both, only part of which may be milkfat. Mellorine is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of flavoring. Mellorine contains not less than 1.6 pounds of total solids, and weighs not less than 4.5 pounds to the gallon. Mellorine contains not less than 6 per cent fat and 2.7 per cent milk protein, by weight, of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content be less than 4.8 per cent or the protein less than 2.2 per cent. Vitamin A is present at a level equivalent to 40 International Units per gram of fat.

3.39 Official standards for any milk or milk product not contained in these regulations must conform to the standards prescribed in current Code of Federal Regulations Title 21, Section 131 and 133 and related sections as promulgated by the Federal Food and Drug Administration.

SECTION 4. Labeling Imitation Milk Products

4.01 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.

SECTION 5. Labeling

5.01 All fluid milk and fluid milk products shall be labeled to conform with the Fair Packaging and Labeling Regulations for the enforcement of the Fair Packaging and Labeling Act promulgated by the Federal Food and Drug Administration and in effect on April 1, 1981 and later amendments.

SECTION 6. Labeling of Ice Milk

6.01 All consumer packages and containers of ice milk shall be conspicuously labeling in legible, boldface type on at least one side, the words "ICE MILK", also giving the name and address of the manufacturer or distributor thereof, and the net contents of each contents of each container in the terms of fluid measure.

6.02 Ice milk mix must be legibly labeled "ICE MILK MIX". The label must also identify the manufacturer or distributor thereof, and an accurate statement of the quantity of the contents by fluid measure.

SECTION 7. Sanitary Requirements for Counter Freezer Establishments

7.01 The sale of melted ice cream and other frozen dairy products is prohibited in either liquid or refrozen form.

7.02 Mix shall be stored in a temperature of 40 degrees or lower.

7.03 All mix containers shall be code dated using one of the following terms: "Packaging", "Sell By", or "Use Before" date.

SECTION 8. Freezer Room Requirements

8.01 Freezer units shall be installed in such a way that they are not subject to contamination by dust, insects, rodents, or customers.

8.02 Freezer units shall be cleaned and sanitized at intervals necessary to produce acceptable product.

8.03 Sanitization may be done with steam, quaternary ammonia compounds,

chlorine compounds, hot air, light rays, or other methods approved by the commissioner of agriculture.

8.04 An ample supply of running hot (170 degrees F. for sanitization) and cold water shall be available to the freezer room.

8.05 A hand wash bowl with running hot and cold water shall be adjacent to the freezer.

8.06 Wash tanks adequate to wash and sanitize freezer parts, cans, and all utensils shall be provided.

SECTION 9. Storage Rooms

9.01 All storage plants, rooms, walk-in coolers, or boxes where ice cream, frozen dairy products and materials for manufacturing the same are stored, must be kept clean and free from odor.

9.02 All materials used in the manufacture of ice cream and any other frozen dairy products shall be kept in closed containers.

9.03 No decomposed, decayed, fermented, contaminated or rancid materials shall be used in the manufacture of ice cream or any other frozen dairy product.

9.04 All supplies such as ice cream cones, packages, containers, lids, etc. must be suitably stored to prevent soiling, dust accumulation, moisture damage and other contamination by insects, rodents, etc.

SECTION 10. Testing of Milk for Butterfat by Light Transmission (Milko-Tester Method)

10.01 Definitions - The term "Milko-Tester Method" shall mean the automated light scattering method for determining the fat content of raw unhomogenized milk as described in the Journal of the Association of Official Analytical Chemists and is approved for the testing of raw unhomogenized milk. The word "tester" shall mean any person who operates the Milko-Tester for determining the percentage of butterfat in milk or cream.

10.02 Licensing Requirements - No person shall operate a Milko-Tester to determine the butterfat of milk for a basis of payment unless licensed by the commissioner of agriculture to perform both this test and the Babcock test. Buyers who want to use the Milko-Tester for producer payment must notify the commissioner no less than thirty (30) days prior to its use.

10.03 Reference Method - The Babcock test shall be used as the reference method to maintain the calibration of the Milko-Tester. Other methods may be used as a reference upon approval by the commissioner. Written notification of the reference method shall be sent to the commissioner prior to the installation and first use of a Milko-Tester. A subsequent change in the reference method used shall be made only with the specific approval of the commissioner.

10.04 Preparation of Samples - All milk samples to be tested are to be tempered to within 95° to 100°F. and adequately mixed by pouring from one container into another four (4) times. Each sample must be tested immediately after mixing.

If the sample bottle is not over two-thirds full, the sample may be mixed by shaking horizontally back and forth six (6) round trips through a distance of about six (6) inches within a period of three (3) seconds.

10.05 Records - Permanent records shall be made and held on file for one (1) year. Printout tapes shall be held for a period of not less than sixty (60) days. These records must show the following:

- (1) All calibration results and check tests for initial and subsequent calibrations.
- (2) All tests for checking accuracy of calibrations.
- (3) Daily and accumulative total of tests run.
- (4) All testing records shall bear the signature of the person performing such test.

SECTION 11. Testing for Butterfat by the Roese-Gottlieb Fat Extraction (Mojonnier)
Method (Reference Method)

11.01 The Roese-Gottlieb Fat Extraction Method of testing for milk fat is adopted as the official referee method for determining milk fat content of dairy products and is approved for all milk fat testing.

SECTION 12. Adulteration of Milk and Milk Products

12.01 Milk and milk products shall be considered as adulterated when:

(1) the freezing point of whole raw milk is found to be above $-.530^{\circ}$ as determined by the Thermistor Cryoscope Method for determining added water in milk.

(2) the freezing point of processed whole milk is above $-.525^{\circ}$ as determined by the Thermistor Cryoscope Method for determining added water in milk.

(3) milk and milk products of which the coliform bacteria plate count exceeds ten (10) colonies per milliliter as determined by the standard agar plate method.

(4) milk and milk products, excluding cultured products, of which the total bacteria plate count exceeds twenty thousand (20,000) per milliliter as determined by the standard agar plate method.

(5) ice cream and ice milk of which the coliform bacteria plate count exceeds ten (10) colonies per gram as determined by the standard agar plate method.

(6) ice cream and ice milk of which the total bacteria plate count exceeds fifty thousand (50,000) per gram as determined by the standard agar plate method.

SECTION 13. Compliance Enforcement

Whenever two (2) of the last four (4) consecutive bacterial counts and/or coliform or water adulteration counts, or fat content of official regulatory samples taken on two (2) separate production lots fail to meet the standard for named milk and milk products, the commissioner will cause a written notice to be sent to the person concerned. This notice shall be in effect as long as two (2) of the last four (4) consecutive samples do not meet the standard defined for the product. An additional sample shall be taken within twenty-one (21) days of the sending of such notice.

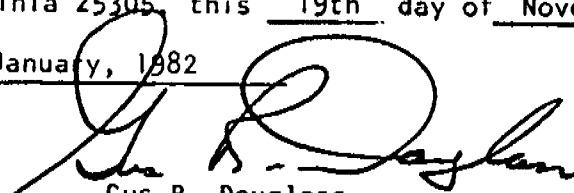
On receipt of written notice, the person or persons concerned may request the commissioner of agriculture to hold a hearing for purposes of discussing laboratory findings and correction of cause of product(s) found not in compliance. Embargo of product and/or action in a court of competent jurisdiction shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts and/or coliform counts, or water adulteration or fat content on official regulatory samples.

If a single confirmed sample finding poses a potential health hazard, immediate regulatory action will be taken against the marketed product or products without consideration of prior product laboratory findings.

SECTION 14. Effective Date

14.01 Date Done

Done in the Office of the Commissioner, West Virginia Department of Agriculture Capitol Building, Charleston, West Virginia 25305, this 19th day of November, 1982 to become effective the 25th day of January, 1982


Gus R. Douglass
Agriculture Commissioner

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-11

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FOR
SERIES IV

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Nov. 19, 1981
ADMINISTRATIVE LAW DIVISION

File 61
~~WEST VIRGINIA LEGISLATIVE REGULATIONS~~ *RULES*
STATE DEPARTMENT OF AGRICULTURE
~~Chapter 19-11-C~~
SERIES ~~IVC~~ *4*

TITLE: Rules and Regulations Dealing with Milk and Milk Products Standards, Distribution and Enforcement Policy.

Section 1. General

1.1 Scope - These Legislative regulations amend, repromulgate and recodify administrative regulations governing milk and milk products from the manufacturing plant to the consumer. They establish definitions and standards for milk and milk products; prohibit the manufacture and sale of imitation milk; provides for the manufacture and sale of ice milk; establishes requirements for labeling and production standards for soft serve manufacturers; and provides for milk fat analysis by Light Transmission and the Roesse-Gottlieb (Mojonnier) Fat Extraction Method.

1.2 Authority - W. Va. Code 19-11.

1.3 Filing Date - November 19, 1981

1.4 Effective Date - January 25, 1982

Section 2. Declaration of Policy

2.1 The following regulations are intended to result in uniformity of product standards and to conform as near as practicable to milk and milk product standards established for these same items by the Food & Drug Administration of the Federal Department of Health and Human Services, and to allow movement of milk and milk products in inter and intrastate commerce with a minimum of economic barriers.

2.2 It shall be unlawful for any person to sell, offer or expose for sale, or have in his possession with intent to sell, any milk produced by a cow which has reacted to a tuberculin test, or is affected with a dangerously transmissible disease, as food for human beings or for animals, unless it has been previously heated to at least one hundred and seventy-eight degrees Fahrenheit (178°F.), or heated to one hundred and forty degrees Fahrenheit (140° F.) and held at that point for at least twenty (20) minutes, except when a special examination has been made under the direction of the Commissioner of Agriculture and State Director of Health and written permission to use such milk has been given by them.

2.3 Milk and Milk products may contain any safe and suitable optional ingredients permitted by Federal standards.

2.4 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, either in bulk or in containers, sealed or unsealed, under any name whatever, any condensed, evaporated, concentrated, powered,

dried or desiccated milk, cream or skimmed milk to which has been added or which has been blended or compounded, any fats or oils other than milk fats, producing what is known as "filled milk".

Section 3. Definitions and Standards

3.1 Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall contain not less than eight and one-fourth percent ($8\frac{1}{4}\%$) milk solids-not-fat and not less than three and one-fourth percent ($3\frac{1}{4}\%$) milk fat.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practices, and the product shall be called "Vitamin D Milk" or "Milk, Vitamin D Added".

The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

3.2 Pasteurization, pasteurized, and similar terms mean that every particle of such product shall have been heated in properly operated equipment to one of the temperatures specified in the table in the appendix (See Appendix 1), and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction).

3.3 Ultrapasteurized means that such product shall have been thermally processed at or above two hundred eighty degrees Fahrenheit (280° F.) for at least two (2) seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

3.4 Flavored milk and flavored milk products shall mean milk and milk products as defined in the standards to which have been added a characterizing flavor, with or without added sweetener. The flavor shall be appropriately included as part of the name of the food (e.g. Chocolate Milk). Any egg nog flavor product shall contain not less than 0.5 percent milk fat and at least 0.5 percent egg yolk solids.

3.5 Acidified Products - Milks, sour cream, sour half and half, and cottage cheese products may be prepared by the addition of one or more safe and suitable acidifying ingredients, including glucono-delta-lactone, with or without the addition of enzymes or characterizing microbial organisms. The names of such "acidified" or "directly set" products shall be appropriately modified to distinguish them from their cultured counterparts.

3.6 Skimmed Milk, also known as skim milk or non-fat milk, is milk from which sufficient milkfat has been removed to reduce its milkfat content to less than 0.5 percent. Skim milk that is in final package form for beverage use shall contain not less than eight and one-fourth percent ($8\frac{1}{4}\%$) milk solids-not-fat, and added Vitamin A in such quantity that each quart of the product contains

not less than 2,000 International Units thereof within limits of good manufacturing practices.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practices.

3.7 Lowfat milk is milk from which sufficient milkfat has been removed to produce a food having, within limits of good manufacturing practices, one of the following milkfat contents: 1/2, 1, 1 1/2, or 2 percent. Lowfat milk shall contain not less than 8 1/4 percent milk solids-not-fat, and added vitamin A in such quantity that each quart of the product contains not less than 2,000 International Units thereof within limits of good manufacturing practices.

If added, vitamin D shall be present in such quantity that each quart of the food contains 400 International Units thereof within limits of good manufacturing practices.

3.8 Buttermilk is a fluid product resulting from the churning of milk or cream. It contains not less than 8 1/4 percent milk solids-not-fat.

3.9 Cultured buttermilk is a fluid product resulting from the souring or treatment of cream, milk, partially skimmed milk or skimmed milk, alone or in combination with, characterizing microbial organisms. It contains not less than 8 1/4 percent milk solids-not-fat.

3.10 Condensed milk, usually known as evaporated milk, is the liquid food obtained by partial removal of water only from milk. It contains not less than 7.5 percent, by weight, of milk fat and not less than 25 percent, by weight, of total milk solids. Evaporated milk contains added vitamin D present in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practices. It is homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.11 Sweetened condensed milk is the food obtained by partial removal of water only from a mixture of milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not less than 8 percent, by weight, of milkfat and not less than 28 percent, by weight, of total milk solids. The quantity of nutritive carbohydrate sweetener used is sufficient to prevent spoilage.

3.12 Condensed skimmed milk, usually known as evaporated skimmed milk, is the liquid food obtained by the partial removal of water only from skim milk. It contains not less than 20 percent, by weight, of total milk solids, and not more than 0.5 percent, by weight, of milkfat unless otherwise indicated. Evaporated skimmed milk contains added vitamin A in such quantity that each fluid ounce of food contains not less than 125 International Units thereof within limits of good manufacturing practices, and added vitamin D in such quantity that each fluid ounce of the food contains 25 International Units thereof within limits of good manufacturing practices. It may be homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

3.13 Sweetened condensed skimmed milk is the food obtained by the partial removal of water only from a mixture of skim milk and safe and suitable nutritive carbohydrate sweeteners. The finished food contains not more than 0.5 percent, by weight, of milkfat unless otherwise indicated, and not less than 24 percent, by weight, of total milk solids. The quantity of nutritive carbohydrate sweeteners used is sufficient to prevent spoilage.

3.14 Dried milk or dry whole milk is the product resulting from the removal of water from milk, and contains not less than 26.0 percent milkfat and not more than 5 percent moisture.

If added, vitamin D shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

3.15 Dried skim milk, or nonfat dry milk, is the product resulting from the removal of water from skim milk, and contains not more than 1 1/2 percent, by weight, of milkfat unless otherwise indicated, and not more than 5 percent, by weight, of moisture.

3.16 Nonfat dry milk fortified with vitamins A and D conforms to the definition for dried skim milk except that vitamins A and D are added in such quantity that, when prepared according to label directions, each quart of the reconstituted product contains 2,000 International Units of Vitamin A and 400 International Units of Vitamin D.

3.17 Sweet cream or cream means the liquid milk product, high in fat, separated from milk, which may have been adjusted by adding thereto: milk, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Cream contains not less than 18 percent milkfat.

3.18 Whipped cream products means any product made by whipping light whipping cream or heavy whipping cream. If flavoring and/or sweetening is added, the resulting product should be so identified.

3.19 Light cream, coffee cream or table cream is cream which contains not less than 18 percent, but less than 30 percent milkfat.

3.20 Light whipping cream or whipping cream is cream which contains not less than 30 percent, but less than 36 percent milkfat.

3.21 Heavy cream or heavy whipping cream is cream which contains not less than 36 percent milkfat.

3.22 Whipped light cream, whipped coffee cream, or whipped table cream is light cream into which air or gas has been incorporated.

3.23 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 80.0 percent milkfat. The addition of coloring is permitted.

3.24 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 50.0 percent milkfat. The addition of harmless coloring matter is permitted.

3.25 Ice cream is a food product produced by freezing, while stirring, a mix consisting of pure milk products, nutritive carbohydrate sweeteners, and other safe and suitable non-milk derived ingredients, and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream contains not less than 1.6 pounds of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon. When flavoring extracts are used, ice cream contains not less than 10.0 percent milkfat and 20.0 percent total milk solids. When one or more bulky flavors are used (e.g. eggs, fruits, nuts, chocolate, cake, etc.) the weights of milkfat and total milk solids are not less than 10 percent and 20 percent, respectively, of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished food; but in no case are such weights less than 8 percent and 16 percent, respectively, of the weight of the finished food.

When calculating the minimum amount of milkfat and nonfat milk solids required in the finished food, the solids of chocolate or cocoa used shall be considered a bulk flavoring ingredient. In order to make allowance for additionally sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate and cocoa solids used may be multiplied by 2.5; the weight of fruit and nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

Any whey and modified whey products used shall contribute, singly or in combination, not more than 25 percent, by weight, of the total nonfat milk solids content of the finished food. Caseinates may be added to ice cream mix containing not less than 20 percent total milk solids.

3.26 Ice milk is the food prepared from the same ingredients and in the same manner prescribed in 3.25 for ice cream except that (1) its content of milkfat is more than 2 percent and not more than 7 percent; (2) its content of total milk solids is not less than 11 percent; (3) caseinates may be added when the content of total milk solids is not less than 11 percent; (4) the provision for reduction in milkfat and nonfat milk solids content from the addition of bulky flavors applies except that in no case will the milkfat content be less than 2 percent, nor the nonfat milk solids content be less than 7 percent. The quantity of food solids per gallon is not less than 1.3 pounds.

3.27 Ice milk mix is the unfrozen combination of ingredients which, when frozen while stirring, will produce a product conforming to the definition and standard for ice milk.

3.28 Frozen dietary dessert is a milk product, frozen while stirring, intended for special dietary use. It may contain accepted non-nutritive sweeteners and/or

any harmless polyhydric alcohol, and/or other accepted safe and suitable ingredients. If it contains an artificial sweetener, its name shall include "artificially sweetened."

3.29 Half and half is a product consisting of a mixture of milk and cream which contains not less than 10.5 but less than 18 percent milkfat.

3.30 Sour cream is cream with an acidity of not less than 0.5 percent, expressed as lactic acid, which contains not less than 18.0 percent milkfat, except that when the food is characterized by the addition of nutritive sweeteners or bulky flavoring ingredients, the weight of the milkfat is not less than 18 percent of the remainder obtained by subtracting the weight of such optional ingredients from the weight of the food, but in no case does the food contain less than 14.4 percent milkfat.

Sour cream may contain safe and suitable ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

3.31 Cottage cheese curd or dry curd cottage cheese is the soft uncured cheese prepared from the curd obtained by adding lactic-acid producing bacteria, or from adding suitable food grade acids, with or without enzymatic action, to pasteurized skimmed milk or pasteurized reconstituted skimmed milk. It may contain up to 80.0 percent moisture.

3.32 Cottage cheese is the soft uncured cheese prepared by mixing cottage cheese dry curd with pasteurized cream or a pasteurized mixture of cream with milk or skimmed milk or both. Such cream or mixture is used in such quantity that the milkfat added thereby is not less than 4.0 percent, by weight, of the finished cottage cheese. The finished cottage cheese contains not more than 80.0 percent moisture.

3.33 Lowfat cottage cheese is the food prepared from the same ingredients and in the same manner prescribed in 3.32 for cottage cheese except that its milkfat content is not less than 0.5 percent and not more than 2.0 percent, by weight, and its moisture content is not more than 82.5 percent.

3.34 Grade A cottage cheese, lowfat cottage cheese or cottage cheese curd shall be made from pasteurized Grade A dairy products.

3.35 Egg nog is a milk product consisting of a mixture of milk or milk products containing not less than 6.0 percent milkfat and not less than 1.0 percent egg yolk solids. It may contain sweetener, flavoring, safe and suitable sweeteners, flavorings, stabilizers, emulsifiers, and color.

3.36 Egg nog drink is a milk product consisting of a mixture of milk and milk products containing less than 6.0 percent milkfat and shall contain at least 0.5 percent egg yolk solids, sweetener and flavoring. An emulsifier and not over 0.5 percent stabilizer may be added.

3.37 Milk shake or similar drink, by whatever name called is a product consisting of wholesome dairy products containing not less than 3.0 .

percent milkfat, with or without the addition of ice cream, with or without the addition of coloring and flavoring, and may contain up to 0.5 percent stabilizer.

3.38 Mellorine is a food produced by freezing, while stirring, a mix consisting of safe and suitable ingredients including, but not limited to, milk derived nonfat solids and animal or vegetable fat, or both, only part of which may be milkfat. Mellorine is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of flavoring. Mellorine contains not less than 1.6 pounds of total solids, and weighs not less than 4.5 pounds to the gallon. Mellorine contains not less than 6 percent fat and 2.7 percent milk protein, by weight, of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content be less than 4.8 percent or the protein less than 2.2 percent. Vitamin A is present at a level equivalent to 40 International Units per gram of fat.

3.39 Official standards for any milk or milk product not contained in these regulations must conform to the standards prescribed in current Code of Federal Regulations Title 21, Section 131 and 133 and related sections as promulgated by the Federal Food and Drug Administration.

Section 4. Labeling Imitation Milk Products

4.1 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.

Section 5. Labeling

5.1 All fluid milk and fluid milk products shall be labeled to conform with the Fair Packaging and Labeling Regulations for the enforcement of the Fair Packaging and Labeling Act promulgated by the Federal Food and Drug Administration and in effect on April 1, 1981, and later amendments.

Section 6. Labeling of Ice Milk

6.1 All consumer packages and containers of ice milk shall be conspicuously labeled in legible, boldface type on at least one side, the words, "ICE MILK", also giving the name and address of the manufacturer or distributor thereof, and the net contents of each contents of each container in the term of fluid measure.

6.2 Ice milk mix must be legibly labeled "ICE MILK MIX". The label must also identify the manufacturer or distributor thereof, and an accurate statement of the quantity of the contents by fluid measure.

Section 7. Sanitary Requirements for Counter Freezer Establishments

7.1 The sale of melted ice cream and other frozen dairy products is prohibited in either liquid or refrozen form.

7.2 Mix shall be stored in a temperature of 40 degrees or lower.

7.3 All mix containers shall be code dated using one of the following terms: "Packaging", "Sell By", or "Use Before" date.

Section 8. Freezer Room Requirements

8.1 Freezer units shall be installed in such a way that they are not subject to contamination by dust, insects, rodents, or customers.

8.2 Freezer units shall be cleaned and sanitized at intervals necessary to produce acceptable products.

8.3 Sanitization may be done with steam, quaternary ammonia compounds, chlorine compounds, hot air, light rays, or other methods approved by the Commissioner of Agriculture.

8.4 An ample supply of running hot (170 degrees F. for sanitization) and cold water shall be available to the freezer room.

8.5 A hand wash bowl with running hot and cold water shall be adjacent to the freezer.

8.6 Wash tanks adequate to wash and sanitize freezer parts, cans, and all utensils shall be provided.

Section 9. Storage Rooms

9.1 All storage plants, rooms, walk-in coolers, or boxes where ice cream, frozen dairy products and materials for manufacturing the same are stored, must be kept clean and free from odor.

9.2 All materials used in the manufacture of ice cream and any other frozen dairy products shall be kept in closed containers.

9.3 No decomposed, decayed, fermented, contaminated or rancid materials shall be used in the manufacture of ice cream or any other frozen dairy product.

9.4 All supplies such as ice cream cones, package, containers, lids, etc., must be suitably stored to prevent soiling, dust accumulation, moisture damage and other contamination by insects, rodents, etc.

Section 10. Testing of Milk for Butterfat by Light Transmission (Milko-Tester Method)

10.1 Definitions - The term "Milko-Tester Method" shall mean the automated light scattering method for determining the fat content of raw unhomogenized milk as described in the Journal of the Association of Official Analytical Chemists and is approved for the testing of raw, unhomogenized milk. The word "tester"

shall mean any person who operates the Milko-Tester for determining the percentage of butterfat in milk or cream.

10.2 Licensing Requirements - No person shall operate a Milko-Tester to determine the butterfat of milk for a basis of payment unless licensed by the Commissioner of Agriculture to perform both this test and the Babcock test. Buyers who want to use the Milko-Tester for producer payment must notify the Commissioner no less than thirty (30) days prior to its use.

10.3 Reference Method - The Babcock test shall be used as the reference method to maintain the calibration of the Milko-Tester. Other methods may be used as a reference upon approval by the Commissioner. Written notification of the reference method shall be sent to the Commissioner prior to the installation and first use of a Milko-Tester. A subsequent change in the reference method used shall be made only with the specific approval of the Commissioner.

10.4 Preparation of Samples - All milk samples to be tested are to be tempered to within 95° to 100° F. and adequately mixed by pouring from one container into another four (4) times. Each sample must be tested immediately after mixing.

If the sample bottle is not over two-thirds full, the sample may be mixed by shaking horizontally back and forth six (6) round trips through a distance of about six (6) inches within a period of three (3) seconds.

10.5 Records - Permanent records shall be made and held on file for one (1) year. Printout tapes shall be held for a period of not less than sixty (60) days. These records must show the following:

10.5.1 All calibration results and check tests for initial and subsequent calibrations.

10.5.2 All tests for checking accuracy of calibrations.

10.5.3 Daily and accumulative total of tests run.

10.5.4 All testing records shall bear the signature of the person performing such test.

Section 11. Testing for Butterfat by the Roese-Gottlieb Fat Extraction (Mojonnier Method [Reference Method]).

11.1 The Roese-Gottlieb Fat Extraction Method of testing for milkfat is adopted as the official referee method for determining milkfat content of dairy products and is approved for all milkfat testing.

Section 12. Adulteration of Milk and Milk Products

12.1 Milk and milk products shall be considered as adulterated when:

- 12.1.1 The freezing point of whole raw milk is found to be above $-.530^{\circ}$ as determined by the Thermistor Cryoscope Method for determining added water in milk.
- 12.1.2 The freezing point of processed whole milk is above $-.525^{\circ}$ as determined by the Thermistor Cryoscope Method for determining added water in milk.
- 12.1.3 Milk and milk products of which the coliform bacteria plate count exceeds ten (10) colonies per milliliter as determined by the standard Agar Plate Method.
- 12.1.4 Milk and Milk Products, excluding cultured products, of which the total bacteria plate count exceeds twenty thousand (20,000) per milliliter as determined by the standard Agar Plate Method.
- 12.1.5 Ice cream and ice milk of which the coliform bacteria plate count exceeds ten (10) colonies per gram as determined by the standard Agar Plate Method.
- 12.1.6 Ice cream and ice milk of which the total bacteria plate count exceeds fifty thousand (50,000) per gram as determined by the standard Agar Plate Method.

Section 13. Compliance Enforcement

Whenever two (2) of the last four (4) consecutive bacterial counts and/or coliform or water adulteration counts, or fat content of official regulatory samples taken on two (2) separate production lots fail to meet the standard for named milk and milk products, the Commissioner will cause a written notice to be sent to the person concerned. This notice shall be in effect as long as two (2) of the last four (4) consecutive samples do not meet the standard defined for the product. An additional sample shall be taken within twenty-one (21) days of the sending of such notice.

On receipt of written notice, the person or persons concerned may request the Commissioner of Agriculture to hold a hearing for purposes of discussing laboratory findings and correction of cause of product(s) found not in compliance. Embargo of product and/or action in a court of competent jurisdiction shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts and/or coliform counts, or water adulteration or fat content on official regulatory samples.

If a single confirmed sample finding poses a potential health hazard, immediate regulatory action will be taken against the marketed product or products without consideration of prior product laboratory findings.

Dept. of Agri.
Leg. Regs., 19-11
SERIES IV, Sec. 14

Section 14. Effective Date

14.1 Date Done - Done in the office of the Commissioner, West Virginia Department of Agriculture, Capitol Building, Charleston, West Virginia 25305, this 19th day of November, 1981, to become effective the 25th day of January, 1982.

Gus R. Douglass
Agriculture Commissioner

APPENDIX 1

Section 3.2 Pasteurization of Milk (from page 2)

<u>TEMPERATURE</u>	<u>TIME</u>
145° F*.....	30 minutes
161° F*.....	15 seconds
191° F	1 second
204° F	0.05 second
212° F	0.01 second

*If the product has a fat content of ten percent (10%) of more, or if it contains added sweeteners, the specified temperature shall be increased by five degrees Fahrenheit (5° F.)