

§ 135.130 Mellorine.

(a) *Description.* (1) Mellorine is a food produced by freezing, while stirring, a pasteurized mix consisting of safe and suitable ingredients including, but not limited to, milk-derived nonfat solids and animal or vegetable fat, or both, only part of which may be milkfat. Mellorine is sweetened with nutritive carbohydrate sweetener and is characterized by the addition of flavoring ingredients.

(2) Mellorine contains not less than 1.6 pounds of total solids to the gallon, and weighs not less than 4.5 pounds to the gallon. Mellorine contains not less than 6 percent fat and 2.7 percent protein having a protein efficiency ratio (PER) not less than that of whole milk protein (108 percent of casein) by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content of the finished food be less than 4.8 percent or the protein content be less than 2.2 percent. The protein to meet the minimum protein requirements shall be provided by milk solids, not fat and/or other milk-derived ingredients.

(3) When calculating the minimum amount of milkfat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

(b) *Fortification.* Vitamin A is present in a quantity which will ensure that 40 international units (IU) are available for each gram of fat in mellorine, within limits of good manufacturing practice.

(c) *Methods of analysis.* Fat and protein content, and the PER shall be determined by following the methods contained in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980),

which is incorporated by reference. Copies may be obtained from the AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(1) Fat content shall be determined by the method: "Fat, Roesse-Gottlieb Method—Official Final Action," section 16.287.

(2) Protein content shall be determined by one of the following methods: "Nitrogen—Official Final Action," Kjeldahl Method, section 16.285, or Dye Binding Method, section 16.286.

(3) PER shall be determined by the method: "Biological Evaluation of Protein Quality—Official Final Action," sections 43.212–43.216.

(d) *Nomenclature.* The name of the food is "mellorine". The name of the food on the label shall be accompanied by a declaration indicating the presence of characterizing flavoring in the same manner as is specified in § 135.110(c).

(e) *Label declaration.* Each of the ingredients used shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter, except that sources of milkfat or milk solids not fat may be declared in descending order of predominance either by the use of the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in § 101.4(b)(3), (b)(4), (b)(8), and (b)(9) of this chapter are used, or alternatively as permitted in § 101.4 of this chapter.

[42 FR 19137, Apr. 12, 1977, as amended at 47 FR 11826, Mar. 19, 1982; 49 FR 10096, Mar. 19, 1984; 54 FR 24894, June 12, 1989; 58 FR 2896, Jan. 6, 1993; 63 FR 14035, Mar. 24, 1998]

§ 135.140 Sherbet.

(a) *Description.* (1) Sherbet is a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in paragraph (b) of this section, and may contain one or more of the optional caseinates specified in

paragraph (c) of this section subject to the conditions hereinafter set forth, and other safe and suitable nonmilk-derived ingredients; and excluding other food fats, except such as are added in small amounts to accomplish specific functions or are natural components of flavoring ingredients used. Sherbet is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of one or more of the characterizing fruit ingredients specified in paragraph (d) of this section or one or more of the nonfruit-characterizing ingredients specified in paragraph (e) of this section.

(2) Sherbet weighs not less than 6 pounds to the gallon. The milkfat content is not less than 1 percent nor more than 2 percent, the nonfat milk-derived solids content not less than 1 percent, and the total milk or milk-derived solids content is not less than 2 percent nor more than 5 percent by weight of the finished food. Sherbet that is characterized by a fruit ingredient shall have a titratable acidity, calculated as lactic acid, of not less than 0.35 percent.

(b) *Optional dairy ingredients.* The optional dairy ingredients referred to in paragraph (a) of this section are: Cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, superheated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, and whey and those modified whey products (e.g., reduced lactose whey, reduced minerals whey, and whey protein concentrate) that have been determined by FDA to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a

total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent calculated as lactic acid. The term "milk" as used in this section means cow's milk.

(c) *Optional caseinates.* The optional caseinates referred to in paragraph (a) of this section which may be added to sherbet mix are: Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, and sodium caseinate. Caseinates may be added in liquid or dry form, but must be free of excess alkali, such caseinates are not considered to be milk solids.

(d) *Optional fruit-characterizing ingredients.* The optional fruit-characterizing ingredients referred to in paragraph (a) of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, or partially or wholly dried. The fruit may be thickened with pectin or other optional ingredients. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. It may be acidulated. In the case of concentrated fruit or fruit juices, from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juices, cold-pressed citrus oil may be added thereto in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that, in relation to the weight of the finished sherbet, the weight of fruit or fruit juice, as the case may be (including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content), is not less than 2 percent in the case of citrus sherbets, 6 percent in the case of berry sherbets, and 10 percent in the case of sherbets prepared with other fruits. For the purpose of

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this section, tomatoes and rhubarb are considered as kinds of fruit.

(e) *Optional nonfruit characterizing ingredients.* The optional nonfruit characterizing ingredients referred to in paragraph (a) of this section include but are not limited to the following:

(1) Ground spice or infusion of coffee or tea.

(2) Chocolate or cocoa, including sirup.

(3) Confectionery.

(4) Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the sherbet.

(5) Any natural or artificial food flavoring (except any having a characteristic fruit or fruit-like flavor).

(f) *Nomenclature.* (1) The name of each sherbet is as follows:

(i) The name of each fruit sherbet is “_____ sherbet”, the blank being filled in with the common name of the fruit or fruits from which the fruit ingredients used are obtained. When the names of two or more fruits are included, such names shall be arranged in order of predominance, if any, by weight of the respective fruit ingredients used.

(ii) The name of each nonfruit sherbet is “_____ sherbet”, the blank being filled in with the common or usual name or names of the characterizing flavor or flavors; for example, “peppermint”, except that if the characterizing flavor used is vanilla, the name of the food is “_____ sherbet”, the blank being filled in as specified by § 135.110(e) (2) and (5)(i).

(2) When the optional ingredients, artificial flavoring, or artificial coloring are used in sherbet, they shall be named on the label as follows:

(i) If the flavoring ingredient or ingredients consists exclusively of artificial flavoring, the label designation shall be “artificially flavored”.

(ii) If the flavoring ingredients are a combination of natural and artificial flavors, the label designation shall be “artificial and natural flavoring added”.

(iii) The label shall designate artificial coloring by the statement “artificially colored”, “artificial coloring added”, “with added artificial coloring”, or “_____, an artificial color

added”, the blank being filled in with the name of the artificial coloring used.

(g) *Characterizing flavor(s).* Wherever there appears on the label any representation as to the characterizing flavor or flavors of the food and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by paragraph (f)(2) (i) and (ii) of this section, as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter (except that the word “sherbet” may intervene) in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6-point on packages containing less than 1 pint, not less than 8-point on packages containing at least 1 pint but less than one-half gallon, not less than 10-point on packages containing at least one-half gallon but less than 1 gallon, and not less than 12-point on packages containing 1 gallon or over.

(h) *Display of statements required by paragraph (f)(2).* Except as specified in paragraph (g) of this section, the statements required by paragraph (f)(2) of this section shall be set forth on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(i) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

[43 FR 4599, Feb. 3, 1978, as amended at 46 FR 44434, Sept. 4, 1981; 58 FR 2896, Jan. 6, 1993]

§ 135.160 Water ices.

(a) *Description.* Water ices are the foods each of which is prepared from the same ingredients and in the same manner prescribed in § 135.140 for sherbets, except that the mix need not be pasteurized, and complies with all the provisions of § 135.140 (including the requirements for label statement of ingredients), except that no milk or milk-derived ingredient and no egg ingredient, other than egg white, is used.