

**Opinion No. 43-4284**

May 12, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Capt. R. F. Poston, Director, Div. Sanitary Engineer and Sanitation, Department of Public Health, Santa Fe, New Mexico. Attention of James M. Doughty, Jr., State Milk Sanitarian

We are in receipt of your request of recent date concerning certain questions arising out of the Department of Public Health's regulations regulating the labeling and grading of milk and milk products.

Your first question is as follows:

"Under the State regulations governing the grading and grade labeling of milk and milk products, is it required that recombined milk be given and show a grade label, assuming that the producer of this milk is using the State grading system on other products?"

Section 7 of these regulations provides that at least once every six months the health officer shall announce the grades of all milk and milk products delivered by all producers or distributors, if said milk is graded. If said milk is graded said grades shall be based upon the following standards, **the grading of milk products being identical with the grade of milk**, except that the bacterial standards shall be doubled in the case of cream and omitted in the case of sour cream, buttermilk and cultured buttermilk.

By virtue of this section authority is given to grade all milk products in the same manner that milk is graded, with the exceptions as set out.

It appears to me there can be no question that recombined milk is a milk product, in view of Section 1, Paragraph H of these regulations, which is as follows:

"Reconstituted or recombined milk is a product resulting from the combining of milk constituents with water, and which complies with the standards for milk fat and solids not fat of milk as defined herein."

Being a milk product by virtue of Section 7, supra, recombined milk should be graded as any other milk. Thus, since recombined milk is subject to be graded as a milk product, Section 4 of these rules requires that such recombined milk be given and show a grade label. This section is, in part, as follows:

"No milk or milk products sold, produced or offered for sale within the State of New Mexico by any person shall carry a label, device or design marked Grade A or Grade B or any other grade, statement, design or device regarding the safety, sanitary quality or food value of the contents of the container which is misleading or which does not meet

the requirements and specifications of these regulations set forth by the State Board of Public Health. All bottles, cans, packages and other containers enclosing milk or any milk product defined in these regulations shall be plainly labeled or marked with (1) the name of the contents as given in the definitions of these regulations; (2) the grade of the contents if said contents are graded under the provisions of these regulations; (3) the word 'pasteurized' only if the contents have been pasteurized; (4) the word 'raw' only if the contents are raw."

In view of the foregoing it is my opinion that the answer to your first question should be in the affirmative.

Your second question is as follows:

"Under the State regulations governing the grading and grade labeling of milk and milk products, is the requirement that all milk and milk products to be graded, shall come from herds or additions thereto which have been found free from Bang's disease, applicable only to milk or milk products carrying the grade "A" label, or to milk and milk products carrying any grade label?"

I have carefully examined Section 7 of these regulations, which deals with the question propounded by you. After a thorough examination of this entire section it has been impossible for me to determine with certainty just what the Department of Public Health intended by this regulation. The bacterial standard for grade A raw milk is set out, followed by the sanitary regulations under which milk must be produced to be grade A milk. As to grade B raw milk the only difference from the grade A milk is as to the bacterial count. As to grade C raw milk, however, the only provision is as follows:

"Grade C raw milk is raw milk which violates any of the requirements for grade B raw milk and which shall be plainly labeled 'cooking only'."

It would thus appear that if milk does not meet the standards for A or B milk with respect to the bacterial count or to the sanitary conditions under which milk was produced such milk would automatically be grade C milk, since the sanitary requirements are a part of the requirements for grade A, and consequently grade B, raw milk. It would, therefore, appear that milk produced from herds not found to be free from Bang's disease could be graded as grade C raw milk. However, since it is uncertain just what the Board intended by these regulations and since the Board can easily alter the regulations to clarify their intent and to make provision for the emergency conditions arising out of the war, I would rather not express my formal opinion on this question, but would suggest that this question be presented to them for their action.

By ROBERT W. WARD,

Asst. Atty. General