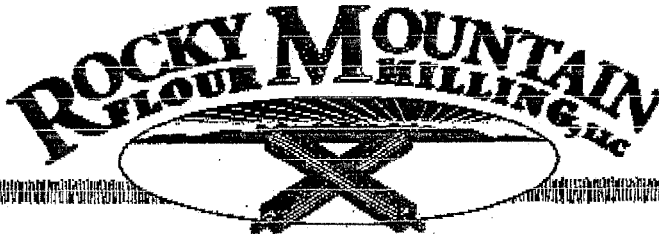


400 Platte Street
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Phone: (970) 785-2794
FAX: (970) 785-0575

Mr. Henry Kim
FDA
(202) 260-0631

RECEIVED
8-21-97
HSK

August 20, 1997

Dear Mr. Kim:

Per our phone conversation of August 15, 1997, could you please summarize in writing our discussion regarding flour enrichment issues. In particular, please address how the Nutrition Labeling and Education Act of 1990 (NLEA) affects federal preemption over state laws for products that have a standard of identity.

The concern of Rocky Mountain Flour Milling's is whether or not it is necessary to enrich organic wheat flour in all states. Certain states have laws stating that is unlawful to sell unenriched flour in their state. However, our competitors are selling unenriched flour; Rocky Mountain Flour Milling will do the same, but only when we are sure that it is legal to sell unenriched flour in all states.

Thank you for your prompt attention to this matter.

Sincerely,

Lisa Curran
Executive Vice President Quality Assurance

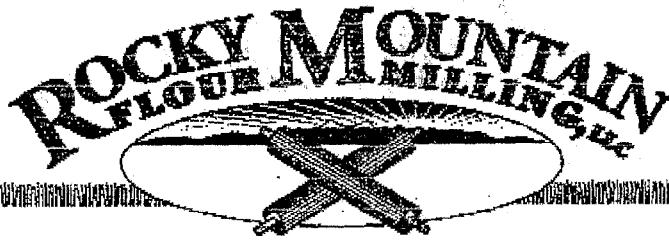
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FAX

Date 8/14
No. of pages including this page 4

To: Henry Kim

From: Lisa Curran

Phone: _____

Phone: 970-785-2794

Fax: 202-205-4422

Fax: 970-785-0575

CC: _____

Remarks:

Per our phone conversation.

*Thanks,
Lisa*

25-2-19. NEW MEXICO PUBLIC HEALTH LABORATORY TO SERVE AS TESTING LABORATORY. - The New Mexico public health laboratory shall serve as the testing laboratory for samples collected for examination pursuant to the provisions of this act [25-2-1 to 25-2-19 NMSA 1978].

FLOUR AND BREAD ENRICHMENT ACT

25-5-1. [ENRICHMENT OF FLOUR AND BREAD] DEFINITIONS. - As used in the Flour and Bread Act, unless the context otherwise requires:

A. "flour" means foods commonly known in the milling and baking industries as:

- (1) white flour, also known as wheat flour or plain flour;
- (2) bromated flour;
- (3) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and
- (4) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake, pancake and pastry flours;

B. "white bread" means any bread made with flour as defined in Subsection A of this section, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread and Italian bread;

C. "rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls such as hamburger rolls, hot dog rolls and Parker House rolls and hard rolls such as Vienna rolls and kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings such as cinnamon rolls or buns and butterfly rolls;

D. "board" means the environmental improvement board;

E. "director" means the director of the division or his authorized representative;

F. "division" means the environmental improvement division of the health and environment department; and

G. "person" means an individual, corporation, partnership, association, joint stock company, trust or any group of persons whether incorporated or not engaged in the commercial manufacture or sale of flour, white bread or rolls.

25-5-1.1. SHORT TITLE. - Sections 25-5-1 through 25-5-9 NMSA 1978 may be cited as the "Flour and Bread Act".

25-5-2. MANUFACTURE OR SALE OF UNENRICHED FLOUR UNLAWFUL. - It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour (as defined in Section 1 [25-5-1 NMSA 1978]) unless the following vitamins and minerals are contained in each pound of flour: Not less than two [2] milligrams and not more than two and one-half [2½] milligrams of thiamine; not less than one and two-tenths [1.2] milligrams and not more than one and one-half [1½] milligrams of riboflavin; not less than sixteen [16] milligrams and not more than twenty [20] milligrams of niacin or niacin-amide; not less than thirteen [13] milligrams and not more than sixteen

and one half [18½] milligrams of iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than five hundred [500] milligrams and not more than fifteen hundred [1500] milligrams of calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the board shall by regulation prescribe, certifying that such flour will be (1) resold to a distributor, baker to other processor, or (2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this act or (3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any such purchaser so furnishing any such certificates to use or resell the flour so purchased in any manner other than as prescribed in this section.

25-5-3. MANUFACTURE OR SALE OF BREAD AND ROLLS FROM UNENRICHED FLOUR UNLAWFUL. - It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls (as defined in Section 1 [25-5-1 NMSA 1978]) unless the following vitamins and minerals are contained in each pound of such bread or rolls: Not less than one and one-tenth [1.1] milligrams and not more than one and eight-tenths [1.8] milligrams of thiamine; not less than seven-tenths [0.7] milligrams and not more than one and six-tenths [1.6] milligrams of riboflavin; not less than ten [10] milligrams and not more than fifteen [15] milligrams of niacin; not less than eight [8] milligrams and not more than twelve and one-half [12½] milligrams of iron (Fe).

25-5-4. DIVISION - DUTY TO ENFORCE. - The division is hereby charged with the duty of enforcing the provisions of the Flour and Bread Act and rules, regulations and orders of the board promulgated pursuant to the Flour and Bread Act.

25-5-5. BOARD - REVISION OF REQUIREMENTS. -

A. Whenever the vitamin and mineral requirements set forth in Sections 25-5-2 and 25-5-3 NMSA 1978 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the board, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of the Flour and Bread Act, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments.

B. In promulgating regulations pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978.

25-5-6. BOARD - POWER TO ADJUST IN CASE OF SHORTAGE. -

A. In the event of findings by the board that there is an existing or imminent shortage of any ingredient required by Section 25-5-2 or 25-5-3 NMSA 1978 and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of the Flour and Bread Act, the board shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls and, if it finds it necessary or appropriate, excepting such foods from labeling requirements until the further

order of the board. Any such findings may be made without hearings on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the board on its own motion may, and upon receiving the sworn statements of ten or more persons subject to the Flour and Bread Act that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence and shall make findings based upon the evidence presented. The board shall publish notice of any such hearing at least ten days prior thereto.

B. Whenever the board has reason to believe that such shortage no longer exists, it shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and it shall make findings based upon the evidence so presented. If its findings be that such shortage no longer exists, it shall issue an order to become effective not less than thirty days after publication thereof revoking such previous order; provided, however, that undisposed flour stocks of flour on hand at the effective date of such revocation order or flour manufactured prior to such effective date for sale in this state may thereafter be lawfully sold or disposed of.

C. In conducting hearings pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978, except for the number of days' notice required for such hearing.

25-5-7. PUBLICATION OF REGULATIONS. - All orders, rules and regulations adopted by the board pursuant to this act shall be published at least twice in at least one [1] daily newspaper of general circulation printed and published in this state, and shall become effective upon such date after publication as the board shall fix.

25-5-8. INSPECTION BY DIRECTOR. - For the purpose of the Flour and Bread Act, the director is authorized to take samples for analysis and to conduct examination and investigations and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held or any vehicle being used for the transportation thereof and to inspect any such place or vehicle and any flour, white bread or rolls therein and all pertinent equipment, materials, containers and labeling.

25-5-9. PENALTY. - Any person who violates any of the provisions of this act or the orders, rules or regulations promulgated by the board under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding five hundred dollars (\$500.00) or to imprisonment, not to exceed ninety [90] days.