

TITLE 3. FOOD AND AGRICULTURE

NOTICE OF A PROPOSED READOPTION OF AN EMERGENCY ACTION FIVE WORKING DAY PUBLIC COMMENT PERIOD

[Government Code Section 11346.1]

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department), Milk and Dairy Food Safety Branch, is proposing to take the action described in the Informative Digest as included in the Finding of Emergency. The emergency filing will readopt sections 450, 450.1, 450.2, 450.3, 450.4, 451 and 452 under Article 7, Chapter 1, Division 2 of Title 3 of the California Code of Regulations. Those sections of the regulations established a temporary standard for Ultra-Filtered Milks pursuant to Food and Agricultural Code sections 36633 and 36637. The Finding of Emergency and regulatory text are enclosed.

Authority and Reference: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912, 32912.5, 36631, 36632, 36633 and 39701, Food and Agricultural Code.

Sections Affected: Sections 450, 450.1, 450.2, 450.3, 450.4, 451 and 452 of Article 7, Chapter 1, Division 2 of Title 3 of the California Code of Regulations.

Five Working Day Public Comment Period and Written Comments: Any person interested may submit a written comment relevant to the action proposed to the person designated in this Notice as the contact person **beginning March 21, 2016 and ending at 5:00 p.m., March 28, 2016**. Following the close of the written comment period, this regulatory action will be transmitted to the Office of Administrative Law (OAL) for an additional five day comment period, whereby the public may submit written comments directly to that agency. For further information on the emergency rulemaking process, please access the OAL Internet website at: www.oal.ca.gov, under "Emergency Regulations", or contact the OAL reference attorney at (916) 323-6225, or e-mail: staff@oal.ca.gov.

Contact Persons: Inquiries concerning the substance of the proposed regulations, or any written comments concerning this proposal are to be addressed to the following:

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Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>

Dated: March 18, 2016



Anne Quilter, Fluid Milk Testing Coordinator

FINDING OF EMERGENCY

The California Department of Food and Agriculture (Department) finds that an emergency exists, and that the attached regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Emergency Defined

“Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code section 11342.545. If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation pursuant to Government Code section 11346.1(b)(1). In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to preserve the public peace, health and safety, or general welfare.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provides a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, that agency shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. The Department has properly noticed this emergency regulation for a five day public comment period.

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

Background

The Department received a petition on April 20, 2015 from Tim Doelman, Senior Vice President, Operations and Product Development, fairlife LLC, requesting a temporary standard for new ultra-filtered milk products. Article 2 of Chapter 1 of Part 3 of Division 15 of the Food and Agricultural Code provides an avenue to allow novel products to be legally produced and sold in California.

Specifically, there were no definitions and standards for “reduced fat ultra-filtered milk” or “flavored reduced fat ultra-filtered milk” in statutes or regulations. Food and Agricultural Code section 38211 provides a standard for “reduced fat milk”, however “reduced fat ultra-filtered milk” would be a different product and does not fall within the standard set forth in section 38211. Food and Agricultural Code section 38653 provides a standard for “flavored reduced-fat milk”, however, “flavored reduced-fat ultra-filtered milk” would be a different product and does not fall within the standards set forth in Food and Agricultural Code.

Therefore, the Department accepted the petition and determined that ultra-filtered milk products qualify as new dairy products requiring temporary standards, as the filtration process results in products that deviate from the compositional requirements for reduced fat milk and flavored reduced fat milk as set forth in Food and Agricultural Code sections 38211 and 38653.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

On April 20, 2015, the Department received a petition from Tim Doelman, Senior Vice President, Operations and Product Development, fairlife LLC, requesting a temporary standard for a new milk product called, ultra-filtered milk. Pursuant Food and Agricultural Code section 36634, the Department was required to notify the petitioner within 15 days of receipt of the petition as to whether a hearing

would be granted. The hearing was required to be held no later than 65 days following receipt of the petition.

On May 5, 2015, the Department issued a notice of a public hearing to all interested and affected parties, and posted the notice on its Internet web site. The purpose was to consider the adoption of a temporary standard for ultra-filtered milk products in accordance with Food and Agricultural Code sections 36631 through 36638. The hearing was conducted exclusively by written brief, because the Department did not receive a request for an oral hearing. After the close of the comment period on June 19, 2015, the Department evaluated the public comments and granted the approval for a temporary standard.

On August 14, 2015, the Department received approval from OAL of the original emergency filing [OAL #2015-0804-01E] whereby the Department then proceeded with the regular rulemaking process. The regulation was properly noticed to the public for a 45-day comment period from November 27, 2015 through January 11, 2016.

On February 4, 2016, the Department transmitted to OAL for filing with the Secretary of State the adopted regulatory text and rulemaking file. The Department certified that it complied with sections 11346.2 to 11347.3, inclusive, of the Government Code within the required 180-day period.

The Department demonstrated due diligence in completing the regular rulemaking process and submitted the Certificate of Compliance to OAL in accordance with Government Code section 11346.1(e), prior to the expiration of the 180-day period required for emergency filings. However, on March 18, 2016, the Department withdrew the regular rulemaking file from OAL in order to publish a 15 day notice of a document added to the rulemaking file and amended regulatory text. Therefore, the 180-day time period for emergency filings has now expired.

The Department is now seeking to readopt the emergency regulations, with amendments that are substantially equivalent to the original emergency text, in accordance with section 36637 of the Food and Agricultural Code and Government Code section 11346.1, which pertain to emergency filings. This readoption of the emergency filing would be effective for 90 days in accordance with Government Code section 11346.1(h). The Department must complete the regular rulemaking process within that time period and resubmit the file to OAL.

Alternatives Considered Other Than This Proposed Emergency Regulation

No alternative exists for the Department other than this emergency rulemaking action. The Department is authorized to adopt the ultra-filtered milk products standard as an emergency regulation if a petition for a temporary standard is granted. Food and Agricultural Code section 36634 mandates a timeframe, as detailed above, for making a decision on a petition for a temporary standard. The 180-day time limit for emergency filings has expired and the Department must seek a readoption of the emergency filing for an additional 90-day period in accordance with Government Code section 11346.1(h). Given these mandates, the Department had no option other than the readoption of the emergency regulation, as the time constraints mandated by Food and Agricultural section 36634 would not be met if the regular rulemaking process was followed.

The only viable option for the Department is to pursue a readoption of the emergency rulemaking action to implement the temporary standard for Ultra-Filtered Milk Products, in accordance with Food and Agricultural Code sections 36633, 36634 and 36637.

Authority and Reference Citations

Authority: Sections 407, 36601 and 36637, Food and Agricultural Code.

Reference: Sections 32912, 32912.5, 36631, 36632, 36633 and 39701, Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, section 407 of the Food and Agricultural Code, provides that the Department may adopt such regulations as are reasonably necessary to carry out the provisions of this Code which she is directed or authorized to administer or enforce.

Existing law, section 32912 of the Food and Agricultural Code, provides that any milk or milk product that is subject to a standard of identity or standard of composition defined in Division 15 of the Food and Agriculture Code may be specially formulated or processed to lower the content of its milkfat, alter its milkfat composition, or otherwise modify its nutrient profile to the extent that it will not comply with the compositional requirements of its standard of identity or composition.

Existing law, section 32912.5 of the Food and Agricultural Code provides that any labeling requirements adopted by the Department shall be in conformity with the labeling requirements established under the Federal Food, Drug and Cosmetic Act and Title 21 of the Code of Federal Regulations.

Existing law, section 36631 of the Food and Agricultural Code, provides that the Department administer Article 2 of Chapter 1 of Part 3 of Division 15 of the Food and Agricultural Code, to accommodate, in a timely fashion, safe and wholesome milk products.

Existing law, section 36632 of the Food and Agricultural Code, provides that the Department may grant a temporary standard for a new milk product for an initial period of one year, following a properly noticed hearing.

Existing law, section 36633 of the Food and Agricultural Code provides that in granting a temporary standard, the Department shall establish an appropriate definition and nomenclature as well as quality and labeling requirements applicable to the permitted product.

Existing law, section 36637 of the Food and Agricultural Code states that upon granting a petition under article 2 of Chapter 1 of Part 3 of Division 15 of the Food and Agricultural Code, the Department shall adopt the standard as an emergency regulation pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of Chapter 1 of Part 3 of Division 15 of the Food and Agricultural Code, any regulations adopted under article 2 of Chapter 1 of Part 3 of Division 15 of the Food and Agricultural Code shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

This proposal will readopt sections 450, 450.1, 450.2, 450.3, 450.4, 451 and 452 of Article 7, Chapter 1, Division 2 of Title 3 of the California Code of Regulations to establish a temporary standard for Ultra-Filtered Milk Products pursuant to Food and Agricultural Code sections 36633 and 36637. This temporary standard will allow for the production and sale of Ultra-Filtered Milk Products in California.

The Department determined that the temporary standard differed significantly from that of existing definitions and standards in statutes or regulations. The Department also considered the health and safety conditions under which the proposed product will be processed and distributed. In granting the temporary standard, the Department established appropriate definitions and nomenclature as well as quality and labeling requirements applicable to the permitted products. By approving the temporary standard, the Department is enhancing openness and transparency in business and government.

The Department has evaluated this proposal, and believes that it is not duplicative of, inconsistent with or incompatible with existing State regulations, as no regulations existed to define this new standard for milk products prior to the adoption of this regulation as an emergency. The Department believes the regulation is consistent with its mission statement, particularly encouraging innovation and creating fairness by allowing into the marketplace a new dairy product category, produced by a novel technology.

In order for the temporary standard to become permanent in Title 3 of the California Code of Regulations, there is necessity to request a readoption of the emergency filing and proceed with completing the regular rulemaking process within the required 90-day extension period in accordance with Government Code section 11346.1(h).

Description of Emergency Regulatory Text

Adopt Sections 450, 450.1, 450.2, 450.3, 450.4, 451 and 452 of Article 7, Chapter 1, Division 2 of Title 3 of the California Code of Regulations

- Section 450 (Ultra-Filtered Milk Products) defines ultra-filtered milk products and states the standards and requirements that are to be met, as well as indicating that products shall be labeled in accordance with Title 21 of the Code of Federal Regulations.
- Section 450.1 (Ultra-filtered milk) specifies the milkfat, milk solids not fat and total milk solids requirements for ultra-filtered milk, and specifies to what degree the milk solids not fat and total milk solids may be reduced if lactose is removed by filtration. It also specifies what the product shall be labeled.
- Section 450.2 (Reduced Fat Ultra-Filtered Milk) specifies the milkfat and milk solids not fat requirements for reduced fat ultra-filtered milk, and specifies to what degree the milk solids not fat may be reduced if lactose is removed by filtration. It also specifies what the product shall be labeled.
- Section 450.3 (Lowfat Ultra-Filtered Milk) specifies the milkfat and milk solids not fat requirements for lowfat ultra-filtered milk, and specifies to what degree the milk solids not fat may be reduced if lactose is removed by filtration. It also specifies what the product shall be labeled.
- Section 450.4 (Nonfat Ultra-Filtered Milk) specifies the milkfat and milk solids not fat requirements for nonfat ultra-filtered milk, and specifies to what degree the milk solids not fat may be reduced if lactose is removed by filtration. It also specifies what the product shall be labeled.
- Section 451 (Flavored Ultra-Filtered Milk Products) specifies the standards and requirements for flavored ultra-filtered milk, and specifies to what degree the milk solids not fat may be reduced if lactose is removed by filtration. It also specifies what the products shall be labeled.
- Section 452 (UHT Ultra-Filtered Milk Products) specifies the standards and requirements for UHT ultra-filtered milk, and specifies to what degree the milk solids not fat or total milk solids may be reduced if lactose is removed by filtration. It also specifies what the product shall be labeled.

The Department relied upon the following document and information in making its determinations:

- Petition dated April 20, 2015 from Tim Doelman, Senior Vice President, Operations and Product Development, fairlife, LLC. The Department evaluated the petitioner's request for a temporary standard by comparing it to existing standards of identity, confirming that it did not meet any current standards of identity and then evaluated the proposed product standards and labeling as compared to requirements in the Food and Agricultural Code and Title 21 of the Code of Federal Regulations. The Department considered comments received during the written comment period and made appropriate changes to the petitioner's original proposed standard. The Department evaluated the proposed product labels to confirm compliance with Title 21 of the Code of Federal Regulations, and also with the Food and Agricultural Code.

Duplication or Conflicts with Federal Regulation

This proposal does not duplicate or conflict with federal regulations because there are no federal regulations defining ultra-filtered milk products.

Anticipated Benefits from this Regulatory Action

The California dairy industry generates \$21 billion in direct economic activity and \$65 billion in dairy related economic activity. This proposal benefits the dairy industry by allowing a new product into the marketplace. There is considerable competition in the beverage industry for "shelf space" at retail. Encouraging innovation by allowing novel dairy products, that are safe and wholesome, benefits the dairy industry as a whole.

FISCAL IMPACT ESTIMATES

Fiscal impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Agency or School District Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 14500 et Seq. Require Reimbursement: None

Business Impact: The Department has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation imposes no new fees or costs to the dairy industry. The proposal benefits the industry and the public by allowing a new dairy product category to be manufactured, sold and consumed in California.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that representative private persons or businesses would necessarily incur in reasonable compliance with the proposed action. The proposed regulation does not impose any new fees or costs to persons or businesses. There is not a paperwork requirement as a result of this proposal.

Effect on Housing Costs: None

Effect on Small Business: This regulatory action may affect small businesses.

**DEPARTMENT OF FOOD AND AGRICULTURE
MILK AND DAIRY FOOD SAFETY BRANCH
PROPOSED READOPTION OF EMERGENCY REGULATIONS**

The Department of Food and Agriculture, Milk and Dairy Food Safety Branch, hereby readopts sections 450, 450.1, 450.2, 450.3, 450.4, 451 and 452 of Article 7, Chapter 1, Division 2 of Title 3 of the California Code of Regulations, with the following changes, to read as follows:

Section 450. Ultra-Filtered Milk Products.

(a) Ultra-filtered milk products are market milk products resulting from the filtration of milk to alter the relative quantities of milk solids not fat components, including proteins, lactose, and minerals.

(b) Except as otherwise provided in this article, ultra-filtered milk products shall meet all standards and requirements that are specified in Division 15 (commencing with section 32501) of the Food and Agricultural Code for market milk.

(c) Ultra-filtered milk products shall be labeled in accordance with the applicable provisions of Title 21 of the Code of Federal Regulations.

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912, 32912.5, 36631, 36632 and 36633, Food and Agricultural Code.

Section 450.1. Ultra-Filtered Milk.

Ultra-filtered milk shall contain not less than 3.5 percent of milkfat and not less than 8.7 percent milk solids not fat. The minimum percentages of milkfat and milk solids not fat required by this section may vary by an amount no greater than 0.1 of 1 percent, provided that the total combined percentages of milkfat and milk solids not fat, at the time of delivery to the consumer, shall equal or exceed 12.2 percent. However, when lactose has been completely or partially removed by filtration the total milk solids and the milk solids not fat percentages may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the ultra-filtered milk with a milk nutrition label. It shall be labeled "ultra-filtered milk."

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912 and 36633, Food and Agricultural Code.

Section 450.2. Reduced-Fat Ultra-Filtered Milk.

Reduced-fat ultra-filtered milk shall contain not less than 1.9 percent milkfat, not more than 2.1 percent milkfat, and not less than 10 percent of milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the reduced-fat ultra-filtered milk with a reduced-fat milk nutrition label. It shall be labeled "reduced-fat ultra-filtered milk."

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912 and 36633, Food and Agricultural Code.

Section 450.3. Lowfat Ultra-Filtered Milk.

Lowfat or light (lite) ultra-filtered milk shall contain not less than 0.9 percent milkfat, not more than 1.1 percent milkfat, and not less than 11 percent of milk solids not fat provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the lowfat or light (lite) ultra-filtered milk with a lowfat or light (lite) milk nutrition label. It shall be labeled "lowfat ultra-filtered milk", "light ultra-filtered milk" or "lite ultra-filtered milk".

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912 and 36633, Food and Agricultural Code.

Section 450.4. Nonfat Ultra-Filtered Milk.

Nonfat, skim or fat-free ultra-filtered milk shall contain not more than twenty hundredths of 1 percent of milkfat and not less than 9 percent of milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the nonfat, skim or fat-free ultra-filtered milk with a nonfat, skim or fat-free milk nutrition label. It shall be labeled "nonfat ultra-filtered milk", "skim ultra-filtered milk" or "fat-free ultra-filtered milk".

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912 and 36633, Food and Agricultural Code.

Section 451. Flavored Ultra-Filtered Milk Products.

(a) ~~Flavored ultra-filtered milk shall contain not less than 3.25 percent milkfat and not less than 8.7 percent milk solids not fat. The minimum percentages of milkfat and milk solids not fat required by this section may vary by an amount no greater than 0.1 of 1 percent, provided that the total combined percentages of milkfat and milk solids not fat, at the time of delivery to the consumer, shall equal or exceed 12.2 percent.~~ However, when lactose has been completely or partially removed by filtration the total milk solids and milk solids not fat percentages may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the flavored ultra-filtered milk with a flavored milk nutrition label.

(b) Flavored reduced-fat ultra-filtered milk shall contain not more than 2.1 percent milkfat and not less than 10 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the flavored reduced-fat ultra-filtered milk with a flavored reduced-fat milk nutrition label.

(c) Flavored lowfat ultra-filtered milk shall contain not more than 1.2 percent milkfat and not less than 11 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the flavored lowfat ultra-filtered milk with a flavored lowfat milk nutrition label.

(d) Flavored nonfat, skim or fat-free ultra-filtered milk shall contain not more than twenty hundredths of 1 percent of milkfat and not less than 9 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the flavored nonfat, skim or fat-free ultra-filtered milk with a flavored nonfat, skim or fat-free milk nutrition label.

(e) Flavored ultra-filtered milk products shall be labeled with the respective product name described in sections 450.1 through 450.4 of this article preceded by the term “flavored.” The principal flavor may be substituted for the word “flavored” in the name of the product (for example, “chocolate nonfat ultra-filtered milk”). Flavored ultra-filtered milk products shall be so colored or contain ingredients that cause them to differ distinctly from milk in appearance and other characteristics.

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912 and 36633, Food and Agricultural Code.

Section 452. UHT Ultra-Filtered Milk Products.

(a) Ultra-filtered milk products may be aseptically processed and packaged such that they would be UHT milk products.

(b) UHT ultra-filtered milk shall contain not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT ultra-filtered milk with a UHT milk nutrition label.

(c) UHT reduced-fat ultra-filtered milk shall contain not more than 2.1 percent milkfat and not less than 8.25 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT reduced-fat ultra-filtered milk with a UHT reduced-fat milk nutrition label.

(d) UHT lowfat or light (lite) ultra-filtered milk shall contain not more than 1.2 percent milkfat and not less than 8.25 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT lowfat or light (lite) ultra-filtered milk with a UHT lowfat or light (lite) milk nutrition label.

(e) UHT nonfat, skim or fat-free ultra-filtered milk shall contain not more than twenty hundredths of 1 percent of milkfat and not less than 8.25 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT nonfat, skim or fat-free ultra-filtered milk with a UHT nonfat, skim or fat-free milk nutrition label.

(f) UHT flavored ultra-filtered milk shall contain not less than 3 percent milkfat and not less than ~~16 1/2~~ 8.25 percent ~~total~~ milk solids not fat, provided that when lactose has been completely or partially removed by filtration the ~~total~~ milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT flavored ultra-filtered milk with a UHT flavored milk nutrition label.

(g) UHT flavored reduced-fat ultra-filtered milk shall contain not more than 2.1 percent milkfat and not less than 8.25 percent milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT flavored reduced-fat ultra-filtered milk with a UHT flavored reduced-fat milk nutrition label.

(h) UHT flavored lowfat or light (lite) ultra-filtered milk shall contain not more than 1.2 percent milkfat and not less than 8.25 percent solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT flavored lowfat ultra-filtered milk with a UHT flavored lowfat milk nutrition label.

(i) UHT flavored nonfat, skim or fat-free ultra-filtered milk shall contain not more than twenty hundredths of 1 percent of milkfat and not less than 8.25 percent of milk solids not fat, provided that when lactose has been completely or partially removed by filtration the milk solids not fat percentage may be reduced by no more than the percentage of lactose removed. The degree to which the lactose is reduced will be determined by comparing the nutrition panel on the UHT flavored nonfat, skim or fat-free ultra-filtered milk with a UHT flavored nonfat, skim or fat-free milk nutrition label.

(j) UHT flavored ultra-filtered milk products shall be labeled with the respective product name described in sections 450.1 through 450.4 of this article, preceded by the term "UHT" and by the term "flavored" as applicable. The principal flavor may be substituted for the word "flavored" in the name of the product (for example, "UHT chocolate lowfat ultra-filtered milk"). Notwithstanding other provisions of Food and Agricultural Code section 39715, the term "ultra-filtered" may be used in lieu of the term "modified" in the product name. UHT flavored ultra-filtered milk products shall be so colored or contain ingredients that cause them to differ distinctly from milk in appearance and other characteristics.

NOTE: Authority cited: Sections 407, 36601 and 36637, Food and Agricultural Code. Reference: Sections 32912, 36633 and 39701, Food and Agricultural Code.