

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Agriculture
(agency name)

Administrative Order No. 1915

(1) I, C. Alan Pettibone, director of the Washington State Department of Agriculture do promulgate and adopt at Olympia, Washington the annexed rules relating to:

WAC 16-101 and adding a new section

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. These rules shall take effect:
[] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, C. Alan Pettibone, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

To meet the requirements of ESSB 5044, sec. 19, laws of 1986. Original filing would have required substantial changes after recommendations were made by special study created by this legislation.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[] (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.
[X] (b) This rule is promulgated pursuant to RCW 15.36 RCW ESSB 5044, sec. 19 which directs that the

Department of Agriculture
(agency)

has authority to implement the provisions of 15.36.550 RCW Fluid Milk
(name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the
(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON APPROVED AND ADOPTED FILED

December 31 19 86

By [Signature] Deputy Director

Title

DEC 31 1986

CODE REVISER'S OFFICE

New Section JW

WAC 16-101-690 Civil Penalties--Substandard Products.

1. Commencing July 1, 1987, a civil penalty may be imposed by the department against any dairy processing plant for deviation below the butterfat or solids-not-fat standard set forth in chapter 16-101 WAC for those fluid dairy products listed below: milk, pasteurized milk, homogenized milk, Vitamin D milk, Vitamin A milk, Vitamin A lowfat milk, nonfat milk, Vitamin A nonfat milk, reconstituted or recombined milk or milk products, buttermilk or cultured buttermilk, protein fortified fluid milk products and acidified milk and milk products.

2. For purposes of this rule, the following terms have the following meanings.

a. "Butterfat value" is the value of butterfat in producer milk, as listed in the monthly federal milk order report for the dairy processing plant in question in the month during which the deviation from standards occurs.

b. "Solids-Not-Fat value" is the Commodity Credit Corporation purchase price for nonfat dry milk as of the date the deviation from standards occurs.

3. For purposes of this regulation, the Roesse-Gottlieb procedure as described in the 14th edition of the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) shall be the reference method for determining the milk fat in milk and other fluid dairy products. The test for total solids in milk and other fluid dairy products shall be the final action oven procedure as described by the AOAC. Solids-Not-Fat shall be determined by subtracting the fat from the total solids.

4. The department shall take and test samples from dairy processing plants on a regular basis pursuant to RCW 15.36.110. For the purposes of administering this rule, all plants in the state to the extent practical, shall be sampled and tested with like frequency.

For each fluid dairy product to be tested, three representative samples shall be taken. If the first sample tested for any product falls below the butterfat or solids-not-fat standard by more than 0.1%, the remaining two samples for that product shall be tested and the average butterfat or solids-not-fat content of the three samples shall be used for purposes of administering this rule.

The result of each sampling shall be reported in accordance with RCW 15.32.530. In no event may a sample be taken for purposes of this civil penalty procedure, sooner than three days after the results of the previous sample have been mailed to the plant operator.

If the average butterfat or solids-not-fat content of the fluid dairy product deviates more than one tenth of one percent (0.1%) below the standard for that product set forth in chapter 16-101 WAC, a violation occurs. Deviations of greater than 0.1% but not more than 0.5% below the applicable standard shall be assigned a violation point value of one. Deviations below the applicable standard by more than 0.5% shall be assigned a violation point value of two.

5. Finished dairy product test results shall be recorded separately for each type of product sampled from each processing plant and for each component standard (butterfat and solids-not-fat).

6. The civil penalty shall be calculated separately for each type of product tested.

On the first occasion that a dairy processing plant receives a violation point for a product, a copy of the laboratory report disclosing the deviation from the applicable standard shall be sent to the concerned processing plant.

If the dairy processing plant incurs two violation points during the last four consecutive tests for a product, the director shall send a warning letter to the concerned processing plant, calling attention to these civil penalty regulations.

If over the course of four consecutive tests, including the most recent (current) test, the dairy processing plant accumulates three violation points for a product, the director shall impose a civil penalty against the processing plant. The amount of the civil penalty shall be equal to the butterfat and/or solids-not-fat value absent from the volume of the sampled product, as represented by the average sample results, multiplied by the number of pounds of that product processed on the day of the violation.

If over the course of four consecutive tests, including the most recent (current) test, the dairy processing plant accumulates four violation points for a product, the director shall impose a civil penalty against the processing plant. The amount of the civil penalty shall be equal to two times the butterfat and/or solids-not-fat value absent from the volume of the sampled product, as represented by the average sample results, multiplied by the number of pounds of that product processed on the day of the violation.

If over the course of four consecutive tests, including the most recent (current) test, the dairy processing plant accumulates five or more violation points for a product, the director shall impose a civil penalty against the dairy processing plant. The amount of the civil penalty shall be equal to three times the butterfat and/or solids-not-fat value, absent from the volume of the sampled product, as represented by the average sample results, multiplied by the number of pounds of that product processed on the day of the violation.

Notwithstanding the provisions of this section, no penalty shall be imposed if no violation points are assigned during the most recent (current) test.

7. All civil penalties which are assessed pursuant to these regulations shall be processed in accordance with RCW 34.04.090.

In no case shall a civil penalty imposed under this section exceed \$10,000 per product, per offense.

A milk plant that refuses to supply the department with adequate records to verify the amount of a civil penalty shall be subject to the maximum penalty.