CHAPTER 3

Food Standards by Acts of Congress

Butter and Nonfat Dry Milk are two foods which have been defined by the Congress. The exact wording of the legislated definitions is quoted below. Although the basic definitions of Butter and of Nonfat Dry Milk have been enacted by Congress, the many details essential to broad understanding of the definitions, grades and enforcement of them have been assigned to administrative offices. Regulatory responsibilities have been delegated primarily to the U.S. Department of Agriculture and to the Food and Drug Administration.

Butter Law Enacted by Congress in 1923

The Act of March 4, 1923 (42 Stat. 1500), defines butter as:

For the purpose of this chapter “butter” shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and contains not less than 80 per centum by weight of milk fat, all tolerances being allowed for.

Butter Grades


Nonfat Dry Milk

The second food defined by Act of Congress is now officially named “nonfat dry milk.” Originally its common name was “skim milk powder.” To avoid the supposedly negative connotation of the word “skim” the Congress by legislation defined the product as “nonfat dry milk.” The
Congressional action of 1956 has been incorporated as a part of the Food, Drug, and Cosmetic Act, as amended. That section is here quoted in full:

Sec. 201c. Nonfat Dry Milk. The Act of July 2, 1956 (70 Stat. 486), defines nonfat dry milk as follows: ' * * * for the purposes of the Federal Food, Drug, and Cosmetic Act of June 26 sic, 1938 (ch. 675, sec. 1, 52 Stat. 1040) nonfat dry milk is the product resulting from the removal of fat and water from milk, and contains the lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which made. It contains not over 5 per centum by weight of moisture. The fat content is not over 1½ per centum by weight unless otherwise indicated.

'The term 'milk,' when used herein, means sweet milk of cows.'

The administration of the Nonfat Dry Milk Act is the responsibility of the Food and Drug Administration. Its regulation on this subject is at 21 CFR §18.540 which is quoted below:

§ 18.540 Dried skim milk, powdered skim milk, skim milk powder; identity. Dried skim milk, powdered skim milk, skim milk powder, is the food made by drying sweet skim milk. It contains not more than 5 per centum of moisture, * * *. The term 'skim milk' as used in this section means cow's milk from which the milk fat has been separated.

Note 70 Stat. 486, 21 U.S.C. 321c, provides a statutory definition for this food under the name 'nonfat dry milk.' (Note amended, 21 F.R. 6566, Aug. 31, 1956.)

It is emphasized here that liquid skim milk is not covered by the Congressional definition. Thus, in the trade, the liquid skim milk is still known and suitably labeled as "skim milk." One seldom, if ever, sees a bottle labeled "nonfat milk."

On May 23, 1962, Representative Pucinski, from the state of Illinois introduced a further Bill, HR 11881, to the 87th Congress. The proposed legislation would make it legal to add either, or both, vitamins A and D to Nonfat Dry Milk. The Bill is reproduced in the Appendix [A-9]. The objectives seem logical. Many persons consume whole milk with its inherent vitamin A to which addition of Vitamin D is technically and legally an accepted practice. Consumers who have changed over to skim milk in its naturally liquid form or to "Nonfat Dry Milk" for reconstitution might logically wish to obtain vitamins A and/or D in their purchases of nonfat milk. This Bill, if enacted,1 would permit addition of vitamins A and/or D to the dry product. No such legislation

1 There was no further action on HR 11881 and it automatically died, as of December 31, 1962. Substantially the same bill has been reintroduced in the 88th Congress, January 9, 1963, as HR 806 by Representative Pucinski of Illinois.
is needed for fluid skim milk because that decision is not presently governed by the Congress.

Bill HR 11881 points up again the impracticability of the Congress legislating the definitions of specific foods. That responsibility is best handled by administrative branches of the federal government. Both butter and nonfat dry milk might likely be consumed in greater quantities if standards could be readily adjusted to current needs and to expert scientific judgment and, incidentally, the legislative load on the Congress might also be lightened.

Filled Milk Prohibited

Contrasting with the legislated definition of butter and of nonfat dry milk, one food has been legislatively outlawed by an act of Congress. It is "filled milk," a composite product in which the fat content has been increased or substituted in specified dairy products by addition or substitution of any fat or oil other than milk fat. The law on this is in 21 U.S.C.A. § 61(c). Several paragraphs there set forth the Filled Milk Act of 1923. Of these, the first paragraph will suffice here to provide the intent and the nature of the law. It states:

The term 'filled milk' means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated.