



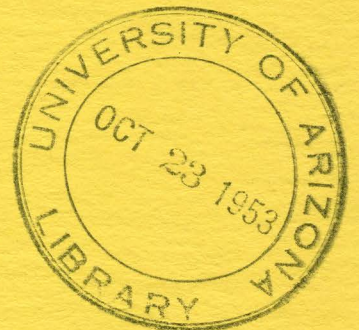
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# Restrictions On The Production And Interstate Distribution Of Margarine In The Eleven Western States



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RESTRICTIONS ON THE PRODUCTION AND INTERSTATE  
DISTRIBUTION OF MARGARINE IN THE  
ELEVEN WESTERN STATES

by

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## SUMMARY AND CONCLUSIONS

1. Interstate movement of margarine is restricted much less now by laws and regulations in the western states than prior to World War II. However, there are indications in other parts of the United States of a possible new trend toward extremely burdensome restrictions on margarine.
2. Many of the restrictions which still remain in the West are of the "nuisance" type which hamstring marketing and increase costs. Ultimately the consumer pays for all the confusion and expense caused by these restrictions.
3. Utah and Idaho have realized large revenue increases in recent years from their margarine excise taxes. Other states may impose or reimpose such taxes from their example. Formerly, excise taxes were practically prohibitive and generally yielded little revenue.
4. In California and Oregon restrictions on serving of margarine in public eating places are of most serious consequence.
5. Differences in the various state requirements regarding labeling of margarine containers increase the costs of packaging and distributing margarine. California labeling requirements are reported to be the most burdensome of any western state.
6. Removal of restrictive margarine legislation was accomplished almost entirely by court decisions prior to 1940. Since that time removal has been performed primarily by state legislatures.

RESTRICTIONS ON THE PRODUCTION AND INTERSTATE DISTRIBUTION OF  
MARGARINE IN THE ELEVEN WESTERN STATES <sup>1/</sup>

by J. S. Hillman and J. D. Rowell <sup>2/</sup>

INTRODUCTION

For several decades, laws and regulations relating to margarine and the margarine industry have provided "a classic example" of interstate trade barriers. However, margarine trade restrictions are not nearly so serious at present (1953) as they were prior to World War II, or even as late as 1950. The repeal of the Federal excise tax in 1950, and the repeal of numerous state taxes and coloring prohibitions have been instrumental in the removal of trade barriers.

Margarine production and consumption have increased steadily over the past two decades, but particularly since 1946. For example, per capita consumption of margarine in the United States increased from 2.4 pounds to 7.8 pounds per capita between 1940 and 1952, <sup>3/</sup> The removal of restrictions such as excise taxes and color prohibitions has been a principal factor in this increase. Other factors also are responsible for greater use of margarine. The large price differential between margarine and butter, the changes in quality of margarine, the improvements in packaging and labeling, and gradual disappearance of the social "stigma" of using margarine, all have led to its wider use.

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<sup>1/</sup> This is a publication of the University of Arizona Research and Marketing Project 300, a part of regional marketing project WM-9 under U.S. Public Law 733, states of Arizona, Utah, and Washington cooperating.

<sup>2/</sup> Department of Agricultural Economics, Arizona Agricultural Experiment Station,

<sup>3/</sup> Fats and Oils Situation, Bureau of Agricultural Economics, U.S. Department of Agriculture, Washington, D.C., April-May 1953.  
(Note--The 1952 figure of 7.8 pounds is preliminary).

Investigations have shown the two principal purposes of margarine legislation to be the prevention of fraud and the raising of revenue. There seems to be adequate justification for proper regulatory activities on margarine to prevent deception of the public. But a tax on the product to prevent fraud in its distribution seems questionable. While most taxes on margarine at one time produced revenue which was inconsequential, the taxes which remain have more recently shown a much greater yield. On the other hand, these taxes still burden the consumer, especially the low income consumer.

Until the late nineteen thirties the margarine laws which were enacted by the states tended to be severely restrictive. The general practice of the legislatures during these years was to go to extremes in restricting the margarine industry. And the courts were very lenient in upholding this type of legislation. As an example, see the case Magnano Co. v. Hamilton, 292 U.S. 40 (1943) in the State of Washington, in which a state excise tax of 15 cents per pound on all margarine was upheld by the U.S. Supreme Court even though the intention, in part, was to "protect the dairy industry."

Since 1940 the restrictive trend has been reversed with respect to margarine and it has been the legislatures and popular referenda instead of the courts to which the industry has looked for help. Various studies, writings and increased public interest in and demand for an inexpensive spread for bread were responsible for this shift.

In this publication the term "trade barrier" will mean any statutory or administrative measure or procedure, the effect or purpose of which is to obstruct the shipment of legitimate, healthful and honestly described margarine from one western state to market in another.

CURRENT RESTRICTIONS ON THE PRODUCTION AND DISTRIBUTION  
OF MARGARINE IN THE ELEVEN WESTERN STATES

Margarine restrictions in the West have been undergoing many changes during the past few years. A survey of the legislative activity in the eleven western states shows that two states--Montana and Washington--considered margarine legislation in 1952 and 1953. This legislation repealed or amended certain laws, rules or regulations which were compiled in Reports 109 and 110, Arizona Agricultural Experiment Station, <sup>1/</sup>

In Washington a public referendum was held in November, 1952. As a result the manufacture, transportation, hauling, possession, sale, use or serving of yellow margarine became legal December 4, 1952. This act repealed all the prohibitions on margarine except its use in state institutions.

In February, 1953, the Montana Code was amended to permit the sale of yellow margarine. Also changed by this legislation were provisions for labeling of margarine, provisions relative to the advertisement of margarine; provisions relative to the serving of margarine in state institutions; and provisions relative to margarine coloring matter and labeling terminology.

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<sup>1/</sup> "A Summary of Laws Relating to the Interstate Movement of Agricultural Products in the Eleven Western States," Arizona Agricultural Experiment Station Report No. 109, May, 1952, 105 pp.

"A Summary of Administrative Rules and Regulations Relating to the Interstate Movement of Agricultural Products in the Eleven Western States," Arizona Agricultural Experiment Station Report No. 110, February 1953, 107 pp.

The important question for this study is: Do the existing laws and regulations in the Western Region restrict interstate trade in margarine? In answering this question, an assumption will be made that the provisions of the Federal law on serving yellow margarine in public eating places are not unduly restrictive; therefore, where a state law follows the Federal law in this respect the state law is not considered unduly restrictive. With respect to the labeling provisions of state laws, if they are not in excess of Federal requirements they are not considered unduly restrictive.

The analysis will be broken down into four sections: (1) Prohibitions and exemptions; (2) taxes and licensing; (3) labeling and packaging requirements; and (4) other regulations.

#### Prohibitions and Exemptions

Several types of prohibitions affecting the margarine industry have been enacted by the eleven western states. The earliest of these was outright prohibition of manufacture and sale of the product. All were passed before 1900, and none exist today. The most common and most important prohibition until recently was the one which forbade the sale of yellow margarine. No western state has this type of law at present. Another type of legislation prohibits the serving of margarine in eating establishments and in state institutions. Various other prohibitions have arisen in the production, distribution, and sale of margarine in the West, but today prohibitions are of smaller consequence than at any time in several decades.

Table 1 shows prohibitions relative to margarine which existed as of July 1, 1953 in the eleven western states. The California prohibition on serving of colored margarine in public eating places is one of the most severe restrictions of this type remaining in the West. Hotels, restaurants, etc., are absolutely forbidden to serve the yellow product. Because a little over 50 percent of the population of the eleven western states is in California, any such law or regulation in California is about as important as for the other ten states combined.

Another type of prohibition is the restriction on use of margarine in charitable, state-owned or state-supported institutions. The typical industry attitude toward these restrictions is found in the following comment from a margarine manufacturer:

"The State of California, unfortunately, has a law forbidding the sale of margarine to any institutional account for resale. Margarine can be sold to government agencies, state agencies, penal institutions and hospitals providing they request it. We are not allowed to solicit margarine business from these institutions."

Probably of lesser consequence are the prohibitions on bulk containers of colored margarine in California and Wyoming. As one company puts it:

"This restriction is minor due to the fact customers may buy as many pounds as they wish regardless of whether it is a one-pound or two-pound size. Anything larger than the two-pound size is not essential."

Table 1. --Prohibitions on Margarine, Eleven Western States, July 1, 1953

State	Types of Prohibition
Arizona	None
California	Cannot serve yellow margarine in public eating places. No charitable or penal institution receiving state assistance may serve margarine except when proper request to do so is made. Sale of colored margarine is prohibited in containers over two pounds.
Colorado	None
Idaho	Margarine may not be purchased for use at public institutions, state or county.
Montana	Poisonous coloring matter prohibited.
Nevada	None
Oregon	None
Utah	Yellow imitation butter prohibited. This prohibition does not include yellow margarine which is properly labeled.
Washington	All margarine prohibited in state educational, charitable, medical, reformatory or penal institutions.
Wyoming	Sale of colored margarine prohibited in containers over one pound.



Exemptions from tax and bond requirements were more important during the years when taxes were high on margarine and when the ingredients of manufacture were largely of foreign origin. No exemption provisions exist in the following states: Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming.

Exemption is made in Colorado from an excise tax on margarine. In order to be exempt from the tax, the fat content of margarine must be derived from oleo oil, oleo stock, oleo stearine, neutral lard, milk fat, cottonseed oil, peanut oil, corn oil or soybean oil. Coconut oil is the major ingredient not listed and on which the tax must be paid. Most margarine is made from the list of exempt fats and oils and so is not subject to tax in Colorado.

The State of Utah levies an excise tax on margarine sold within the state. Stamps may be affixed to show that the tax has been paid. The State also requires a bond be posted by sellers of margarine. However, an "exemption" to the bond requirement is provided for those dealers who handle only margarine to which stamps have been affixed.

Exemption provisions have not been of much importance in recent margarine legislation.

### Taxes and Licenses

State excise taxes on margarine were introduced by California in 1925. This act became the model which set the pattern of most of the margarine legislation for the next 25 years. The original California tax was two cents per pound. However, Utah set the stage in 1929 for excise taxes of a much higher rate with a tax of 10 cents per pound on colored and five cents per pound on uncolored margarine. After this, numerous states levied taxes on margarine, many of which have been repealed since 1940.

Excise taxes have been of four groups: (1) taxes on colored margarine; (2) taxes on uncolored margarine; (3) taxes placed only on margarine made with vegetable oils; and (4) taxes on margarine made with foreign fats and oils. The supporters of those particular laws allege that the acts merely equalize the tax rate for margarine producers with that paid in other types of taxes by dairy farmers. <sup>1/</sup>

During the 1930's these taxes constituted one of the most serious barriers to the interstate movement of margarine. For example, the 15 cent tax on all margarine in the State of Washington was completely prohibitive. Its repeal in 1949 was one of the last actions taken by western state legislatures in this regard. Since 1940, two other western states-- New Mexico and Wyoming--have repealed the tax provisions of their margarine laws. Also, Colorado, during this period, repealed features of its tax which related to margarine manufactured from certain "domestic" oils. Although effective margarine taxes in the West are found in only two states, several states retain objectionable fee and bond requirements,

Table 2 shows the margarine taxes and license fees as of July 1, 1953.

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<sup>1/</sup> Melder, F. E., State and Local Barriers to Interstate Commerce in the United States, University of Maine Studies, Second Series, No. 43, 1937, p. 94.

Table 2. --Margarine License Fees and Taxes, Eleven Western States, July 1, 1953.

State	Taxes	License Fees, Etc., Per Annum
Arizona	None	None
California	None	Manufacturers, \$100; Wholesalers, \$50; Retailers, \$5; Restaurants, etc., \$2.
Colorado	10c per pound <sup>a/</sup>	Manufacturers, wholesalers and retailers, \$25 each,
Idaho	5c per pound on uncolored, 10c per pound on colored	Wholesalers, \$25; retailers, \$5, <sup>b/</sup>
Montana	None	Wholesalers, \$20 annually for each place of business; manufacturers, \$20 and up, <sup>c/</sup>
Nevada	None	None
New Mexico	None	None
Oregon	None	None
Utah	5c per pound on uncolored, 10c per pound on colored	All persons selling margarine must post bond of \$500, <sup>d/</sup> Those who handle unstamped margarine, \$1,000.
Washington	None	None
Wyoming	None	None

<sup>a/</sup> No tax levied on margarine the oil content of which is composed of oleo oil, oleo stock, oleo stearin, neutral lard, milk fat, cottonseed oil, peanut oil, corn oil or soybean oil.

<sup>b/</sup> Separate license required for each place of business in Idaho.

<sup>c/</sup> License fee of \$20 for the first 100,000 pounds of margarine manufactured; \$5 for each additional 100,000 or portion thereof.

<sup>d/</sup> Dealers handling only margarine with stamps affixed are exempt from bond requirement.

As seen in Table 2, the only effective tax laws exist in the States of Idaho and Utah, There seems to be little general justification remaining for these taxes aside from protection to the dairy industry and the raising of revenue in those states. The removal of these taxes would benefit consumers, particularly those with low incomes. These tax laws constitute two of the largest restrictions in the margarine trade in the West. The restrictive effect of the Utah tax is described by one margarine manufacturer as follows:

"This tax is the biggest nuisance we have because we have to stand the expense of purchasing these stamps from the state. They come in a roll and require the hiring of extra labor to unpack each case that is shipped into Utah in order to place the stamp on each pound. The margarine is then repacked and each case resealed and is made ready for shipment. We not only have our money tied up in ten cents a pound on a non-profit investment, but we must also collect the extra ten cents when the margarine is sold plus a labor cost of approximately one cent a pound from which we receive no return in packing the product."

Another producer writes:

"Of the eleven western states, the laws we consider to be trade barriers are those of Idaho and Utah which impose a 10c per pound tax and the lack of uniformity in administering this tax."

The revenue produced by margarine taxes is many times more than during the 1930's. For example, the Utah tax in the year ended December 31, 1939 yielded \$16,118,21, but in the fiscal year ended June 30, 1952 this same tax yielded \$574,100,90. And in Idaho corresponding margarine tax yields were \$417,00 and \$515,348,45. These huge increases were due primarily to the increased sales of margarine brought about by the widening price differential between margarine and butter, even when the tax was included on margarine. Also, the Federal-excise tax had been removed. And, since 1951, yellow margarine has been permitted in Idaho, and a greater volume of the colored product has been purchased. With these examples in Utah and Idaho, there may be a new "wave" of margarine taxes and increases in such taxes--to raise revenue--not to prevent fraud or to protect the dairy industry. In 1953 North Dakota raised its margarine taxes to 10 cents per pound on the uncolored product and 20 cents per pound on the colored product.

The Colorado tax is of little importance because all or nearly all of the margarine sold in the state in recent years has been manufactured from tax exempt fats and oils. According to the Colorado Public Expenditure Council:

"This provision (the exemption) nullifies for all practical purpose the excise tax,"

Table 2 also shows license fees and bond requirements for producers and handlers of margarine. California requires a license of all eating places which serve margarine. It should be pointed out that this California fee is on white margarine because yellow margarine is prohibited in public eating establishments.

It seems difficult to justify these fees from the standpoint of increased revenue or prevention of fraud. However, they create few serious interstate trade barriers. In all cases the fees are relatively small. In the West, manufacturers exist only in California, where there are eight. These eight margarine producers are sufficiently large not to be greatly restricted by the \$100 fee there. Margarine wholesalers and retailers do not seem to be severely restricted by the fees in the various states.

#### Labeling and Packaging Requirements

Nearly all of the early margarine legislation was passed "to prevent fraud." Coloring restrictions were used to accomplish this end. Also, the prevalent law required that the product be labeled or packaged so as not to be misleading to consumers.

Every state in the West except New Mexico has some type of labeling law. The restrictive feature of these laws derives not so much from the individual requirements which must be met as from the differences among the various state requirements. These differences work a hardship on margarine manufacturers who supply outlets in many states. If these states differ greatly in their laws and regulations on the packaging and labeling of margarine, costs may well be raised in the process of distribution. Ultimately the consumer pays these costs in the form of higher prices for margarine.

Labeling requirements existing in the west are of two general types. One type prevents the use of dairy terminology in the sale or advertisement of margarine. Generally speaking, margarine manufacturers consider these laws as redundant, and not unduly restrictive. Another type stipulates that the word and letter usage on containers meet certain specifications. Both, but especially the latter, tend to produce the general restrictive effects outlined above. For example, it was said to the authors of this study that:

"Laws requiring the word 'oleo' as a prefix and which do not grant the alternative 'margarine' in labeling or other usage are considered restrictive since they encourage an adverse psychological attitude toward the product, reminiscent of those periods and areas where the reference was a mark of social stigma,"

In Table 3 selected packaging and labeling requirements are enumerated for each of the eleven western states. Probably the most restrictive feature of these specifications is the various size of letters and types of print required on the label. A company describes one such situation this way:

"California has a law that requires special labeling. That----acts somewhat as a trade barrier as it requires special packages for sale of the product within the State."

It is possible that margarine labeling provisions may become more restrictive in the West. Recent examples of what seem to be a trend toward extremely burdensome labeling are shown by the Iowa and South Dakota laws. As of July 1, 1953 all margarine sold in Iowa must have the word "oleo" imprinted four times on each stick of margarine, and that which is sold in South Dakota must have the word "imitation butter" imprinted on each stick. One manufacturer, speaking of these two laws, says:

"This has imposed untold thousands of dollars in equipment expenditures in order to comply."

Packaging requirements are limited in scope and restrictiveness in the western states.

Table 3, --Some Important Provisions of Margarine Packaging and Labeling Requirements  
Eleven Western States, July 1, 1953.

State	Requirement
Arizona	<ol style="list-style-type: none"> <li>1. Dairy terminology forbidden in sale or advertisement of margarine.</li> <li>2. Margarine must be distinctly labeled for sale.</li> </ol>
California	<ol style="list-style-type: none"> <li>1. Top and sides of margarine packages must be labeled with word "oleomargarine" or "substitute for butter" in Roman type not less than 1 inch high and 1/2 inch wide.</li> <li>2. Name and address of manufacturer and list of ingredients must accompany each package.</li> <li>3. Word "colored" must be at least 3-1/8 inches in length on colored margarine package and in strong contrast to the color of the container.</li> <li>4. Dairy terminology forbidden in sale or advertisement of margarine.</li> </ol>
Colorado	<ol style="list-style-type: none"> <li>1. Word "oleomargarine" must appear in gothic letters at least 3/8 inches high, Ink used must be in strong contrast to rest of package.</li> <li>2. Name and address of manufacturer required.</li> </ol>
Idaho	<ol style="list-style-type: none"> <li>1. Word "oleomargarine" or "margarine" must appear on each separate package in at least 20-point type.</li> <li>2. Product may not be sold in containers over 1 pound and ingredients must be listed.</li> <li>3. Term "oleomargarine" or "margarine" must appear on label in lettering at least as large as any other wording.</li> </ol>
Montana	<ol style="list-style-type: none"> <li>1. Every package must be labeled "oleomargarine" with black letters 1/2 inch in height.</li> <li>2. Name of manufacturer and list of ingredients required on label.</li> <li>3. Dairy terminology forbidden in margarine advertising.</li> </ol>
Nevada	<ol style="list-style-type: none"> <li>1. Word "oleomargarine" must appear on all packages in at least 1/2 inch print.</li> <li>2. Each package must have net weight appear in letters not less than 1/4 inch.</li> </ol>
New Mexico	None.
Oregon	<ol style="list-style-type: none"> <li>1. Dairy terminology forbidden in advertising or sale.</li> </ol>
Utah	<ol style="list-style-type: none"> <li>1. Margarine prints or rolls must be sold in only the following sizes: 1/2 pound, 1 pound, 1-1/2 pounds or multiples of one pound.</li> <li>2. Label shall be in gothic letters not less than 1 inch long. Label as to weight shall be in 12-point gothic type.</li> </ol>
Washington	<ol style="list-style-type: none"> <li>1. Dairy terminology forbidden except where legally necessary.</li> </ol>
Wyoming	<ol style="list-style-type: none"> <li>1. Dairy terminology forbidden in advertisement or sale.</li> <li>2. Word "oleomargarine" or "margarine" must appear on label in as large type as any other words. Each separate package must bear term "oleomargarine" or "margarine" in not less than 20-point type.</li> </ol>

### Other Regulations

The most important "other" regulation on margarine is the specification on serving it in public eating places. Eight western states--Arizona, California, Colorado, Idaho, Montana, Oregon, Utah, Wyoming--have laws in this regard.

The usual requirement is that signs with specified lettering, which bear such terms as "margarine served here" (sometimes in gothic print be displayed prominently. Often these are required to be placed on menus, and in same size type. In one state, Oregon, it is mandatory that margarine be served in triangular shape only. Speaking of this particular type of law a manufacturer says:

"This is an unfavorable restriction, but on the other hand we have complied with this law by purchasing a packaging machine that will cut margarine into a triangular shaped patty. ---We have also printed signs for the restaurant operators---,"

A few states have prescribed standards for margarine. The state of California defines margarine so as to prevent misrepresentation. Montana requires that margarine shall contain not less than 80 per cent fat. And Wyoming defines both the colored and uncolored product. None of these definitions or minor standardization requirements are serious impediments to trade in margarine. Perhaps as standardization requirements arise in the various states, the differences--if any--in these requirements will need to be analyzed more critically.

Some states require that records be kept in order that compliance with laws or regulations may be checked. Manufacturers in California have to submit a report of the amount of margarine sold or distributed. Colorado, Montana, Idaho, and Utah firms must keep records of margarine sold for tax or license purposes. Oregon requires persons who sell margarine to keep a sale-book record for inspection by the department of agriculture of that state. The Utah law stipulates that common carriers, when requested, shall report in writing the date



of shipment or deliveries, to whom consigned and delivered, or other data on margarine required by the state tax commission.

Like the requirements on labeling, it is when the differences in these and other requirements become cumulative that trade restrictions are noticeable. A state law of this type of itself is seldom seriously restrictive of interstate trade. It is only when the nonuniformities of state laws manifest themselves, i.e., when compared with each other, that handlers of margarine realize the effect. The effect of some laws, such as the restrictions on serving margarine, is also to reduce the use of the product.

These miscellaneous requirements are not considered to be as seriously deterrent to interstate margarine shipment as are some of the other laws discussed. This does not mean that these and other minor aspects of laws or regulations not listed here have never been and could never be trade barriers. In many cases restrictiveness depends on interpretation and enforcement of laws and regulations by administrative officials. Depressed economic conditions may lead to a plea for more "protection" from certain agricultural interests, at which time present "miscellaneous" as well as other types of margarine legislation could be revised and enforced so as to become much more restrictive than at the time this report was written.