

CREAM STANDARDS:--Section 12406 fixes minimum standards for various grades of cream.

July 19, 1937

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Honorable Jewell Mayes,
Commissioner
Department of Agriculture
Jefferson City, Missouri

Dear Mr. Mayes:

We have your request for an opinion of July 13, 1937, relative to a construction of that portion of Section 12406 R. S. Missouri 1929, which deals with the various grades of cream. In answer to your inquiry we desire to point out certain portions of other statutes applicable to this question.

Section 12395, Laws of Missouri 1933, page 171, makes it the duty of the Commissioner of Agriculture

"to prescribe such reasonable rules and regulations for their operation as he deems necessary to fully carry out the provisions of this article, or any other law relative to the production, manufacture, transportation, sale or consumption of dairy products,* * *".

The above and other sections are all a part of Article V, relating to the Bureau of Dairying, Dairy Products and Imitations.

It is made the duty of the Commissioner to inspect and license milk and cream gathering stations. Section 12396 R. S. Missouri 1929.

In the application for such license the purchaser of cream shall furnish certain facts to the commissioner, and

"such other facts as the state--
commissioner, shall require concerning
the character, financial responsibility
and good faith of the applicant* * *."

For a violation of any of the provisions of the article
this license may be revoked. Section 12397 R. S. Missouri 1929.

Section 12398 provides that the Commissioner shall license
the use and operation of milk or cream testing apparatus. The
statute specifically refers to the Babcock tester.

Section 12405 makes it a criminal offense for any creamery
or cheese or butter factory to manipulate or under-read or
over-read the Babcock test or contrivance used for determining
the quality or value of milk or cream. It also makes it an
offense for the creamery

"to pay for such milk on the basis of
any measurement except the true measure-
ment as thereby determined."

That portion of Section 12406 dealing with cream is
as follows:

"1. Cream is that portion of milk, rich
in fat, which rises to the surface of milk
on standing, or is separated from it by
centrifugal force, is fresh and clean, and
contains not less than eighteen per cent.
(18%) of milk fat.

2. Evaporated cream, clotted cream, is
cream from which a considerable portion of
water has been evaporated.

3. Three grades of cream are hereby estab-
lished, to be known and described as follows:

Extra. Extra grade cream is sweet cream suitable for table use, and such as will not curdle in hot water, tea or coffee. First grade. First grade cream shall consist of cream that is clean to the taste and smell, slightly sour, containing not to exceed four-tenths of one per cent. acid, and to contain not less than twenty-five per cent. butter fat, and shall be free from lumps, curd, dirt, and of foreign matter. Second grade. Second grade cream is cream that is too sour to grade as first grade and having curdy or undesirable flavors or odors. Cream that is old, rancid, molded, dirty or curdy, or that is produced by unclean separators or stored, handled or transported in unclean cans, or that has been produced, handled, separated, stored or transported in violation of this article, and all other creams not coming within any of the three grades above established is hereby declared to be illegal, and its production, transportation and sale for human food is hereby prohibited. Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and punished as provided by law."

We call your attention to the above part of Section Three, "Three grades of cream are hereby established". Giving to the statute its plain and ordinary meaning, the word "established" means to set up, fix, determine, etc. This is the meaning that is ascribed to it by the terms of Section 655 R. S. Missouri 1929.

We find in the dairy law a complete scheme for the handling and classification of dairy products. No person or creamery may use a testing apparatus without a license therefor. The testing apparatus is primarily for the purpose of determining the percentage of fat. There would be no need of such regulatory statutes if there were no fixed standards or definitions of cream. Without the definitions of extra, first grade and second grade cream as contained in Section 12406 these other statutes relating to the licensing of testers, etc.,

"would be without life, mere sound and fury signifying nothing--the mischiefs would abide, the remedy be lost--".

Shohoney vs. Railroad Company, 231 Mo. 131, 1. c. 156.

When the legislature fixed these standards for cream it was clearly intended, for example, that cream which would curdle in hot water, tea or coffee was not to be classified as extra cream. It was equally true that by the definition of first grade cream the legislature intended to exclude therefrom cream which contained, among other things, less than 25% butter fat. If a cream does not contain among other things 25% butter fat it is not first grade cream. A cream containing only 23% butter fat cannot be purchased as first grade cream under the above statutory definition unless the person or creamery giving the Babcock test overreads the test itself and finds as a fact that the cream actually contains 25% butter fat. To so misread the tester is made a criminal offense by Section 12405. The true quality of the cream purchased must be found prior to purchasing and Section 12405 makes it a misdemeanor to purchase cream on any basis other than the true measurement as determined by a test.

The above and foregoing deals primarily with statutes passed under the police power of this state for the protection of the public. Similar regulatory laws have been upheld. In *St. Louis vs. Ameln* (1911), 139 S.W. 429, 235 Mo. 669, a city ordinance against the sale of adulterated milk--consisting of a mixture of milk and water--was upheld. A similar ordinance was upheld forbidding coloring of milk and cream. City of *St. Louis vs. Polinsky* (1905) 89 S.W. 625, 190 Mo. 516. In *City of St. Louis vs. Renter*, (1905), 89 S.W. 628, an ordinance forbidding the sale of cream containing less than 12% butter fat was held to be a valid exercise of police power. In *Hutchinson Ice Cream Company vs. State of Iowa*, (1916), 242 U.S. 153, an Iowa law forbidding the sale or offering for sale of ice cream not containing butter fat in reasonable proportion was held to be a valid exercise of the state police power. Kansas City by ordinance prohibited the sale of skimmed milk. *City of Kansas City vs. Cook*, 38 Mo. App. 660.

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The primary object of such legislation is to secure pure food and to prevent fraud, deception and deceit. State vs. Packing Company (1904), 124 Iowa 323, l. c. 328; State vs. Holton, Gray and Company, (1910), 148 Iowa 724; Day-Bergwell Company vs. State, 190 Wis. 8. When a creamery advises its customers that they are purchasing extra cream or that extra cream has been used in the making of some product the public are entitled to rely upon the fact that such cream is "sweet cream suitable for table use and such as will not curdle in hot water, tea or coffee." This is the standard which the legislature says that the public are entitled to rely upon. To sell to the public or use in the manufacture of a product first grade cream under the representation that extra grade cream is being sold or has been used would amount to fraud, deception and deceit on the part of the seller which the legislature possesses full power to prevent. People vs. William-Henning Company (1913) 260 Ill. 554.

CONCLUSION

It is therefore the opinion of this office that the State Dairy Law requires that cream be bought or sold on a graded basis after a test by a competent operator of a testing machine.

It is further the opinion of this office that all cream bought and sold must be on the quality basis as defined by the statute, and that the statutory definitions of extra, first grade and second grade cream are but the minimum standards.

Respectfully submitted,

FRANKLIN E. REAGAN,
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APPROVED:

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