

CHAPTER 32

DAIRY PRODUCTS

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32.11 DISCRIMINATION IN BUYING AND SELLING; SCHEDULE OF PRICES.

(a) Any person, firm, copartnership, or corporation engaged in the business of buying milk, cream or butterfat for manufacture or for sale of such milk, cream, or butterfat, who shall discriminate between different sections, localities, communities, or cities of this state, or who shall discriminate between persons in the same section, locality, community or city of this state, by purchasing such commodity at a higher price or rate from one person or in one locality than is paid for the same commodity by such person, firm, copartnership, or corporation in the same locality or in another locality, after making due allowance for the difference, if any, in the reasonable cost of transportation from the locality of purchase to the locality of manufacture or locality of sale of such milk, cream, or butterfat, shall be deemed guilty of unfair discrimination, which is a misdemeanor.

(b) A processor or wholesaler who sells selected class I or class II dairy products as defined in section 32.70 in Minnesota shall maintain a current schedule of prices showing rebates, discounts, refunds, and price differentials for the selected dairy products offered for sale at wholesale to retailers or to another wholesaler.

History: 1993 c 367 s 26

32.25 MILK, CREAM, SKIM MILK, AND BUTTERMILK BOUGHT BY WEIGHT; BABCOCK AND ALTERNATIVE TESTS.

Subdivision 1. **Milk fat, protein, and solids not fat bases of payment; tests.** Milk must be purchased from producers using a formula based on one or more of the following:

- (1) payment of a standard rate with uniform differentials for milk testing above or below 3.5 percent milk fat;
- (2) payment of a standard rate for the pounds of milk fat contained in the milk;
- (3) payment of a standard rate for the pounds of protein contained in the milk;
- (4) payment of a standard rate for the pounds of solids not fat contained in the milk; or
- (5) payment of standard rates based on other attributes of value in the milk.

In addition, an adjustment may be made on the basis of milk quality and other premiums.

Testing procedures for determining the percentages of milk fat, protein, and solids not fat must comply with the Association of Analytical Chemists approved methods or be as adopted by rule.

[For text of subds 2 and 3, see M.S.1992]

History: 1993 c 367 s 27

32.394 GRADE A PASTEURIZED MILK.

[For text of subds 1 to 8c, see M.S.1992]

Subd. 8d. Processor assessment. (a) A manufacturer shall pay to the commissioner a fee for fluid milk processed and milk used in the manufacture of fluid milk products sold for retail sale in Minnesota. Beginning May 1, 1993, the fee is six cents per hundredweight. If the commissioner determines that a different fee, not less than five cents and not more than nine cents per hundredweight, when combined with general fund appropriations and fees charged under sections 31.39 and 32.394, subdivision 8, is needed to provide adequate funding for the Grades A and B inspection programs and the administration and enforcement of Laws 1993, chapter 65, the commissioner may, by rule, change the fee on processors within the range provided within this subdivision.

(b) Processors must report quantities of milk processed under paragraph (a) on forms provided by the commissioner. Processor fees must be paid monthly. The commissioner may require the production of records as necessary to determine compliance with this subdivision.

Subd. 9. Payments; refunds; disposition. Fees are payable by a processor or marketing organization by July 1 of each year for Grade A, and by January 1 of each year for manufacturing grade, and if not paid within 30 days of the due date, the service must be discontinued, and permission to market manufacturing grade or Grade A milk or milk products or use the Grade A label must be withdrawn. A processor may terminate payment and service without loss of the Grade A label if written notice of that intention is given prior to the due date of the payment of an assessment and if the continuous inspection of the plant is assumed by a city whose milk control ordinance is substantially equivalent to Minnesota law and rule and is enforced with equal effectiveness. If a farm discontinues the production of milk within six months of the billing date, a request for a refund based on inspection services not received may be made by the processor or by the marketing organization on behalf of its patrons. This request must be made in writing by July 1 for manufacturing grade, or by December 31 for Grade A, and on approval by the commissioner refunds must be made to the processor or marketing organization.

The fees for services performed by the activities of this section must be deposited in the state treasury and constitute a separate account to be known as the dairy services account, which is hereby created.

[For text of subds 11 and 12, see M.S.1992]

History: 1993 c 65 s 4.5; 1993 c 172 s 29

DAIRY TRADE PRACTICES

32.70 DEFINITIONS.

Subdivision 1. Application. The definitions in this section apply to sections 32.70 to 32.74.

Subd. 2. Basic cost. (a) "Basic cost" for a processor means the actual cost of the raw milk plus 75 percent of the actual processing and handling costs for a selected class I or class II dairy product.

(b) "Basic cost" for a wholesaler means the actual cost of the selected class I or class II dairy product purchased from the processor or another wholesaler. Basic cost for a wholesaler does not include any part of an over-order premium assessment under section 32.73.

(c) "Basic cost" for a retailer means the actual cost of the selected class I or class II dairy product purchased from a processor or wholesaler. Basic cost for a retailer does not include any part of an over-order premium assessment under section 32.73.

Subd. 3. Bona fide charity. "Bona fide charity" means a corporation, trust, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Subd. 4. Processor. "Processor" means a person engaged in manufacturing or processing selected class I or class II dairy products in the person's own plant for sale in Minnesota.

Subd. 5. **Producer.** "Producer" means a person who operates a dairy herd or herds in Minnesota producing milk or cream commercially and whose milk or cream is sold to, or received or handled by, a distributor or processor. "Producer" does not include an incorporated or unincorporated association of producers.

Subd. 6. **Responsible person.** "Responsible person" means the business entity that makes payment to an individual Grade A or Grade B milk producer.

Subd. 7. **Selected class I dairy products.** "Selected class I dairy products" means milk for human consumption in fluid form and all other class I dairy products as defined by the Upper Midwest Milk Marketing Order, Code of Federal Regulations, title 7, part 1068.40, or successor orders.

Subd. 8. **Selected class II dairy products.** "Selected class II dairy products" means milk for human consumption processed into fluid cream, eggnog, yogurt, and all other class II dairy products as defined by the Upper Midwest Milk Marketing Order, Code of Federal Regulations, title 7, part 1068.40, or successor orders.

Subd. 9. **Sell at retail; sale at retail; retail sales.** "Sell at retail," "sale at retail," and "retail sales" mean a retail sale or offer for retail sale of a selected class I or class II dairy product for ultimate consumption or use.

Subd. 10. **Sell at wholesale; sale at wholesale; wholesale sales.** "Sell at wholesale," "sale at wholesale," and "wholesale sales" mean sale or offer for sale of a selected class I dairy product for purposes of resale or further processing or manufacturing, but does not include a producer selling or delivering milk to a processor. A delivery of selected class I dairy products to a retailer in Minnesota is a "sale at wholesale" if an assessment required under section 32.73 has not been paid.

Subd. 11. **Wholesaler.** "Wholesaler" means a person including a distributor in the business of making sales of selected class I or class II dairy products, at wholesale in Minnesota. In the case of a person making sales at both retail and wholesale, "wholesaler" applies only to the sales at wholesale.

History: 1993 c 65 s 6; 1993 c 367 s 29

32.71 DUTIES AND POWERS OF THE COMMISSIONER; DATA PRIVACY.

Subdivision 1. **Duties; rules.** The commissioner shall adopt emergency and permanent rules to implement and administer sections 32.70 to 32.74 as necessary.

Subd. 2. **Data privacy.** Financial and production information received by the commissioner on processors, wholesalers, or retailers including, but not limited to, financial statements, fee reports, price schedules, cost documentation, books, papers, records, or other documentation for the purpose of administration and enforcement of this chapter shall be classified private data or nonpublic data pursuant to chapter 13. That classification shall not limit the use of the information in the preparation, institution, or conduct of a legal proceeding by the commissioner in enforcing this chapter.

History: 1993 c 65 s 7

32.72 SALES BELOW COST PROHIBITED; EXCEPTIONS.

Subdivision 1. **Policy; processors; wholesalers; retailers.** (a) It is the intent of the legislature to accomplish partial deregulation of milk marketing with a minimum negative impact upon small volume retailers.

(b) A processor or wholesaler may not sell or offer for sale selected class I or class II dairy products at a price lower than the processor's or wholesaler's basic cost.

(c) A retailer may not sell or offer for sale selected class I or class II dairy products at a retail price lower than (1) 105 percent of the retailer's basic cost until June 30, 1994; and (2) the retailer's basic cost beginning July 1, 1994, and thereafter. A retailer may not use any method or device in the sale or offer for sale of a selected dairy product that results in a violation of this section.

Subd. 2. **Exceptions.** The minimum processor, wholesaler, and retailer prices of subdivision 1 do not apply:

- (i) to a sale complying with section 325D.06, clauses (1) to (4);
- (ii) to a retailer giving away selected class I and class II dairy products free if the customer is not required to make a purchase;
- (iii) to a processor, wholesaler, or retailer giving away selected class I and class II dairy products free or at a reduced cost to a bona fide charity; or
- (iv) to a retailer during the month of June 1994, and June of each year thereafter.

History: 1993 c 65 s 8; 1993 c 367 s 30

32.73 MILK OVER-ORDER PREMIUM; PURPOSE; IMPLEMENTATION; ASSESSMENT FORMULA; EXEMPTIONS; DISCLOSURE; REPORT.

Subdivision 1. **Purpose.** The legislature hereby establishes an over-order premium for milk to benefit the incomes of all Minnesota dairy producers and stabilize the economy in rural communities.

Subd. 2. **Implementation.** If the price for class I milk, as announced for each month by the federal milk marketing order that includes Minnesota, falls below \$13.20 per hundred pounds, the provisions of this section are effective and the commissioner shall implement the over-order premium program.

Subd. 3. **Assessment formula.** For each cent the announced price per hundred pounds of milk falls below \$13.20, the commissioner shall collect from the wholesaler that makes the first wholesale sale of selected class I dairy products for retail sale in Minnesota an assessment of \$0.0225. The commissioner shall deposit the assessments in the Minnesota milk over-order premium account which account is hereby created.

Subd. 4. **Exemptions.** Selected class I dairy products sold as home delivery retail sales, sales involving the women, infants, and children nutrition program (WIC), and sales to public or nonpublic schools are exempt from assessment under this section.

Subd. 5. **Equalization pool.** Money in the Minnesota milk over-order premium account is appropriated to the commissioner to pool and redistribute payments at a uniform rate to Minnesota Grade A and B milk producers. The commissioner may make payments to a responsible person who, in turn, must pay Grade A and Grade B milk producers at the uniform distribution rate.

Subd. 6. **Disclosure.** Payments of the over-order premium to a producer must be accompanied by a statement specifying the over-order premium rate, the dates of delivery to which the premium applies, the total hundredweight of milk to which the over-order premium applies, and the over-order premium amount paid to the producer.

Subd. 7. **Annual report.** Not later than February 1 of 1995 and each year thereafter, the commissioner, after consultation with representatives of the dairy production, processing, and marketing industries, shall report to the chairs of the agriculture committees of the senate and the house of representatives on the impacts and benefits to dairy farmers of the over-order premium and dairy marketing partial deregulation provisions of Laws 1993, chapter 65, and the level of over-order premiums provided by common marketing agencies in the upper midwest during the previous calendar year. In addition, the February 1, 1995, report must provide recommendations concerning the desirability of exempting from the over-market premium assessment selected class I dairy products sold to certain not-for-profit customers, including hospitals, nursing homes, licensed day care providers, and residential care facilities and institutions. The report provided by the commissioner on February 1, 1995, must include an assessment of the impact of the removal of retail price controls during the month of June 1994.

History: 1993 c 65 s 9; 1993 c 367 s 31,32

NOTE: If any provision of this section is held to be unconstitutional, then all of this section is inoperative and of no effect. See Laws 1993, chapter 65, section 12.

32.74 REDRESS FOR INJURY OR THREATENED INJURY.

A person injured by a violation of sections 32.70 to 32.74 may commence a legal action based on the violation in a court of competent jurisdiction and may recover economic damages and the costs of the action, including reasonable attorneys' fees. A per-

son injured or who is threatened with injury or loss by reason of violation of sections 32.70 to 32.74 may commence a legal action based on the violation and obtain injunctive relief in a court of competent jurisdiction against persons involved in a violation or threatened violation of sections 32.70 to 32.74 to prevent and restrain violations or threatened violations of sections 32.70 to 32.74 without alleging or proving actual damages or that an adequate remedy at law does not exist, so that injunctive relief can be obtained promptly and without awaiting evidence of injury or actual damage. This injunctive relief does not abridge and is not in lieu of any other civil remedy provided in sections 32.70 to 32.74.

History: 1993 c 65 s 10