

CHAPTER 33

BUTTER SUBSTITUTES

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33.001 DEFINITION. Subdivision 1. Except where the context otherwise indicates, for the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. "Commissioner" means the commissioner of the department of agriculture.

[1961 c 113 s 1; 1961 c 128 s 15]

33.002 ENFORCEMENT. The commissioner shall enforce the provisions of this chapter.

[1921 c 309 s 3; 1923 c 116 s 3; 1931 c 97 s 3; 1931 c 344 s 7; 1933 c 175 s 8; 1961 c 144 art 2 s 22] (3855-7, 3855-17, 3919, 3925, 3928-3)

33.01 "BUTTER" OR "BUTTERED" IN ADVERTISING OR REPRESENTING CERTAIN PRODUCTS UNLAWFUL. It shall be unlawful for any person to make, publish, disseminate, circulate, or place before the public, or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in any book, notice, handbill, poster, bill, label, circular, pamphlet, or letter, or in any other way, any publication advertising in any manner, or to represent that any food product or article of food produced or manufactured, in whole or in part, out of or from any animal fats or vegetable oils, or any article or product manufactured or produced in imitation or semblance of natural butter, not produced wholly from pure, unadulterated milk or cream, in or as a part of or connected with which publication, or representation, the words "butter" or "buttered" are used or appears; however, the word "butter" or "buttered" may be used in designating the following: (1) A food article known to the trade as "plum butter," "apple butter," or "peanut butter," when used in connection with the name of the article from which it was manufactured; and (2) a food article which is labeled with the word "butter" or "buttered" immediately preceding the name of the food and which contains a minimum of 51 percent butter as shortening except for pretzels which shall contain a minimum of 10 percent butter as shortening, and complies with rules and regulations promulgated by the commissioner. Nothing herein contained shall repeal or modify any of the provisions now in force for the labeling of the food product known as oleomargarine.

[1921 c 309 s 1; 1963 c 332 s 1; 1967 c 345 s 1] (3917)

33.011 PROSECUTION BY COUNTY ATTORNEY. It shall be the duty of all county attorneys, upon complaint made, to prosecute all persons violating any of the provisions of section 33.01 within their respective counties.

[1921 c. 309 s. 3] (3919)

33.02 CERTAIN WORDS NOT TO BE USED IN ADVERTISING. No person shall use in any way in connection or association with the sale or offering or exposure for sale or advertisement of any substances designed to be used as a substitute for butter, the word "butter," "creamery" or "dairy," or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter.

[1923 c. 116 s. 1] (3923)

33.03 IMITATION BUTTER FLAVORING; LABELING RESTRICTIONS. No

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person shall, by himself or agent, or as a servant or agent of another, manufacture, sell, distribute, offer or expose for sale or distribution in the state, or have in his possession with intent to use, sell, or exchange, any article of food prepared with or containing artificial or imitation flavoring of butter and labeled or represented with the words "butter", "buttered", "butter flavored", or any combination of words, symbols, letters, or designs which are misleading in that it implies a quality or character to the food which is false or misleading in any particular. Compound foods containing such artificial or imitation flavor shall be labeled to declare the presence of said flavor only as "artificial flavor added" or "with artificial flavor" and shall not contain any other descriptive statements or claims regarding said flavor. Provided that food flavors or extracts contained in package form shall be labeled in accordance with mandatory labeling requirements of the Commissioner of Food and Drugs of the United States Department of Health, Education and Welfare.

[1931 c 97 s 1; 1945 c 28 s 1; 1969 c 94 s 1] (3928-1)

33.031 PROSECUTING OFFICERS, DUTIES. It shall be the duty of every prosecuting officer to whom the commissioner of agriculture shall report any violations of sections 33.02 or 33.03 to cause appropriate proceedings to be instituted in the proper courts and prosecuted, without delay, for the enforcement of the penalties therein specified.

[1923 c 116 s 3; 1931 c 97 s 3; 1961 c 113 s 1] (3925, 3928-3)

33.032 PENALTY. Any person violating any of the provisions of sections 33.01, 33.02, or 33.03 shall be guilty of a misdemeanor.

[1921 c 309 s 2; 1923 c 116 s 2; 1931 c 97 s 2; 1961 c 128 s 16; 1965 c 34 s 1] (3918, 3924, 3928-2)

33.04 [Repealed, 1963 c 832 s 7]

33.05 [Repealed, 1959 c 606 s 12; 1961 c 128 s 20]

33.06 OLEOMARGARINE, LABELING. It shall be unlawful for any person to manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine made, wholly or partly, out of fats, oils, or oleaginous substances or compound thereof, unless each receptacle and package in which the same is kept for sale or sold has securely affixed upon the side thereof, a white or light colored label, which shall be printed in the English language with black ink in type not smaller than 36-point bold-faced capitals, the word "oleomargarine" and immediately thereafter, under the same label and in the same colors, there shall be printed in the English language, in eight-point bold-faced Gothic capitals, the name and, with substantial accuracy, the percentage of each ingredient contained in such oleomargarine, giving the name of each animal or vegetable from which such fats or oils are derived.

[1931 c. 344 s. 3] (3855-3)

33.07 MUST BE STAMPED OR PLACARDED. It shall be unlawful for any person to sell, or offer or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished on the outside of each tub, package, or parcel thereof, in a conspicuous place, by a placard with the word "oleomargarine" printed in English thereon; the placard to be placed in a conspicuous position in full view of the purchaser; and the word "oleomargarine" on such placard shall be printed in plain, uncondensed Gothic letters, each letter not less than one inch in height, and these placards shall contain no other words thereon; and there shall also be displayed upon each tub, package, or parcel containing such oleomargarine, in the same manner and in a conspicuous position, a placard with the word "oleomargarine" printed thereon, in the same form as above described in this section; and when oleomargarine is sold from such package, or tub, or otherwise, at retail, in print, roll, or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the word "oleomargarine" printed or stamped thereon in English in letters one-fourth inch square, the quantity sold, and immediately following there shall appear upon the wrapper the name and address of the manufacturer.

[1931 c. 344 s. 4] (3855-4)

33.08 DESCRIPTIVE MATTER ON PACKAGES. Descriptive matter upon the label shall be free from any statement, design, or device that is in itself misleading or that conveys or tends to convey information that the product is derived from other than the ingredients of which it is composed; and it shall be unlawful to label oleomargarine "dairy rolls," "country rolls," "Guernsey," "Jersey," "Holstein," or other labeling that would indicate that the product is of dairy or creamery origin.

The use of any false or misleading statement, design, or device shall not be justified by any statement given as the opinion of any expert or other person appearing on the label, nor by any descriptive matter explaining the use of the false or misleading statement, design, or device.

[1931 c 344 s. 5] (3855-5)

33.09 OLEOMARGARINE, SERVING AS BUTTER. It shall be unlawful for the proprietor of any hotel, dining room, dining car, drinking place, cafe, bakery, boat, lumber camp, mining camp, railroad camp, boarding house, or hospital, or any place where guests, boarders, or patients are served with food for pay, or for any managing agent or servant of such proprietor, to serve as or for butter, or as a substitute thereof, any oleaginous substance or compound other than that produced wholly from pure, unadulterated milk or cream, unless he or they shall cause to be plainly printed in English upon every bill of fare, if one be used, and in letters not smaller than eight-point bold-faced Gothic capitals, the words "oleomargarine used in place of butter," and in case no bill of fare be used, the manager or person in charge of the establishment shall cause to be posted upon each side of the dining car or eating room, in a conspicuous position and in letters large enough to be distinctly seen and read from all parts of the room, placards containing on the face thereof the words, in the English language, "oleomargarine used in place of butter," and such person shall keep such placards continuously posted, as long as such butter substitute be kept or used.

[1931 c 344 s 6] (3855-6)

33.091 PENALTY. The minimum punishment for any person violating any of the provisions of sections 33.06 to 33.09 shall be a fine of \$25 or imprisonment for 20 days.

[1931 c 344 s 8; 1969 c 6 s 1] (3855-8)

33.095 USE OF OLEOMARGARINE IN STATE INSTITUTIONS PROHIBITED; EXCEPTION. The service of oleomargarine or any other butter substitute to the inmates of any state institutions as a substitute for table butter is hereby prohibited except such substitution may be ordered by the institution superintendent when necessary for the health of a specific patient or inmate, and as directed by the physician in charge of this patient or inmate. When approved by the medical director, or if there be none, by the superintendent of the institution, oleomargarine or any other butter substitute may be served to one or more inmates for the purpose of conducting medical research on the effect of animal fat in the diet of humans.

[1921 c 438 s 1; 1923 c 24 s 1; 1961 c 484 s 1; 1969 c 993 s 1] (3921)

33.096 SURPLUS OLEOMARGARINE. For the purpose of experimentation in the use of oleomargarine in state institutions, the commissioner of public welfare and corrections may accept surplus oleomargarine offered through the school lunch program, provided that butter is unavailable to these institutions through said program. The oleomargarine so received may be served to patients and inmates of state institutions notwithstanding the provisions of any law to the contrary, provided, however, individual servings of oleomargarine shall be triangular in shape.

[1965 c 886 s 24]

33.10 TAX ON OLEOMARGARINE. Subdivision 1. There is hereby imposed, levied, and assessed an inspection fee and excise tax of ten cents upon each pound of oleomargarine which: (1) is artificially colored to a shade of yellow which has a tint containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in terms of the Lovibond tintometer scale, and (2) is sold, offered or exposed for sale, or given or delivered to a consumer. Such fee and tax shall be paid to the commissioner of taxation prior to any such sale, gift, or delivery, except where otherwise provided in cases where tax metering devices are used.

Subd. 2. The tax upon any blend of oleomargarine and butter sold for manufacturing purposes in containers of 50 pounds or larger shall be prorated based upon the percentage of oleomargarine contained in the blend computed according to regulations of the commissioner of taxation.

[1933 c 175 s 1; 1957 c 437 s 1; 1963 c 832 s 2; 1969 c 754 s 1; 1969 c 1129 art 7 s 1] (3855-10)

33.11 INDICATION OF TAX PAYMENT. All oleomargarine offered or exposed for sale or distributed in any manner in this state shall be packed in containers, packages, or cartons not before used for that purpose, and in the manner

required by the laws of this state and of the United States. Before any container, package, or carton containing oleomargarine, upon which a fee and tax are imposed by section 33.10, is broken, or is offered or exposed for sale, gift, or distribution to a consumer, there shall be securely affixed to each individual container, package, or carton a stamp or stamps indicating payment of the fee and tax prescribed. Individual containers, packages, or cartons which contain amounts other than one pound shall bear a stamp or stamps, as the commissioner of taxation shall prescribe, indicating payment of the proportional amount of tax payable thereon, except that smaller wrapped portions of oleomargarine contained within a container, package, or carton of one pound capacity or less, which bear a stamp or stamps, need not be stamped. Such stamp or stamps shall be cancelled prior to the removal from the package, container, or carton of any oleomargarine. Such cancellation shall comply with the rules and regulations of the commissioner of taxation adopted by him to govern the cancellation of such stamps. In lieu of such stamp or stamps, the commissioner of taxation may permit the affixing of a distinctive mark by means of a tax metering machine or other device, and may by regulation provide for the supervision, inspection, and operation of such machines, and for the payment of taxes by persons using such machines. He may require the filing of periodic returns accompanied by the tax then due by any person using such machines, and may require a corporate surety bond in an amount necessary to guarantee the payment of such tax. The commissioner of taxation shall prescribe rules and regulations relative to the handling, keeping, disposal, and distribution of oleomargarine and the affixing and cancellation of the stamps required by sections 33.10 to 33.15. Whenever a container, package, or carton of oleomargarine is found in the place of business or in the possession of any person without a proper stamp or mark affixed as required by sections 33.10 to 33.15, it shall be presumed that such oleomargarine is kept there or held by that person in violation hereof.

[1933 c 175 s 2; 1963 c 832 s 3; 1969 c 1129 art 7 s 1] (3855-11)

33.111 IDENTIFICATION OF OLEOMARGARINE SERVED IN PUBLIC PLACES. No person shall serve oleomargarine at a public eating place, whether or not any charge is made therefor, unless (1) each separate serving bears or is accompanied by labeling identifying it as oleomargarine, or (2) each separate serving thereof is triangular in shape.

[1963 c 832 s 5]

33.12 COMMISSIONER OF TAXATION TO FURNISH STAMPS. The commissioner of taxation shall prepare and have suitable stamps for use on each container, package, or carton and there shall be sufficient space thereon for the insertion of the name and address of the manufacturer of the oleomargarine in the carton, container, or package to which the stamp is to be affixed and such stamps shall be sold by the commissioner of taxation to all persons applying for them.

[1933 c 175 s 3; 1969 c 1129 art 7 s 1] (3855-12)

33.13 SPOILED OR UNUSED STAMPS TO BE DESTROYED. Any spoiled or unused stamps in the possession of the commissioner of taxation shall be destroyed upon joint certificate of the commissioner of taxation and the public examiner setting forth the number, denomination, and face value of the same. This certificate shall relieve the accountable officer from accountability in the amount thereof.

[1933 c 175 s 4; 1969 c 1129 art 7 s 1] (3855-13)

33.14 PAYMENT BY MANUFACTURER OR IMPORTER. The payment of the inspection fee and tax and the stamping and cancellation of any container, carton, or package of oleomargarine by the manufacturer or importer of any oleomargarine shall exempt all other persons from the requirements of sections 33.10 to 33.15 relative to the stamping of and cancellation of stamps on containers, cartons, and packages of oleomargarine.

[1933 c. 175 s. 5] (3855-14)

33.15 REDEMPTION OF UNUSED STAMPS. Upon written request of the original purchaser thereof and the return of any unused stamps, the commissioner of taxation shall redeem such stamps and cause a refund to be made thereof. He shall prepare a voucher showing the amount of the refund due and the state auditor shall draw a warrant on the state treasurer for this amount.

There is hereby appropriated to the persons entitled to such refund, from the funds or account in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

[1933 c 175 s 6; 1959 c 157 s 1; 1969 c 1129 art 7 s 1] (3855-15)

33.16 [Renumbered 33.095]

33.17 FUNDS, DISPOSAL AND USE. Subdivision 1. The commissioner of taxation shall transfer and pay to the state treasurer, the funds collected under the provisions of sections 33.10 to 33.15; provided, that he may use not to exceed \$75,000 of such funds in each biennium for the administration and enforcement of Minnesota Statutes, Chapter 33, which amount is hereby appropriated therefor. The commissioner of taxation may employ such persons and purchase such supplies as he deems necessary.

NOTE: Extra Session Laws 1967, Chapter 48, Section 37, Subdivision 2, in part, and Laws 1969, Chapter 1139, Section 37, Subdivision 2, in part, read: "The standing appropriation made by Laws 1963, Chapter 832, Section 4, in the sum of \$75,000 per biennium for the administration and enforcement of Minnesota Statutes, Chapter 33, is rescinded and shall no longer be of any force and effect."

Subd. 2. Of the funds deposited in the state treasury pursuant to subdivision 1, \$125,000 shall be credited annually to the dairy and related products research and marketing account, which account is hereby created. The moneys in the dairy and related products research and marketing account are hereby appropriated annually to the governor to be expended by him after consultation with the legislative advisory committee in the manner provided by Minnesota Statutes, Section 3.30, for the purposes of carrying on research and development in the area of new and better uses for dairy and related products, and for the purposes expressed in Minnesota Statutes, Section 8.13. None of the moneys in the dairy research and marketing account shall cancel but shall be available for the purposes expressed herein until expended.

Subd. 3. [Repealed, 1965 c 809 s 35]

[1933 c 175 s 8; 1963 c 832 s 4; 1969 c 1129 art 7 s 1] (3855-17)

33.171 PENALTY. Any person violating any of the provisions of sections 33.10 to 33.15, or any rule or regulation prescribed by the commissioner of taxation thereunder, shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment for not more than 30 days in the county jail; and such violation shall be cause for the immediate cancelation of any license issued to such person by the commissioner of taxation.

[1933 c 175 s 7; 1961 c 113 s 1; 1969 c 1129 art 7 s 1] (3855-16)

33.18 [Renumbered 33.002]

33.19 [Renumbered 33.011]

33.20 [Renumbered 33.031]

33.21 Subdivision 1. [Renumbered 33.032]

Subd. 2. [Renumbered 33.091]

Subd. 3. [Renumbered 33.171]

Subd. 4. [Repealed, 1961 c 484 s 2]