

State of Washington

Department of Agriculture

(agency name)

Administrative Order No. 1781

(1) I, M. Keith Ellis, director of

Washington State Department of Agriculture

Olympia, Washington

(place)

do promulgate and adopt at

the annexed rules relating to:

WAC Chapter 16-129, Filled Dairy Products

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

This action is taken pursuant to Notice No. WSR 82-22-098 & WSR 83-01-053 filed with the code reviser on 11/3/82; 12-14-82. These rules shall take effect:

- [x] 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, 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:

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:

- [x] (a) This rule is promulgated pursuant to RCW 69.04 and 15.38 and is intended to administratively implement that statute.
[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency)

has authority to implement the provisions of

(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.

APPROVED AND ADOPTED December 29, 19 82

by

M. Keith Ellis

Director

Title

STATE OF WASHINGTON FILED DEC 29 1982 CODE REVISER'S OFFICE WSR 83-02-031

AMENDATORY SECTION (Amending Order No. 1101, filed 10/18/68)

WAC 16-129-010 DECLARATION OF PURPOSE. (1) The director finds that because of the advent in the market place of food products which are nondairy food products, and filled dairy products, (a) which closely resemble, and which are made in semblance of genuine dairy products, and (b) which are manufactured in a manner so as to possess in a substantial degree the physical characteristics of genuine dairy products, and (c) which are frequently mistaken both physically and organoleptically for genuine dairy products, and (d) which are held out and sold or marketed as being usable for the same or similar purposes as genuine dairy products, and (e) which are most frequently packaged in the same types, sizes and shapes of glass, paper and plastic containers which historically consumers have associated with the marketing of genuine dairy products, and the labeling, appearance characteristics and other marketing techniques of said packages or containers used for such food products are frequently misleading to consumers in that they are confused and led to believe that they are buying genuine milk products; and the director further finds that as a result of the foregoing conditions and circumstances there is insufficient distinction in the names and other labeling of the said products described above and genuine dairy products; that it is necessary in order to prevent confusion among consumers and for the protection of the public health to promulgate regulations establishing definitions and standards of labeling and advertising for said products.

(2) It is the finding of the director that RCW 69.04.190 provides that rules may be adopted for the purpose of promoting honesty and fair dealings in the interest of consumers in the following areas: standards for identity of the product, standards of quality, and standards of fill, and no authority is set for the adoption of regulations as to where the product may be physically located at point of sale.

AMENDATORY SECTION (Amending Order No. 1101, filed 10/18/68)

WAC 16-129-020 DEFINITIONS. (1) "Products resembling genuine dairy products" means any food product for human consumption other than genuine dairy products, as set forth and defined in subsection ~~((+3+))~~ (4) of this regulation, and which has the appearance, taste, smell, texture and color of genuine dairy products and which taken as a whole bears a resemblance to, or is in semblance of, any genuine dairy products: PROVIDED, ~~((HOWEVER,))~~ That the term "products resembling genuine dairy products" shall not include oleomargarine.

(2) The term "nondairy" means and refers to any product resembling a dairy product as defined in subsection (1) of this regulation and which contains no dairy products or components of dairy products.

(3) "Filled dairy products" means those products which are defined as filled dairy products by RCW 15.38.020.

~~((+3+))~~ (4) "Genuine dairy products" means those certain milk products as defined by ~~((REW-15-36-010))~~ RCW 15.36.011, and dairy products as defined by RCW 15.32.010 and RCW 15.32.051, or regulations adopted thereunder.

~~((+4+))~~ (5) Other terms used in this regulation shall have the definition or definitions as set forth in 69.04 RCW.

NEW SECTION

WAC 16-129-025 WHEN PRODUCTS DEEMED NOT TO BE FILLED DAIRY PRODUCTS. A "filled dairy product" as defined by RCW 15.38.020 does not include a product that meets the following conditions:

(1) The product bears a statement on the main display panel of the package or container stating that the food product is an

"imitation" followed by the name of the milk product imitated, i.e. "imitation milk", "imitation cheddar cheese," in letters not less than one-half the size of the product name, but in no case may the letters be smaller than 18 point type size; and the label must also bear a statement that the product contains dairy ingredients to which has been added a fat or oil filler; and

(2) The label on the product clearly states the ingredients and nutritional value, to include but not limited to vitamins, minerals, protein, and calories, but makes no representation or comparison to a genuine dairy product.

AMENDATORY SECTION (Amending Order No. 1101, filed 10/18/68)

WAC 16-129-030 PRODUCTS RESEMBLING DAIRY PRODUCTS--WHEN DEEMED TO BE MISBRANDED, FALSELY LABELED OR FALSELY ADVERTISED.

(1) Any product resembling a genuine dairy product shall be deemed to be misbranded and to have a misleading label when its package or immediate container or dispenser bears a statement, or legend using dairy terms or words or designs commonly associated with dairying or genuine dairy products, except to the extent that such words or terms are necessary to meet legal requirements for labeling: PROVIDED, That the term "nondairy" may be used as an informative statement.

(2) Any advertisement or display concerning a product resembling a dairy product shall be deemed to be false and misleading if by its content such advertisement or display makes use of any dairy terms, or words or designs commonly associated with dairying or genuine dairy products, except that any such word may be included in the seller's or manufacturer's registered name under which he regularly does business: PROVIDED, That this does not include any name registered as a subterfuge to include a dairy term: PROVIDED FURTHER, That the term "nondairy" may be used as an informative statement.

(3) No representation or suggestion that any product resembling a genuine dairy product is approved or sanctioned by the federal food and drug administration, the Washington state department of agriculture, or any other governmental entity, shall be made in any labeling or advertisement.

(4) Any label concerning a product resembling a dairy product shall clearly set forth a list of ingredients of which such product consists (~~(,--in-the-event-that-such-product-contains-vegetable-fat-or-oil--such)~~). The label shall also set forth and name the specific kind of vegetable fat or oil contained in the product (~~(--If-only-one-oil-is-used,--it--shall--be--specifically--named--in--the--ingredient--statement--)~~) : PROVIDED, That, if a blend (~~(of)~~) or variety of oils is used, the ingredient statement shall contain the term "vegetable oil" in the appropriate place in the ingredient statement, with a qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils", or "vegetable oil may be cottonseed, coconut or soybean oil".

REPEALER

The following sections of the Washington Administrative Code are each hereby repealed:

WAC 16-129-001 PROMULGATION

WAC 16-129-040 EFFECTIVE DATE