

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 698

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4/29
DATE FOR REVIEW 5/7
DATE DUE 5/13

Adopted w/a hearing ____
Adopted w/o a hearing X
Temporary rule ____

Approved ✓ Disapproved ____ Returned to Agency 5/11

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 5/8

✓ Rule as Adopted

✓ Rule as Proposed see SR. copy

✓ Order Adopting 4.28.81

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking See SR copy.
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
3.20.81 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
3.23.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes ~~transcript or tape, exhibits, comments received by agency, requests for a hearing,~~ and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General
see transmittal memo — no requests rec'd.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK W. SEETIN
Commissioner

DATE: May 11, 1981

ATTN : Jon K. Murphy

FROM : H. Theodore Grindal HTG
Special Assistant
Attorney General

PHONE: 6-1288

SUBJECT: In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149 - 1167)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

HTG:rg
Enc.
cc: Susan Robertson
Duane Harves

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Jerry Anderson
Special Assistant Attorney General
Office of the Attorney General

DATE: April 28, 1981

FROM : Gerald Heil, Director GH
Division of Planning

PHONE: 296-1486

SUBJECT: Proposed Amendments to the Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

There are four major amendments proposed to the present rules of this Department governing requirements for the identity, production and processing of Grade A milk products. One clarifies the specific authority for adopting these rules and three relate directly to incorporating the updated federal Grade A Pasteurized Milk Ordinance Recommendations. Several minor grammatical and technical amendments were also made. One change was made between the Rule as Proposed and the Rule as Adopted, as explained in the Findings of Fact and Conclusions document included herein, due to a typographical error in the material submitted to the State Register for publication. (In relation to that, the Statement of Need and Reasonableness, developed prior to the publication of the Notice in the State Register, retains the typographical error.)

Several documents are being submitted as one of the final steps in amending these rules. A list of these documents is attached. Please note that the Notice of Intent to Adopt Rules Without a Public Hearing and the Rules as Proposed appear together as published in the State Register. The list also includes three federal documents: the 1978 Grade A Pasteurized Milk Ordinance, its Supplement and a portion of the Code of Federal Regulations, Title 21. Since no person requested to be notified when these documents were submitted to the Office of the Attorney General, no Notice of Submission nor Affidavit of Mailing such Notice are part of this record. Furthermore, no written comments on these proposed amendments were received at any time - neither during the solicitation of outside opinion nor during the 30-day comment period subsequent to the publication of the Notice of Intent to Adopt Rules Without a Public Hearing in the State Register. Thus, no written comments from the public are included in this record.

If you have any questions, please call me.

GH:dw

Attachment

Enclosure

RECEIVED
APR 29 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

April 28, 1981

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and 3 copies).

B. Order Adopting Rules (2 copies).

C. Notice of Intent to Solicit Outside Opinion (1 copy).

D. Order for Notice of Intent to Adopt a Rule Without Public Hearing (1 copy).

E. Notice of Intent to Adopt a Rule Without Public Hearing (1 copy).

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (1 copy).

G. Mailing List Certificate (1 copy).

H. Rule as Proposed (1 copy).

I. Findings of Fact and Conclusions (1 copy).

J. Statement of Need and Reasonableness (1 copy).

K. Certificate of Compliance with Rulemaking Procedures (1 copy).

L. Code of Federal Regulations, Title 21, Sections 133.128-133.131.

M. Grade A Pasteurized Milk Ordinance - 1978 Recommendations.

N. Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations.

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Amendments to the Rules of the Minnesota Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47:AGR 1149-1167).

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes section 15.0412, subdivision 4, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 1:00 p.m., this 20th day of March, 1981.

Gerald J. Heil

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Amendments to the Rules of
the Department of Agriculture
Governing Grade A Requirements
for Milk, Milk Products and
Goat Milk (Chapter 47: AGR
1149-1167)

FINDINGS OF FACT
AND CONCLUSIONS

The non-controversial rule promulgation procedure of Minnesota Statutes section 15.0412, subdivision 4(h) has been followed in the above-entitled matter. Proper notice was served upon all persons, associations, and other interested groups registered with the Department of Agriculture and notice was also published in the State Register.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having afforded interested persons the opportunity to call for a public hearing, having heard all of the testimony, having considered all of the evidence adduced upon the records, files and proceedings herein, I find the following:

It was necessary to make one change between the Rule as Proposed and the Rule as Adopted in 3 MCAR S 1.1151. In the present Rules and Regulations of the Department of Agriculture, "egg nog flavored milk" is a defined milk product (Chapter 42: AGR 1000 and AGR 1005) which must be pasteurized in accordance with Chapter 42: AGR 1007 at a slightly higher temperature than most milk products because of its added sweetener. The second pasteurization process for egg nog flavored milk in the present rule requires a temperature of 166°F. and a length of time of 15 seconds. Thus, the present, recognized standard is 15 seconds. There was a typographical error in the material submitted for publication in the State Register. Because of that, the Rule as Proposed included the error of 16 seconds, and the Rule as Adopted includes the correct and present standard of 15 seconds. This change is reasonable because 16 seconds was an error originally and necessary because it retains the present, appropriate standard for the pasteurization of egg nog flavored milk.

There have been no comments received on the proposed amendments to the rules during the solicitation of outside opinion period, nor during the 30-day comment period subsequent to the Notice of Intent to Adopt Rules Without a Public Hearing. There have been no requests for a public hearing. I have concluded therefrom that the

proposed amendments to the rules are necessary and reasonable and that they are in the long-term best interests of the State of Minnesota. Therefore, I order the adoption of these rules, as evidenced by the Order Adopting Rules submitted with this record.

STATE OF MINNESOTA

DATE: April 28, 1981

COMMISSIONER OF AGRICULTURE

In the Matter of the Proposed Amendments to the Rules of the Minnesota Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47:AGR 1149-1167).

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joyce Walkosz, being first duly sworn, deposes and says:

That on the 20th day of March, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Amend Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Joyce Walkosz

Subscribed and sworn to before me this 30th day of March, 1981.

Janet E. Gruening

JANET E. GRUENING
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 6, 1983.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47:AGR 1149-1167)	))))	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 6th day of March, 1981, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Mark W. Seetin

COMMISSIONER OF AGRICULTURE

STATE CONTRACTS

The Request for Proposal guidelines to be used in the preparation of an application are available *upon written request* from the address listed below. Deadline for the receipt of applications is Thursday, May 31, 1979 (whether postmarked or hand-carried). To obtain a Request for Proposal packet, please write to:

Case Management RFP
Developmental Disabilities Planning Office
State Planning Agency — Room 200
Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Dairy Industries Division

Notice of Intent to Solicit Outside Opinion Regarding Amendment of Rules Governing Grade A Milk & Grade A Milk Products Requirements, and the Certification Program for Milk Laboratories

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of amending rules governing grade A milk requirements and certified milk laboratories.

In order to adequately determine the nature and utility of such amendments, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed amendments.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing.

Written statements of information and comment may be addressed to:

Orlowe Osten, Director
Minnesota Department of Agriculture
Dairy Industries Division
530 State Office Building
Saint Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-3647, and in person at the above address.

All statements of information and comment must be received by 4:30 p.m., July 1, 1979. Any written material received by the department shall become part of the hearing record.

The proposed amendments, if adopted, would amend Department of Agriculture rules chapters 47 and 57 by adopting by reference the recently revised "Grade A Pasteurized Milk Ordinance," "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey" Sanitation Ordinance and "Evaluation of Milk Laboratories" as recommended by the United States Public Health Service/ Food and Drug Administration.

April 16, 1979

Mark W. Seetin
Commissioner

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Dairy Industries Division

Proposed Amendments to Rules Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt amendments to the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these amendments to the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 32.394, subdivision 4. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments to the rules and identifies the data and information relied upon to support the proposed amendments to the rules has been prepared and is available from Mr. Heil upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Heil.

The amendments are proposed in order to adopt an updated version of the federal standard for the identity, production, and processing of Grade A milk, milk products, and goat milk. The 1965 Recommendations of this federal standard, the Grade A Pasteurized Milk Ordinance, are currently used in Minnesota. The proposed amendments would incorporate the 1978 Recommendations of the Grade A Pasteurized Milk Ordinance, identify for Grade A designation in Minnesota milk products included in Supplement I to the 1978 Recommendations, and make minor technical and grammatical changes. If adopted, the

proposed amendments to the rules would assure continued interstate acceptance of Minnesota milk and milk products and assure consumers an adequate supply of safe and wholesome Grade A milk, milk products, and goat milk.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this Notice and proposed amendments to the rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

Mark W. Seetin
Commissioner of Agriculture

Amendments as Proposed

3 MCAR § 1.1149 Purpose and authority.

A. Purpose. A regulation defining "milk", "condensed milk," "dry milk products," "condensed whey," "dry whey," "cottage cheese," and certain "milk products," "milk producer," "pasteurization," etc.; prohibiting the sale of adulterated and misbranded milk and milk products; requiring permits for the sale of Grade A milk and Grade A milk products; regulating the inspection of Grade A dairy farms and Grade A milk plants, the examination, grading, labeling, pasteurization, distribution and sale of Grade A milk and Grade A milk products; providing for the construction of future Grade A dairies and Grade A milk plants, and the enforcement of this regulation. ~~and the fixing of penalties.~~

B. Authority. The rules contained herein are prescribed pursuant to Minn. Stat. § 32.394, subd. 4 by the commissioner to provide regulations regarding the identity, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

C. Definitions. As used in 3 MCAR § 1.1149 through 3 MCAR § 1.1167, the following definitions shall apply:

1. "Regulatory agency" shall mean the commissioner of the Minnesota Department of Agriculture.

2. "Grade A Pasteurized Milk Ordinance" shall mean the "Grade A Pasteurized Milk Ordinance—1978 Recommendations" and the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey—Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations", including all footnotes and appendixes, standards of the United States Public Health Service/Food and Drug Administration. A copy of this ordinance shall be filed in the office of the regulatory agency.

3 MCAR § 1.1150 ~~Agr 1149~~ Enforcement. The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products intended to bear the Grade A label and sold for ultimate consumption within the state of Minnesota, including the inspection of dairy herds, dairy farms, milk plants, receiving stations and transfer stations and the issuing and revocation of permits to milk producers, haulers, distributors, milk plants, receiving stations and transfer stations, shall be regulated in accordance with the provisions of ~~Part II of~~ the 1978 Grade A Pasteurized Milk Ordinance, ~~1965 Recommendations of the U.S. Public Health Service,* including footnotes,~~ with the following exceptions:

A. ~~(a)~~ [Omit Sections 9, 16 and 17 in their entirety.]

~~(b) Omit footnote 2 as it relates to the definitions for cream, light cream, coffee cream, table cream, whipping cream, light whipping cream, heavy cream, heavy whipping cream, cottage cheese and creamed cottage cheese.~~

~~(c) Definitions for egg nog and egg nog flavored milk as set forth in Agr 1150 and Agr 1151 below shall be included in the definition of milk products (Section 1.0).~~

B. The definitions of egg nog flavored milk and cottage cheese as set forth in 3 MCAR § 1.1151 and 3 MCAR § 1.1152 below shall be included in the definition of milk products.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~Agr 1150 Egg Nog. "Egg Nog." Egg nog is a milk product consisting of a mixture of milk or milk product of at least 6.0 per cent butterfat, at least 1.0 per cent egg yolk solids, sweetener and flavoring, emulsifier and not over 0.5 per cent stabilizer may be added. Egg nog shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:~~

~~155°F. and held at or above this temperature for at least 30 minutes.~~

~~175°F. and held at or above this temperature for at least 25 seconds".~~

3 MCAR § 1.1151 ~~Agr 1151~~ Egg nog flavored milk. ~~"Egg nog flavored milk~~ Egg nog flavored milk is a milk product consisting of a mixture of at least 3.25 per cent butterfat, at least 0.5 per cent egg yolk solids, sweetener, and flavoring~~,~~. e Emulsifier and a maximum of 0.5 per cent stabilizer may be added~~"~~. Egg nog flavored milk shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

150° F. and held at or above this temperature for at least 30 minutes.

166° F. and held at or above this temperature for at least 16 seconds.

3 MCAR § 1.1152 Cottage cheese defined.

A. Cottage cheese. Cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.128.

B. Dry curd cottage cheese. Dry curd cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.129.

C. Lowfat cottage cheese. Lowfat cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.131.

~~Agr 1152 Health Authority. "Health authority" as used herein shall mean the commissioner.~~

3 MCAR § 1.1153 ~~Agr 1153~~ Minimum requirements. All references herein to municipalities, municipal ordinances or police jurisdiction shall refer to the local subdivisions of state government having jurisdiction, provided such local ~~subdivision's~~ subdivisions' standards are not inconsistent herewith. In all other cases the provisions of this chapter shall apply and the state of Minnesota shall be the proper legal jurisdiction.

3 MCAR § 1.1154 ~~Agr 1154~~ Examination of milk and milk products. Sampling procedures and laboratory examinations ~~as set forth in Section 6~~ shall be in substantial compliance with the ~~Eleventh~~ Fourteenth Edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association, and the ~~Tenth~~ Thirteenth Edition of Official Methods of Analysis of the Association of Official ~~Agricultural~~ Analytical Chemists.

~~Agr 1155 Unconstitutionality clause. The various provisions of this regulation shall be severable, and if any part or provision shall be held to be invalid, it shall not be held to invalidate any other part or provision thereof.~~

~~Agr 1156 Effective date. The regulation shall be effective July 1, 1967.~~

~~*A certified copy of the Grade A Pasteurized Milk Ordinance—1965 Recommendations of the U.S. Public Health Service shall be filed in the office of the Commissioner.~~

3 MCAR §§ 1.1155-1.1167 ~~Agr 1157-1167~~ [Reserved for future use.]

~~Filed 6-14-67~~

Department of Revenue
Property Equalization Division

Proposed Rules Governing the Apportionment of the Value of Railroad Operating Property to Counties and Taxing Districts

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State of Minnesota Department of Revenue proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be uncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the amendments to the above-entitled rules without a public hearing was published in the State Register on March 23, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on March 20, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that amendments to the rules identified as Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk are adopted this 28th day of April, 1981 pursuant to authority vested in me by Minnesota Statutes section 32.394, subdivision 4.

STATE OF MINNESOTA

COMMISSIONER OF AGRICULTURE

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
AMENDMENTS TO THE RULES OF THE)
DEPARTMENT OF AGRICULTURE) STATEMENT OF NEED
GOVERNING GRADE A REQUIREMENTS) AND REASONABLENESS
FOR MILK, MILK PRODUCTS AND)
GOAT MILK (Chapter 47: AGR)
1149-1167))

The above captioned rules are amendments to existing rules of the Department of Agriculture, Chapter 47: AGR 1149-1167.

The authority to adopt these rules arises from Minnesota Statutes Section 32.394, subdivision 4 relating to the identification, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

The State of Minnesota has actively participated for 25 years, and currently participates, in the voluntary, cooperative, State-U.S. Public Health Service Program of Certification of Interstate Milk Shippers. The Food and Drug Administration in 1978 joined the U.S. Public Health Service in providing standards for this certification program. These standards, contained in the federal Grade A Pasteurized Milk Ordinance - 1978 Recommendations and Supplement I, provided by these two agencies, are recognized by public health agencies, the milk industry and many others as the national uniform standard for milk sanitation. Forty-nine states participate in this certification program in order to facilitate the interstate shipment of Grade A milk and milk products, and insure an adequate supply of wholesome and safe Grade A milk and milk products for consumers. For these two reasons, Minnesota has participated in the

program since its inception, always adopting the federal Grade A Pasteurized Milk Ordinance by reference.

The Commissioner of the Department of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Laws 1980, Chapter 615, Section 7, codified as Minnesota Statutes Section 15.0412, subdivision 4h (1980).

The rules are presented in sections and portions of sections followed by explanations of the reasons and justifications of proposed changes. Some of the changes which have been made are grammatical and non-technical in nature, and no justification is provided for these in the text of this document.

AMENDMENTS AS PROPOSED

...The rules of the State of Minnesota governing the identity, production and processing of Grade A milk, milk products and goat milk are currently based on the federal rules contained in the Grade A Pasteurized Milk Ordinance. This Ordinance is the basic standard used in the voluntary, cooperative, State - U.S. Public Health Service Program of Certification of Interstate Milk Shippers. This program is nationally recognized and participated in by forty-nine states. This Ordinance is incorporated by reference in the Federal Specifications for procurement of milk and milk products; is used as the sanitary regulation for milk and milk products served on interstate carriers; and is recognized by public health agencies, the milk industry, and many others as a national standard for milk sanitation.

The State of Minnesota currently operates under the last federal Grade A Pasteurized Milk Ordinance which consists of Recommendations made in 1965. The 1978 Recommendations of the Grade A Pasteurized Milk Ordinance, which these amendments propose for adoption by the State of Minnesota, were adopted at the federal level after consultation with professional organizations of the dairy industry, particularly the National Conference of Interstate Milk Shippers. Additional consultation was undertaken by the Minnesota Department of Agriculture with members of the dairy industry in Minnesota regarding adoption of these amendments.

Much of the language of 3 MCAR SS 1.1149-1.1167 is the same or parallel to language which appeared in Agr 1149-1167. There are four major changes and several minor changes proposed for these rules. The major changes are (1) clarification of purpose and authority to provide these regulations, as well as definitions for terms used in the rules; (2) the addition of definitions for certain milk products for which technology has advanced since 1965 to allow for Grade A production and for which standards exist in the 1978 Grade A Pasteurized Milk Ordinance; (3) elimination of references to milk products included in the 1965 Recommendations, but not included in the 1978 Recommendations of the U.S. Public Health Service/Food and Drug Administration; and (4) the inclusion of definitions for cottage cheese, provided at the discretion of the state, pursuant to the federal 1978 Grade A Pasteurized Milk Ordinance Recommendations.

For the purposes of this Statement of Need and Reasonableness, the term "1978 Grade A Pasteurized Milk Ordinance" shall mean and include all of the following: the Grade A Pasteurized Milk Ordinance - 1978 Recommendations of the U.S. Public Health Service/Food and Drug Administration, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations, and all footnotes and appendixes to these two documents. This definition will shorten the somewhat lengthy titles for reference purposes.

3 MCAR S 1.1149 Purpose and Authority.

A. Purpose. A regulation defining "milk", "condensed milk", "dry milk products", "condensed whey", "dry whey", "cottage cheese", and certain "milk products", "milk producer", "pasteurization", etc.; prohibiting the sale of adulterated and misbranded milk and milk products; requiring permits for the sale of Grade A milk and Grade A milk products; regulating the inspection of Grade A dairy farms and Grade A milk plants, the examination, grading, labeling, pasteurization, distribution and sale of Grade A milk and Grade A milk products; providing for the construction of future Grade A dairies and Grade A milk plants, and the enforcement of this regulation. ~~and the fixing of penalties.~~

...The term "Purpose" has been added to clarify this section of the rules and for reference by authorities and readers of the rules. The terms "condensed milk", "dry milk products", "condensed whey", and "dry whey", are new language provided in order to include for Grade A designation these milk products for which standards appear for the first time in the 1978 Grade A Pasteurized Milk Ordinance. These milk products were not included in the 1965 Recommendations but are included in the 1978 Recommendations because the technology and equipment for their production and processing have advanced and improved to the point where Grade A products can be produced.

The term "cottage cheese" is new language which is included because the State of Minnesota wishes to grant this milk product Grade A designation in order to continue its acceptance in interstate commerce and assure consumers a wholesome and safe supply of cottage cheese. This milk product was not included in the 1965

Recommendations because the technology for its Grade A production was not enough advanced. A footnote to the 1978 Grade A Pasteurized Milk Ordinance indicates that regulating cottage cheese is a specific option of the regulatory agency, and the Commissioner of Agriculture has elected to exercise this option for reasons already mentioned.

The phrase "and the fixing of penalties" is deleted because the programs which utilize the 1978 Grade A Pasteurized Milk Ordinance in the State of Minnesota are voluntary and cooperative. The fixing of penalties was never intended to be included in this rule, as omission of Section 16 of the 1978 Grade A Pasteurized Milk Ordinance from these rules in 3 MCAR S 1.1150 below indicates.

B. Authority. The rules contained herein are prescribed pursuant to Minn. Stat. Sec. 32.394, Subd. 4 by the commissioner to provide regulations regarding the identity, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

...This section contains new language which sets forth the authority under the provisions of Minnesota Statutes Chapter 32, the law regarding Dairy Products, through which these rules may be promulgated.

C. Definitions. As used in 3 MCAR S 1.1149 through 3 MCAR S. 1.1167, the following definitions shall apply:

1. "Regulatory agency" shall mean the commissioner of the Minnesota Department of Agriculture.

2. "Grade A Pasteurized Milk Ordinance" shall mean the "Grade A Pasteurized Milk Ordinance - 1978 Recommendations" and the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations", including all footnotes and appendixes, standards of the United States Public Health Service/Food and Drug Administration. A copy of this ordinance shall be filed in the office of the regulatory agency.

...This section contains new language and is provided to clarify the terms used in these rules. The phrase "Grade A Pasteurized Milk Ordinance" is defined herein for two additional reasons. The first is that the Department of Agriculture wishes to include the entire 1978 Grade A Pasteurized Milk Ordinance in the proposed rules. The second reason is to simplify reference to the 1978 Grade A Pasteurized Milk Ordinance in the remaining parts of these rules.

~~Agr 1149~~ 3 MCAR S 1.1150 Enforcement. The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products intended to bear the Grade A label and sold for ultimate consumption within the state of Minnesota, including the inspection of dairy herds, dairy farms, milk plants, receiving stations and transfer stations and the issuing and revocation of permits to milk producers, haulers, distributors, milk plants, receiving stations and transfer stations, shall be regulated in accordance with the provisions of ~~Part II of~~ the 1978 Grade A Pasteurized Milk Ordinance, ~~1965 Recommendations of the U.S. Public Health Service, including footnotes,~~ with the following exceptions:

...This section makes explicit the intent of the Department that all milk and milk products produced in Minnesota which are intended to bear the Grade A label shall be regulated in accordance with the 1978 Grade A Pasteurized Milk Ordinance which replaces and supersedes the "Grade A Pasteurized Milk Ordinance - 1965 Recommendations" of the U.S. Public Health Service.

The 1978 revision of the Grade A Pasteurized Milk Ordinance herein referenced became the standard on which interstate shipment of Grade A milk and milk products are certified for interstate shipment on July 1, 1980. Its adoption by the State would insure an adequate supply of wholesome, safe milk and milk products for consumers. Additionally, its adoption would assure continued intrastate and interstate markets for Minnesota's Grade A dairy products. These markets provide a substantial contribution to the economic well-being of the state. In 1978, the Minnesota dairy industry contributed the largest share of the state's total farm marketing receipts, eighteen percent, surpassing receipts for corn, soybeans, cattle and hogs. Thus the state has a reasonable economic interest in adopting this national standard; and, in light of the

fact that much of the state's milk is sold outside of the state, the adoption of this interstate certification standard is also necessary.

~~(a)~~ A. Omit Sections 9, 16 and 17 in their entirety.

~~(b)--Omit-footnote-2-as-it-relates-to-the-definitions-for-cream,~~ ~~light-cream,-coffee-cream,-table-cream,-whipping-cream,-light-whipping~~ ~~cream,-heavy-cream,-heavy-whipping-cream,-cottage-cheese-and-creamed~~ ~~cottage-cheese.~~

...Section (b) is deleted because it is in part redundant. Six of the ten milk products listed in this section of the rules are no longer exceptions in the 1978 Grade A Pasteurized Milk Ordinance. In 1965, they were milk products which were only options for the regulatory agency to incorporate by reference because of the undeveloped state of technology for their Grade A production. In the 1978 Recommendations they are no longer options, but rather are included in the glossary of the defined milk products. Another product mentioned in this deleted portion, "cottage cheese", is defined in 3 MCAR S 1.1152. "Creamed cottage cheese" is deleted because it is redundant; it is the same product as cottage cheese, as defined in the Code of Federal Regulations. "Coffee cream" and "table cream" are deleted because the terminology is obsolete, they are no longer defined products in the Code of Federal Regulations, and they do not appear anywhere in the 1978 Grade A Pasteurized Milk Ordinance.

~~(c)--Definitions-for-egg-nog-and-egg-nog-flavored-milk-as-set-forth~~ ~~in-Agr-1150-and-Agr-1151-below-shall-be-included-in-the-definition-of~~ ~~milk-products-(Section-1.0).~~

...This section is deleted because "egg nog" is now a defined milk product in the 1978 Grade A Pasteurized Milk Ordinance. "Egg nog flavored milk" is defined in 3 MCAR S 1.1151 below.

B. The definitions of egg nog flavored milk and cottage cheese as set forth in 3 MCAR S 1.1151 and 3 MCAR S 1.1152 below shall be included in the definition of milk products.

...This section contains new language which clarifies the milk products which are exceptions to the 1978 Grade A Pasteurized Milk Ordinance, and ones which the State of

Minnesota wishes to define for inclusion in these proposed amendments to the rules.

~~Agr-1150-Egg-Nog.--"Egg-Nog----Egg-nog-is-a-milk-product-consisting-of-a mixture-of-milk-or-milk-product-of-at-least-6.0-per-cent-butterfat,-at least-1.0-per-cent-egg-yolk-solids,-sweetener-and-flavoring,-emulsifier and-not-over-0.5-per-cent-stabilizer-may-be-added.--Egg-nog-shall-be pasteurized-in-approved-and-properly-operating-equipment-so-that-every particle-is-heated-and-continuously-held-for-the-following-minimum specified-times-and-temperatures:~~

~~155-F.°and-held-at-or-above-this-temperature-for-at-least-30-minutes.~~

~~175-F.°and-held-at-or-above-this-temperature-for-at-least-25-seconds".~~

...This section of the rule is deleted because the specifications for the production and pasteurization of "egg nog" are included in the 1978 Grade A Pasteurized Milk Ordinance whereas they had not been included in the 1965 Grade A Pasteurized Milk Ordinance. Its continued inclusion in the rule would thus be redundant.

~~Agr-1151~~ 3 MCAR S 1.1151 Egg Nog Flavored Milk. ~~"Egg-nog-flavored-milk--~~ Egg nog flavored milk is a milk product consisting of a mixture of at least 3.25 per cent butterfat, at least 0.5 per cent egg yolk solids, sweetener, and flavoring~~,~~. e Emulsifier and a maximum of 0.5 per cent stabilizer may be added". Egg nog flavored milk shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

150°F. and held at or above this temperature for at least 30 minutes.

166°F. and held at or above this temperature for at least 16 seconds.

...This section contains new language describing the specifications for pasteurization of Grade A egg nog flavored milk to clarify the procedure for authorities and readers of the rules. In the 1965 Recommendations of the Grade A Pasteurized Milk Ordinance, "egg nog flavored milk" was a defined milk product, and that standard made explicit the required times and

temperatures for the pasteurization of milk products. Because egg nog flavored milk is a milk product with a sweetener added to it, higher pasteurization temperatures are required than those for milk itself.

In the 1978 Grade A Pasteurized Milk Ordinance, "egg nog flavored milk" is no longer a defined milk product. However, in Rules and Regulations of the Department of Agriculture, Chapter 42, Agr 1005, "egg nog flavored milk" is a defined milk product, and subject to the pasteurization requirements of Chapter 42, Agr 1007, which are the same as those which appear in the new language in this section. Thus, the federal 1978 Grade A Pasteurized Milk Ordinance has removed "egg nog flavored milk" from its list of defined milk products, but the State of Minnesota wishes to retain the definition for this milk product in order to allow it Grade A designation, and this section makes clear the requirements for its pasteurization.

3 MCAR S 1.1152 Cottage Cheese Defined.

A. Cottage Cheese. Cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.128.

B. Dry Curd Cottage Cheese. Dry curd cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.129.

C. Lowfat Cottage Cheese. Lowfat cottage cheese is that product defined in the "Code of Federal Regulations," Title 21, Section 133.131.

...The 1978 Grade A Pasteurized Milk Ordinance does not include cottage cheese in its definition list of "milk products" covered by the Ordinance. The Ordinance does direct, however, that communities wishing to regulate the production and processing of Grade A cottage cheese may do so by incorporating the definitions for such cottage cheese as presented in a footnote to the Ordinance. Because of the importance of these products in the State's interstate trade, and the need to assure an adequate supply of safe and wholesome milk and milk products to consumers, the communities of and the State of Minnesota wish to regulate cottage cheese intended to bear the Grade A label. Thus, this section of the rules incorporates these definitions for cottage cheese as provided in a footnote to the 1978 Grade A Pasteurized Milk Ordinance.

~~Agr-1152-Health-Authority.--"Health-Authority"-as-used-herein-shall-mean the-commissioner.~~

...This section is deleted because this definition no longer appears in the 1978 Grade A Pasteurized Milk Ordinance. Instead "regulatory agency" is defined in the 1978 Grade A Pasteurized Milk Ordinance to mean "the _____ of the _____ or his authorized representative. The term, 'regulatory agency', whenever it appears in this Ordinance shall mean the appropriate agency having jurisdiction and control over the matters embraced within this Ordinance." "Regulatory agency" for the purpose of this rule is defined in 3 MCAR S 1.1149 above.

~~Agr-1153~~ 3 MCAR S 1.1153 Minimum Requirements. All references herein to municipalities, municipal ordinances or police jurisdiction shall refer to the local subdivisions of state government having jurisdiction, provided such local ~~subdivision's~~ subdivisions' standards are not inconsistent herewith. In all other cases the provisions of this chapter shall apply and the state of Minnesota shall be the proper legal jurisdiction.

~~Agr-1154~~ 3 MCAR S 1.1154 Examination of Milk and Milk Products. Sampling procedures and laboratory examinations ~~as-set-forth-in-Section 6~~ shall be in substantial compliance with the ~~Eleventh~~ Fourteenth Edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association, and the ~~Tenth~~ Thirteenth Edition of Official Methods of Analysis of the Association of Official ~~Agricultural~~ Analytical Chemists.

...The proposed amendments in this section clarify the proper and most recent editions of the scientific manuals commonly accepted for use in the examination of milk and milk products.

The term "Agricultural" is changed to "Analytical" because the professional organization has changed its name since 1965 when the last Grade A Pasteurized Milk Ordinance was adopted by the State of Minnesota.

~~Agr-1155-Unconstitutionality-Clause.--The-various-provisions-of-this regulation-shall-be-severable,-and-if-any-part-or-provision-shall-be held-to-be-invalid,-it-shall-not-be-held-to-invalidate-any-other-part-or provision-thereof.~~

...This section is deleted because the 1978 Grade A Pasteurized Milk Ordinance contains similar language about "severability" in Section 18. Furthermore, this section is unnecessary to effectuate the purposes of the rule, since the courts have ultimate jurisdiction in the matter of severability.

~~Agr-1156-Effective-Date.--The-regulation-shall-be-effective-July-1,-1967.~~

...This section is deleted because the effective date of rules is now provided for by statute whereas it was not provided for when the rule was adopted in 1967.

~~*A-certified-copy-of-the-Grade-A-Pasteurized-Milk-Ordinance---1965 Recommendations-of-the-U.S.-Public-Health-Service-shall-be-filed-in-the office-of-the-Commissioner.~~

...This footnote has been deleted from this place in the rule because it has been incorporated into an earlier section of the rule, 3 MCAR S 1.1149 (C) (2).

~~Agr-1157-1167~~ 3 MCAR SS 1.1155-1.1167 Reserved for future use

~~Filed-6-14-67~~

...The filing date is an informational item in the present rules and was not an integral part of the rules. It is deleted because it is an antiquated and obsolete reference.

AG copy.

Department of Agriculture

Dairy Industries Division

Adopted Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (3 MCAR SS 1.1149-1.1167)

The rules published and proposed at State Register, Volume 5, Number 38, pp. 1481-1482, March 23, 1981 (5 S.R. 1481) are now adopted.

Rules as Adopted

3 MCAR S 1.1149 Purpose and authority.

A. Purpose. A regulation defining "milk", "condensed milk," "dry milk products," "condensed whey," "dry whey," "cottage cheese," and certain "milk products," "milk producer," "pasteurization," etc.; prohibiting the sale of adulterated and misbranded milk and milk products; requiring permits for the sale of Grade A milk and Grade A milk products; regulating the inspection of Grade A dairy farms and Grade A milk plants, the examination, grading, labeling, pasteurization, distribution and sale of Grade A milk and Grade A milk products; providing for the construction of future Grade A dairies and Grade A milk plants, and the enforcement of this regulation.

B. Authority. The rules contained herein are prescribed pursuant to Minn. Stat. S 32.394, subd. 4 by the commissioner to provide regulations regarding the identity, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

C. Definitions. As used in 3 MCAR S 1.1149 through 3 MCAR S 1.1167, the following definitions shall apply:

1. "Regulatory agency" shall mean the commissioner of the Minnesota Department of Agriculture.

2. "Grade A Pasteurized Milk Ordinance" shall mean the "Grade A Pasteurized Milk Ordinance - 1978 Recommendations" and the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement I to the Grade A Pasteurized Milk Ordinance 1978 Recommendations", including all footnotes and appendixes, standards of the United States Public Health Service/Food and Drug Administration. A copy of this ordinance shall be filed in the office of the regulatory agency.

3 MCAR S 1.1150 Enforcement. The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products intended to bear the Grade A label and sold for ultimate consumption within the state of Minnesota, including the inspection of dairy herds, dairy farms, milk plants, receiving stations and transfer stations and the issuing and revocation of permits to milk producers, haulers, distributors, milk plants, receiving stations and transfer stations, shall be regulated in accordance with the provisions of the 1978 Grade A Pasteurized Milk Ordinance, with the following exceptions:

A. [Omit Sections 9, 16 and 17 in their entirety.]

B. The definitions of egg nog flavored milk and cottage cheese as set forth in 3 MCAR S 1.1151 and 3 MCAR S 1.1152 below shall be included in the definition of milk products.

3 MCAR S 1.1151 Egg nog flavored milk. Egg nog flavored milk is a milk product consisting of a mixture of at least 3.25 per cent butterfat, at least 0.5 per cent egg yolk solids, sweetener, and flavoring. Emulsifier and a maximum of 0.5 per cent stabilizer may be added. Egg nog flavored milk shall be pasteurized in approved and properly operating equipment so that every particle is heated and continuously held for the following minimum specified times and temperatures:

150°F. and held at or above this temperature for at least 30 minutes.

166°F. and held at or above this temperature for at least ~~16~~ 15 seconds.

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Examination of Dairy Products of the American Public Health Association, and the Thirteenth Edition of Official Methods of Analysis of the Association of Official Analytical Chemists.

3 MCAR SS 1.1155-1.1167 [Reserved for future use.]

APPROVED AS TO FORM AND LEGALITY

May 8 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY H. Theodore Trinkel

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY – 8 1981
Joan Anderson Growe
Secretary of State
3:30 p.m.

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Grade A Requirements for Milk, Milk Products, and Goat Milk (Chapter 47: AGR 1149-1167)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jon K. Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Special Assistant Attorney General

Dated: 4/28/81

Department of Agriculture

Dairy Industries Division

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