

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections: 450, 450.1, 450.2, 450.3,
450.4, 451, 452

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0329-05

OAL Matter Type: Emergency Readopt (EE)

This action by the Department of Food and Agriculture is the first re-adoption of emergency rulemaking action no. 2015-0804-01E, which established a temporary standard for ultra-filtered milk products in title 3 of the California Code of Regulations.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 4/7/2016 and will expire on 7/7/2016. The Certificate of Compliance for this action is due no later than 7/6/2016.

Date: April 7, 2016


Eric J. Partington
Attorney

For: Debra M. Cornez
Director

Original: Karen Ross
Copy: Nancy Grillo

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0329-05EE
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
<p style="text-align: center;">2016 MAR 29 P 3:14</p> <p style="text-align: center;">OFFICE OF ADMINISTRATIVE LAW</p>			
AGENCY WITH RULEMAKING AUTHORITY Department of Food and Agriculture			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 07 2016

2:15 PM

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Ultra-Filtered Milk Products	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0804-01E and 2016-0204-01C
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 450, 450.1, 450.2, 450.3, 450.4, 451 and 452
TITLE(S) 3	AMEND REPEAL
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> File & Print	
<input type="checkbox"/> Print Only	
<input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State
<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Nancy Grillo, Associate Analyst	TELEPHONE NUMBER 916-900-5033
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) nancy.grillo@cdfa.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

3-29-16

TYPED NAME AND TITLE OF SIGNATORY

Dr. Annette Jones, State Veterinarian and Director, AHFSS

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 07 2016

Office of Administrative Law

**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. 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~~except 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. 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~~except 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. 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~~except 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. 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.

(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~~except 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.

(c) Flavored lowfat or light (lite) ultra-filtered milk shall contain not more than 1.2 percent milkfat and not less than 11 percent milk solids not fat, ~~provided~~except 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.

(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~~except 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.

(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~~except 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.

(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~~except 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.

(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~~except 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.

(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~~except 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.

(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~~except 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.

(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~~except 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.

(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~~except 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.

(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.

(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.