

## CHAPTER 32

### DAIRY PRODUCTS

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#### 32.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the words defined in this section, shall for the purposes of this chapter, have the meanings given to them.

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

Subd. 3. **Department.** "Department" means the department of agriculture.

Subd. 4. **Person.** "Person" means an individual, firm, partnership, association, or corporation.

Subd. 5. [Repealed, 1961 c 147 art 3 s 3]

Subd. 6. **Dairy plant.** "Dairy plant" means any place where a dairy product is manufactured, processed, or handled and includes milk-receiving stations, creameries, cheese factories, condenseries, milk plants, transfer stations, cream stations, marketing organizations not operating dairy plants, but purchasing milk and cream directly from producers for resale, and other establishments, as those terms are used in this chapter and chapters 17, 27, 31, 32A, 32B, and 33; but does not include a dairy farm or an establishment where no dairy products are processed, but dairy products are sold at wholesale or retail only.

Subd. 7. **Babcock test.** "Babcock test" means the official Babcock test for milk and cream as set forth in section 32.25.

Subd. 8. **Overrun.** "Overrun" is the difference between the weight of any given amount of pure butterfat and the weight of the butter manufactured therefrom; and this difference, ascertained in any case, divided by the given amount of pure butterfat in such case and multiplied by 100, is the "percentage of overrun" in the manufacture of butter.

Subd. 9. **Milk-receiving station.** "Milk-receiving station" means any dairy plant where raw milk for pasteurization or for manufacture is received, handled, or prepared for processing or for resale as unpasteurized milk or fluid milk products.

Subd. 10. **Dairy product.** "Dairy product" means milk, cream, any product or by-product of either, or any commodity among the principal constituents or ingredients of which is one or a combination of two or more of them, as determined by standards, grades, or rules duly adopted by the commissioner.

Subd. 11. **Adulterated.** "Adulterated" has the meaning given it in section 31.01, subdivision 19, and acts amendatory thereof.

Subd. 12. **Misbranded.** "Misbranded" or "misbranding" has the meaning given in section 31.01, subdivision 5, and acts amendatory thereof.

**History:** (3821-1, 3871, 3873-1, 3928-4) 1921 c 495 s 84; 1927 c 162 s 1; 1927 c 169 s 1; 1935 c 61 s 1; 1949 c 192 s 2; 1949 c 196 s 1; 1955 c 146 s 1-4; 1961 c 113 s 1; 1961 c 147 art 1 § 1-3; 1967 c 219 s 1; 1971 c 339 s 25; 1985 c 248 s 70

## ENFORCEMENT OF CHAPTER

**32.02** [Repealed, 1949 c 196 s 3]

### 32.021 DUTIES AND POWERS OF COMMISSIONER.

Subdivision 1. The commissioner shall be charged with the enforcement of the provisions of this chapter.

Subd. 2. For the purpose of enforcing the provisions of chapter 32 and amendatory acts the commissioner and the commissioner's assistants, agents, and employees, shall have the power and authority granted under the provisions of sections 31.02 to 31.171.

**History:** (3928-11) 1935 c 61 s 8; 1949 c 192 s 2; 1961 c 147 art 2 s 1; 1974 c 84 s 37; 1986 c 444

## LICENSING OF MILK AND CREAM TESTERS

**32.03** [Repealed, 1949 c 196 s 3]

**32.04** [Repealed, 1949 c 196 s 3]

**32.05** [Repealed, 1949 c 196 s 3]

**32.06** [Repealed, 1949 c 196 s 3]

**32.07** [Repealed, 1949 c 176 s 10; 1949 c 196 s 3]

**32.071 MILK AND CREAM BUYER AND TESTER, LICENSE.**

No person shall operate a milk or cream testing apparatus for the purpose of determining the percentage of butterfat in milk or cream, and no person shall grade milk or cream either by apparatus or by an organoleptic method for the purpose of purchasing the same either personally or for others without first securing a license from the commissioner as hereinafter provided.

**History:** 1949 c 176 s 1; 1986 c 444

**32.072 APPLICATION FOR LICENSE.**

Any person desiring to secure such license shall make application therefor on forms to be prepared and provided by the commissioner, and before a license is issued the commissioner shall determine that the applicant is competent and qualified to use such testing apparatus and to make accurate tests with them, and to make accurate organoleptic tests. No person who is not a resident of the United States shall be licensed under the provisions of sections 32.071 to 32.078.

**History:** 1949 c 176 s 2

**32.073 LICENSES; EXAMINATIONS, QUALIFICATIONS.**

A grading and testing license shall be issued by the commissioner to a person making application therefor, after the commissioner has determined that the applicant is competent and qualified to grade and test milk and cream, and that the applicant understands and is familiar with the provisions of sections 32.01 to 32.532. Any conviction for violating sections 32.01 to 32.532 or the standards, grades, and rules adopted by the commissioner shall be taken into consideration in determining whether or not the applicant is competent and qualified.

**History:** 1949 c 176 s 3; 1955 c 835 s 1; 1985 c 248 s 70

**32.074 LICENSED DAIRY PLANT; LICENSED PERSON TO GRADE AND TEST.**

Every milk and cream buyer shall maintain at each licensed dairy plant where milk and cream is purchased, a licensed person to grade and test milk and cream. Any person gathering cream or milk and transporting it by bulk pickup and not in individual containers from farm to plant shall have a license to grade and sample such milk and cream.

**History:** 1949 c 176 s 4; 1953 c 679 s 1

**32.075 TERM OF LICENSE; TRANSFERABILITY; FEES AND PENALTIES.**

Every license issued by the commissioner shall be for a period ending on the 31st day of December next following, and shall not be transferable. The fee for each such initial license shall be \$50 and each renewal thereof shall be \$25 and shall be paid to the commissioner before any license or renewal thereof is issued. If a license renewal is not applied for on or before January 1 of each year, a penalty of \$10 shall be imposed. A person who does not renew a license within one year following its December 31 expiration date, except those persons who do not renew such license while engaged in active military service, shall be required to prove competency and qualification pursuant to section 32.073, before a license is issued. The commissioner may require any other person who renews a license to prove competency and qualification in the same manner. All license fees and penalties received by the commissioner shall be paid into the state treasury.

**History:** 1949 c 176 s 5; 1955 c 820 s 5; 1959 c 19 s 3; 1963 c 102 s 1; 1963 c 123 s 4; 1969 c 1148 s 9; 1975 c 412 s 20; 1981 c 356 s 267; 1983 c 293 s 55; 1986 c 444; 1987 c 358 s 86

**32.076 OFFENSES.**

The grading or testing of each lot of milk and cream by an unlicensed person shall constitute a separate offense.

*History: 1949 c 176 s 6*

**32.077 PENALTY.**

Any person violating any of the provisions of sections 32.071 to 32.078 shall be guilty of a misdemeanor.

*History: 1949 c 176 s 7; 1971 c 23 s 2*

**32.078 SUSPENSION OR CANCELLATION.**

The commissioner is empowered to suspend or cancel any license issued pursuant to the provisions of sections 32.071 to 32.077 after a hearing upon written notice containing the grounds therefor, which notice shall be served personally upon the licensee or the licensee's agent at least five days prior to such hearing.

*History: 1949 c 176 s 8; 1986 c 444*

**32.08** [Repealed, 1961 c 147 art 4 s 2]

**DAIRY PLANT LICENSING AND INSPECTION**

**32.09** [Repealed, 1971 c 339 s 27]

**32.10 LICENSES; SUSPENSION, REVOCATION.**

When any person licensed under sections 28A.04 and 32.10 shall have been convicted of a violation of any provision of any law of this state relating to the manufacture or sale of butter or cheese or other dairy products, or the operation of dairy plants, or other establishments in which dairy products or goat milk, as defined in section 32.391, subdivision 1, are manufactured, processed, or handled, or for transportation, or of any provision of any rule of the commissioner made and promulgated under the provisions of law or there has been a continued course of conduct by such licensee or any agent, representative or employee of such licensee which deceives or defrauds producers or consumers, the license (1) may be suspended for the time stated in order of suspension, (2) may be revoked or canceled by the commissioner, or (3) upon application for a renewal license, the commissioner may refuse to issue the same, upon ten days' written notice with opportunity to be heard. The commissioner shall promulgate procedural rules governing the notice, hearing, evidence, findings, order, and record to be kept in such hearings, in the manner provided by law. Upon conviction of a second or any subsequent offense, the commissioner may revoke and cancel such license with or without notice of hearing, in the commissioner's discretion, and in such case the commissioner shall not issue another license for the operation of such plant or establishment for a term of one year from the date of such cancellation or revocation.

*History: (3935-3) 1927 c 187 s 3; 1955 c 608 s 1; 1961 c 147 art 3 s 2; 1963 c 101 s 2; 1973 c 35 s 11; 1985 c 248 s 70; 1986 c 444*

**32.101 PENALTY.**

Any person who shall violate any of the provisions of sections 28A.04 and 32.10 shall be guilty of a misdemeanor; and, upon conviction, punished by a fine of not less than \$25, or by imprisonment for not less than 30 days; and for each subsequent offense, by a fine of not less than \$50, or by imprisonment for not less than 60 days.

*History: (3935-2) 1927 c 187 s 2; 1973 c 35 s 12*

**32.102 PROSECUTIONS.**

It shall be the duty of every prosecuting officer to whom the commissioner shall report any violation of sections 28A.04 and 32.10 to cause appropriate proceedings to

be instituted and to be prosecuted in the proper courts, without delay, for the enforcement as in such cases therein provided. All fines imposed and paid thereunder shall be paid into the state treasury.

**History:** (3935-5) 1927 c 187 s 5; 1973 c 35 s 13

### 32.103 INSPECTION OF DAIRIES.

(a) At times the commissioner determines proper, the commissioner shall cause to be inspected all places where dairy products are made, stored, or served as food for pay, and all places where cows are kept by persons engaged in the sale of milk, and shall require the correction of all insanitary conditions and practices found. During routine inspections or as necessary, the commissioner shall inspect for evidence of use of rBGH in violation of section 32.75, by producers providing affidavits of nontreatment under that section.

(b) A refusal or physical threat that prevents the completion of an inspection or neglect to obey a lawful direction of the commissioner or the commissioner's agent given while carrying out this section may result in the suspension of the offender's permit or certification. The offender is required to meet with a representative of the offender's plant or marketing organization and a representative of the commissioner within 48 hours excluding holidays or weekends or the suspension will take effect. A producer may request a hearing before the commissioner or the commissioner's agent if a serious concern exists relative to the retention of the offender's permit or certification to sell milk.

**History:** (3819) 1921 c 495 s 30; 1986 c 444; 1989 c 312 s 3; 1990 c 511 s 3; 1994 c 632 art 2 s 13

### 32.104 LOCAL INSPECTION.

Notwithstanding any law to the contrary, the governing authority of any municipal corporation or other subdivision of state government may, by ordinance, provide for the inspection of milk, cream, butter, or other dairy products sold within its limits, and of dairy plants, dairy farms and dairy herds kept for the production of such milk, cream, butter, or other dairy products and may prescribe the terms upon which such sales may be made and fix penalties for violation thereof, but no such ordinance shall conflict with any law of this state, or with any rule of the commissioner for the inspection of dairy herds or dairy plants or dairy farms or impose any additional requirement for the sale of milk, cream, butter or other dairy products processed outside the corporate limits of the municipality than is imposed by law or by the rules of the commissioner, or require a duplication of inspection of dairy plants, dairy farms, or dairy herds producing milk, cream, butter or other dairy products sold within its corporate limits, or otherwise interfere with any power or duty of the commissioner or the commissioner's official subordinates.

When a dairy plant is licensed by the commissioner of agriculture, the plant, including all distribution facilities and vehicles, is exempt from the licensing requirements of any subdivision of state government except for licensing requirements which the city in which the plant is located may impose.

**History:** (3820) 1921 c 495 s 31; 1957 c 885 s 1; 1965 c 118 s 1; 1967 c 313 s 1; 1973 c 123 art 5 s 7; 1985 c 248 s 70; 1986 c 444

## DAIRY PRODUCT CONTAINERS; CLEANING, RETURN

### 32.106 MULTIUSE DAIRY PRODUCT CONTAINERS.

Subdivision 1. **Cleaning.** Before being reused, dairy product containers which may be used more than once shall be cleaned in accordance with rules promulgated in the manner provided by law by the commissioner, except, that in no instance shall such rules serve to eliminate any producers product from the market, whose present method

of production, bears no evidence of endangering the health of the consumers. All rules heretofore adopted by the commissioner relating to the cleaning of dairy product containers which are in effect at the time Laws 1961, chapter 147, article 4, section 1 takes effect and which are not in conflict with this section, shall remain in effect until amended, modified, or repealed by the commissioner.

Subd. 2. **Return.** Every person, receiving any dairy product in containers which may be used more than once and which are to be returned to the sender or seller shall cause such containers to be promptly emptied, thoroughly cleansed as required by rules promulgated by the commissioner, and immediately returned.

**History:** (3816) 1921 c 495 s 27; 1957 c 119 s 1; 1961 c 147 art 4 s 1; 1985 c 248 s 70

### **DISCRIMINATION BY PURCHASERS OF DAIRY PRODUCTS**

#### **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:** (3907) 1921 c 305 s 1; 1923 c 120 s 1; 1955 c 876 s 1; 1971 c 23 s 3; 1993 c 367 s 26

#### **32.12 EVIDENCE OF DISCRIMINATION; COST OF TRANSPORTATION; COMPETITION.**

Subdivision 1. Proof that any person, firm, copartnership, or corporation has paid a higher price for milk or cream or butterfat in one locality or to one person in the same locality than to another, or to another person in the same locality, after due allowance for the reasonable cost of transportation has been made, shall be prima facie evidence of the violation of section 32.11.

Subd. 2. Wherever the transportation cost actually paid for hauling cream shall be two cents or more per pound for butterfat therein contained, and 15 cents per one hundred pounds for transportation of whole milk, such transportation charge shall be deemed a compliance with the terms of section 32.11 as to reasonable cost of transportation.

Subd. 3. It shall not be unfair discrimination for any person to pay, in any section, locality, community, or city in this state, a price equal to that actually paid on the same day by any bona fide competitor in such place for milk, cream or butterfat of the same kind, quality and grade, provided such price is paid in a good faith effort to meet such competition, but the burden of proving such facts shall be upon the person charged with violation of section 32.11.

**History:** (3908) 1921 c 305 s 2; 1955 c 876 s 2; 1973 c 123 art 5 s 7

- 32.13 [Repealed, 1961 c 147 art 3 s 3]  
 32.14 [Repealed, 1961 c 147 art 3 s 3]  
 32.15 [Repealed, 1961 c 147 art 3 s 3; art 4 s 2]  
 32.16 [Repealed, 1961 c 147 art 3 s 3]  
 32.17 [Repealed, 1961 c 147 art 3 s 3]

### DAIRY INDUSTRY RECORDS AND RELATED REGULATORY LAWS

#### 32.18 RECORDS, CONTENTS.

Every person engaged in the purchase, manufacture, or sale of dairy products, and all dairy plant owners or operators shall keep in proper books true and full records of all milk, cream, butterfat, and other dairy products manufactured, purchased, received, shipped, stored, or handled by them each day; the number of pounds of butter and the number, weight, style and composition of cheese made each day, and the amount of butterfat used or utilized in the form of other dairy products, the net price received for all butter and cheese sold, the cost per pound for the manufacture of such butter or cheese, the amount of overrun of butter manufactured from butterfat and cream, the average test of cream and of milk and butterfat purchased, manufactured, sold or handled, and all items of operating cost and expense of such person, owner, or operator, including the salaries, wages, commission, per diem, or other form of compensation, of all employees, officers, directors, and others, and such other information and in such form as the commissioner shall specify or require by rules adopted as required by law.

**History:** (3873-2) 1927 c 169 s 2; 1955 c 660 s 1; 1963 c 91 s 1; 1985 c 248 s 70;

#### 32.19 REPORTS; CONTENTS NOT TO BE DIVULGED, PENALTY.

Every person, owner, or operator required by section 32.18 to maintain daily records on milk, cream, butterfat and other dairy products shall, within 90 days following the close of each fiscal year and at such other times as the commissioner may fix or require, by rules adopted as required by law, make and file with the commissioner, on blank forms prepared by the commissioner, itemized and verified reports of all business transacted by the commissioner, as set out in section 32.18, during the preceding fiscal year. Such reports shall contain such further information as, from time to time, may be required by the commissioner. A duplicate copy thereof shall be retained by such person, owner, or operator in files, which shall be subject to examination by the commissioner at any time. It shall be unlawful for the commissioner, or any public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this section, or any information concerning the business transacted by any such person, owner or operator so reporting, acquired from records, officers or employees while examining or inspecting any books or records kept and maintained as required by section 32.18, except as such information is required or authorized to be disclosed in a judicial proceeding by order of the district court. Except as last stated and with the authority there required, any person violating the provision of this section establishing the confidential character of such information and the reports or returns required to be made and filed with the commissioner shall be guilty of a gross misdemeanor.

Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports or any item or entry therein contained.

**History:** (3873-3) 1927 c 169 s 3; 1947 c 290 s 1; 1955 c 660 s 2; 1985 c 248 s 70; 1986 c 444

#### 32.20 INSPECTION OF BOOKS AND RECORDS.

The books and records of all persons, owners, and operators coming within the provisions of section 32.18 shall be open for the inspection of the commissioner and the

commissioner's deputies and employees at all times, who shall make such examination thereof as is desired or deemed necessary by the commissioner.

**History:** (3873-4) 1927 c 169 s 4; 1986 c 444

### **32.201 PENALTY.**

Any person violating any of the provisions of sections 32.18 to 32.20 shall be guilty of a misdemeanor.

**History:** (3873-5) 1927 c 169 s 5

### **32.203 OVERRUN IN EXCESS OF 24 PERCENT UNLAWFUL.**

It shall be, and it is hereby declared to be, unlawful for any person to have or permit a percentage of overrun in excess of 24 percent in butter manufactured by the person.

**History:** (3821-2) 1927 c 162 s 2; 1986 c 444

### **32.204 EVIDENCE FOR PROSECUTIONS.**

The reports required by law to be made and which are made to the commissioner by persons engaged in the manufacture of butter shall be competent evidence in any prosecution under sections 32.203 and 32.204 against the person making the same, and when such reports, received in evidence upon the trial, show that during a period of one month or more the person on trial and charged with a violation thereof alleged to have been committed on a certain date within that period, has had or permitted an average percentage of overrun in excess of 24 percent in the butter manufactured by the person during that period, such showing shall be prima facie evidence of a violation thereof by the person so charged, committed as of the date alleged.

**History:** (3821-4) 1927 c 162 s 4; 1986 c 444

### **32.205 PENALTY.**

Any person violating any provisions of sections 32.203 and 32.204 shall be guilty of a misdemeanor, the minimum punishment for which shall be a fine of \$25, or imprisonment for 20 days.

**History:** (3821-3) 1927 c 162 s 3

### **32.206 AUDIT OF BOOKS BY COMMISSIONER.**

When complaint shall be made to the commissioner that any person, firm, or corporation is violating the provisions of sections 32.203 and 32.204, or when the commissioner shall have reason to believe that any person, firm, or corporation is violating the provisions thereof, the commissioner may cause the books and records of the person, firm, or corporation alleged to be violating sections 32.203 and 32.204 to be examined and audited by a competent accountant familiar with creamery practices and the handling of books and accounts of creameries. This audit shall be made for the purpose of aiding in determining whether or not there has been such a violation.

**History:** (3821-5) 1931 c 414 s 1; 1986 c 444

### **32.207 BUTTERFAT, NONFAT MILK SOLIDS, SALES IN EXCESS OF PURCHASES.**

It shall be and it is hereby declared to be unlawful for any person to sell or to permit any employees, agents, officers, directors or other representatives to sell butterfat or nonfat milk solids in butter, cheese, milk, cream, or any other dairy products in excess of the number of pounds of butterfat or nonfat milk solids contained in the milk, cream, or other dairy products shown by books and records as received by such person.

**History:** 1955 c 300 s 1; 1965 c 310 s 1; 1986 c 444



**32.208 CUSTOM FACTORIES; WITHHOLDING OF DAIRY PRODUCT PROHIBITED.**

No person engaged in making butter or cheese for others out of cream or milk furnished by them shall withhold, or permit to be withheld, any part of the cream or milk so furnished, or any product thereof, without the knowledge and consent of the owner. Every maker shall keep a record as required by sections 32.18 to 32.20. These records shall be exhibited on request of the commissioner and the commissioner's employees and to all persons furnishing milk and cream to such maker.

*History: (3817) 1921 c 495 s 28; 1961 c 147 art 5 s 3; 1986 c 444*

**MILK AND CREAM****32.21 ADULTERATED DAIRY PRODUCTS.**

**Subdivision 1. Purchase and sale prohibition.** A person may not sell or knowingly buy adulterated dairy products.

**Subd. 2. Manufacture of food for human consumption from adulterated milk or cream prohibited.** An article of food for human consumption may not be manufactured from adulterated milk or cream, except as provided in section 32.22 or the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 301 et seq., and related federal regulations.

Prior to processing milk, all bulk milk pickup tankers must be tested for the presence of beta lactum drug residues and for other residues as determined necessary by the commissioner. Test methods must be those approved by the Association of Analytical Chemists (AOAC) or under the AOAC C2 program. Bulk milk tankers testing positive must be reported to the commissioner or the commissioner's agent within 24 hours. This report must include how and where the milk was disposed of, the volume, the responsible producer, and the possible cause of the violative residue. All milk sample residue results must be recorded and retained for examination by the commissioner or the commissioner's agent for six months by the receiving plant. Milk received from a producer in other than a bulk milk pickup tanker is also subject to this section.

**Subd. 3. Adulterated milk.** For purposes of this section and section 32.22, milk is adulterated if it:

- (1) is drawn in a filthy or unsanitary place;
- (2) is drawn from unhealthy or diseased cows;
- (3) is drawn from cows that are fed garbage or an unwholesome animal or vegetable substance;
- (4) is drawn from cows within 15 days before calving, or five days after calving;
- (5) contains water in excess of that normally found in milk;
- (6) contains a substance that is not a normal constituent of the milk except as allowed in this chapter; or
- (7) contains drug residues or other chemical or biological substances in amounts above the tolerances or safe levels established by rule or under section 32.415.

**Subd. 4. Penalties.** (a) A person, other than a milk producer, who violates this section is guilty of a misdemeanor or subject to a civil penalty up to \$1,000.

(b) A milk producer may not change milk plants within 30 days, without permission of the commissioner, after receiving notification from the commissioner under paragraph (c) or (d) that the milk producer has violated this section.

(c) A milk producer who violates subdivision 3, clause (1), (2), (3), (4), or (5), is subject to clauses (1) to (3) of this paragraph.

(1) Upon notification of the first violation in a 12-month period, the producer must meet with the dairy plant field service representative to initiate corrective action within 30 days.

(2) Upon the second violation within a 12-month period, the producer is subject

to a civil penalty of \$300. The commissioner shall notify the producer by certified mail stating the penalty is payable in 30 days, the consequences of failure to pay the penalty, and the consequences of future violations.

(3) Upon the third violation within a 12-month period, the producer is subject to an additional civil penalty of \$300 and possible revocation of the producer's permit or certification. The commissioner shall notify the producer by certified mail that all civil penalties owed must be paid within 30 days and that the commissioner is initiating administrative procedures to revoke the producer's permit or certification to sell milk for at least 30 days.

(d) The producer's shipment of milk must be immediately suspended if the producer is identified as an individual source of milk containing residues in violation of subdivision 3, clause (6) or (7). Shipment may resume only after subsequent milk has been sampled by the commissioner or the commissioner's agent and found to contain no residues above established tolerances or safe levels. A milk producer who violates subdivision 3, clause (6) or (7), is subject to clauses (1) to (3) of this paragraph.

(1) For the first violation in a 12-month period, a producer shall not receive payment for any milk contaminated or the equivalent of at least the value of two days' milk production on that farm. Milk purchased for use from the producer during the two-day penalty period will be assessed a civil penalty equal to the minimum value of that milk and is payable to the commissioner by the dairy plant or marketing organization who purchases the milk. The producer remains eligible only for manufacturing grade until the producer completes the "Milk and Dairy Beef Residue Prevention Protocol" with a licensed veterinarian, displays the signed certificate in the milkhouse, and sends verification to the commissioner. To maintain a permit or certification to market milk, this program must be completed within 30 days.

(2) For the second violation in a 12-month period, a producer shall not receive payment for any milk contaminated or the equivalent of at least the value of four days' milk production on that farm. Milk purchased for use from the producer during the four-day penalty period will be assessed a civil penalty equal to the minimum value of that milk and is payable to the commissioner by the dairy plant or marketing organization who purchases the milk. The producer remains eligible only for manufacturing grade until the producer reviews the "Milk and Dairy Beef Residue Prevention Protocol" with a licensed veterinarian, displays the updated certificate in the milkhouse, and sends verification to the commissioner. To maintain a permit or certification to market milk, this program must be reviewed within 30 days.

(3) For the third violation in a 12-month period, a producer shall not receive payment for any milk contaminated or the equivalent of at least the value of four days' milk production on that farm. Milk purchased for use from the producer during the four-day penalty period will be assessed a civil penalty equal to the minimum value of that milk and is payable to the commissioner by the dairy plant or marketing organization who purchases the milk. The producer remains eligible only for manufacturing grade until the producer reviews the "Milk and Dairy Beef Residue Prevention Protocol" with a licensed veterinarian, displays the updated certificate in the milkhouse, and sends verification to the commissioner. To maintain a permit or certification to market milk, this program must be reviewed within 30 days. The commissioner shall also notify the producer by certified mail that the commissioner is initiating administrative procedures to revoke the producer's permit or certification to sell milk for a minimum of 30 days.

(e) A milk producer that has been certified as completing the "Milk and Dairy Beef Residue Prevention Protocol" within 12 months of the first violation of subdivision 3, clause (7), need only review the cause of the violation with a field service representative within three days to maintain shipping status if all other requirements of this section are met.

(f) Civil penalties collected under this section must be deposited in the milk inspection services account established in this chapter.

**History:** (3811) 1921 c 495 s 22; 1961 c 147 art 5 s 1; 1967 c 219 s 2; 1985 c 93 s 1; 1987 c 20 s 1; 1990 c 511 s 4; 1992 c 602 s 3

**32.211** [Expired 60 days following cessation of hostilities, World War II. Proclamation No. 2714.]

**32.212 MILK HOUSES FOR BULK TANKS.**

Any producer using a bulk tank for cooling and storage of milk to be used for manufacturing purposes shall have an enclosed milk room which shall conform to the standards provided by this section and section 32.213. The floor shall be constructed of concrete or other impervious material, maintained in good repair, and graded to provide proper drainage. The walls and ceilings of the room shall be sealed and constructed of smooth easily cleaned material. All windows shall be screened and doors shall be self-closing. It shall be well ventilated and must meet the following requirements:

- (1) The bulk tank shall not be located over a drain or under a ventilator.
- (2) The hose port shall be located in an exterior wall and fitted with a tight self-closing door.
- (3) Each milk room shall have an adequate supply of water readily accessible with facilities for heating the water, to insure the cleaning and sanitizing of the bulk tank, utensils and equipment and the keeping of the milk room clean.
- (4) No lights shall be placed directly over the bulk tank.
- (5) The bulk tank shall be properly located in the milk room for easy access to all areas for cleaning and servicing.
- (6) The milkhouse shall be used only for storage of milk, milk utensils, and supplies incidental to the production of milk.
- (7) This section and section 32.213 are effective for all bulk tanks for milk produced for manufacturing purposes.
- (8) No milk processor shall buy milk from any producer of milk using a bulk tank to be used for manufacturing purposes unless such producer has complied with the provisions of this section.
- (9) After July 1, 1965, no person shall install a bulk tank except in a milk room or milkhouse which complies with the provisions of this section and section 32.213.
- (10) The enforcement of this section and section 32.213 shall be administered by the Minnesota department of agriculture.
- (11) Any person violating any provisions of this section and section 32.213 shall be punished by a fine of not more than \$50.

**History:** 1965 c 530 s 1; 1967 c 257 s 1; 1969 c 337 s 1; 1983 c 216 art 1 s 9

**32.213 INFORMATION ON SALE OF BULK TANKS.**

No bulk tank designed for the cooling and storage of milk shall be sold to anyone other than a wholesaler or dealer in such bulk tanks without the seller delivering to the buyer an exact copy of this section and section 32.212 at or prior to the time of delivery of such bulk tank to the buyer.

**History:** 1965 c 530 s 2; 1983 c 216 art 1 s 10

**32.22 SKIMMED MILK.**

Notwithstanding the provisions of section 32.21, milk from which the cream has been removed, if such milk is otherwise wholesome and unadulterated, may be sold as such to makers of skimmed milk cheese, and by licensed dealers; but in the latter case only from vessels legibly marked "skimmed milk" in plain, common black letters upon a light colored background, each letter being at least one inch high and one-half inch wide, and these words being placed on the top or side of such vessel. These requirements shall not apply to skimmed or separated milk delivered to any patron of a creamery who furnishes milk thereto, but all skimmed milk from creameries and all whey from cheese factories so delivered to patrons shall first be pasteurized at a minimum temperature of 145 degrees Fahrenheit for not less than 30 minutes, or at a minimum temperature of 180 degrees Fahrenheit for continuous flow pasteurization.

**History:** (3812) 1921 c 495 s 23

32.23 [Repealed, 1959 c 606 s 12]

32.24 [Repealed, 1959 c 606 s 12]

### 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.

Subd. 2. **Apparatus to conform to specifications.** All glassware, test-bottles, pipettes, acid measures, chemicals, scales, and other apparatus used in the operation of these tests shall conform to the specifications set forth for the particular test method.

Subd. 3. **Penalties for violations.** Any person

(1) who, when testing by the Babcock test, shall use any appliances other than the standard Babcock glassware for measuring or testing milk or cream sold or purchased at prices determined upon the basis of milk fat therein contained, or

(2) who shall manufacture or sell Babcock glassware which is not constructed or graduated in accordance with these specifications, or

(3) who shall employ any test other than the Babcock test or those tests authorized by rule promulgated by the commissioner, or any methods other than the standard official methods for determining the milk fat content of milk or cream, or

(4) who shall incorrectly sample milk or cream purchased or sold, or

(5) who shall incorrectly weigh milk or cream purchased or sold, or

(6) who shall incorrectly grade milk or cream purchased or sold, or

(7) who shall make a false entry of the weight, or test result, or grade of any milk or cream purchased or sold, or

(8) who shall incorrectly sample, weigh, test, or record or report weights or tests of skim milk or buttermilk purchased or sold, or

(9) who shall underread the tests, or

(10) who shall falsify the reading of the tests, or

(11) who shall manipulate the reading of the tests, or

(12) who shall falsely state, certify, or use in the purchase or sale of milk or cream a misreading of such tests, whether the tests or actual reading shall have been made by such person or by any other person, shall be guilty of a misdemeanor.

**History:** (3815) 1921 c 495 s 26; 1927 c 154 s 1; 1941 c 327 s 1; 1945 c 164 s 1; 1947 c 461 s 1; 1955 c 521 s 1; 1961 c 147 art 5 s 2; 1963 c 90 s 1; 1965 c 310 s 2,3; 1984 c 509 s 1; 1985 c 248 s 70; 1993 c 367 s 27

**NOTE:** Clauses (2) and (3) of subdivision 1, as amended by Laws 1984, chapter 509, section 1, are effective upon adoption of the Upper Midwest (68), Eastern South Dakota (76), Chicago Area (30), and Iowa (79) Federal Milk Orders which would permit pricing by all purchasers from producers on a basis other than weight and milk fat content. See Laws 1984, chapter 509, section 2.

32.26 [Renumbered 32.106]

- 32.27 [Renumbered 32.208]
- 32.28 [Repealed, 1957 c 91 s 1]
- 32.29 [Renumbered 32.103]
- 32.30 [Renumbered 32.104]
- 32.31 [Renumbered 32.471]
- 32.32 [Renumbered 32.203]
- 32.33 [Renumbered 32.204]
- 32.34 [Renumbered 32.206]
- 32.35 [Repealed, 1947 c 55 s 1]
- 32.36 [Renumbered 32.472]
- 32.37 [Renumbered 32.473]
- 32.38 [Repealed, 1955 c 833 s 1]
- 32.381 [Renumbered 32.481]
- 32.382 [Renumbered 32.482]
- 32.383 [Renumbered 32.483]
- 32.384 [Renumbered 32.484]
- 32.385 [Renumbered 32.485]
- 32.39 [Repealed, 1947 c 104 s 2]

### 32.391 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to this chapter.

Subd. 1a. **Milk.** "Milk" is defined as the whole, fresh, clean lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. When prepared for market in final package form for beverage use, milk shall contain not less than 8.7 percent milk solids-not-fat and not less than 3.25 percent of milk fat. The name milk, unqualified, means cow's milk.

Subd. 1b. **Skim milk.** "Skim milk" is milk from which milk fat has been removed so that its milk fat content is less than .25 percent. Skim milk in final package form for beverage use must contain at least nine percent milk solids-not-fat, for a total of at least 9.25 percent milk solids. Skim milk may be homogenized.

Subd. 1c. **Lowfat milk.** "Lowfat milk" is milk from which milk fat has been removed so that its milk fat content is from one-half to two percent, within limits of good manufacturing practices. Lowfat milk in final package form for beverage use must contain at least ten percent milk solids-not-fat. Lowfat milk may be homogenized.

Milk solids-not-fat may be added to fluid milk products to meet the above standards from the following sources: partially-skimmed milk, skim milk, concentrated partially-skimmed milk, concentrated skim milk, and nonfat dry milk, used alone or in any combination.

Subd. 1d. **Milk solids-not-fat.** "Milk solids-not-fat" is the portion of a milk product that is not water and is not fat as determined by procedures outlined in Standard Methods For The Examination Of Dairy Products (current edition).

Subd. 1e. **Fluid milk products.** "Fluid milk products" means cream, sour cream, half and half, reconstituted half and half, concentrated milk, concentrated milk products, skim milk, nonfat milk, chocolate flavored milk, chocolate flavored drink, chocolate flavored reconstituted milk, chocolate flavored reconstituted drink, buttermilk, cultured buttermilk, cultured milk, vitamin D milk, reconstituted or recombined milk, reconstituted cream, reconstituted skim milk, homogenized milk, and any other fluid milk product made by the addition of any substance to milk or to any of the above enumerated fluid milk products, when the same is declared to be a fluid milk product by rule promulgated by the commissioner.

Subd. 1f. **Goat milk.** "Goat milk" is a whole, fresh, clean lacteal secretion free from colostrum, obtained by the complete milking of one or more healthy goats.

Subd. 1g. **Sheep milk.** "Sheep milk" is a whole, fresh, clean lacteal secretion free from colostrum, obtained by the complete milking of one or more healthy sheep.

Subd. 2. **Pasteurization.** (a) The terms "pasteurization," "pasteurized," and similar terms mean:

(1) the process of heating every particle of milk, fluid milk products, goat milk, or sheep milk, in properly operated equipment approved by the commissioner, to a temperature of at least 145 degrees Fahrenheit and holding the temperature for at least 30 minutes;

(2) the process of heating every particle of milk, fluid milk products, goat milk, or sheep milk, in properly operated equipment approved by the commissioner, to a temperature of at least 161 degrees Fahrenheit and holding the temperature for at least 15 seconds; or

(3) the process of heating every particle of milk, fluid milk products, goat milk, or sheep milk, in properly operated equipment approved by the commissioner, to the temperatures and holding for the times as the commissioner may prescribe by rule adopted in accordance with law containing standards more stringent than those imposed by this subdivision.

(b) Nothing contained in this definition shall be construed as excluding any other process which has been demonstrated to be equally efficient and is approved by the commissioner.

Subd. 3. **Cooling after pasteurization.** Immediately following pasteurization, all milk, fluid milk products, goat milk, and sheep milk shall be cooled, in properly operated equipment approved by the commissioner, to a temperature of 45 degrees Fahrenheit or lower, and maintained at 45 degrees Fahrenheit or lower until delivered; provided, however, that if the milk, fluid milk products, goat milk, or sheep milk is to be cultured immediately after pasteurization, then such cooling may be delayed until after the culturing process is completed; provided further that the commissioner may prescribe by rule adopted in accordance with law standards more stringent than those imposed by this subdivision.

**History:** 1945 c 384 s 1,2; 1953 c 536 s 1; 1967 c 219 s 3-5; 1985 c 248 s 70; 1986 c 354 s 1; 1990 c 511 s 5

**NOTE:** Subdivision 1, as amended by Laws 1986, chapter 354, section 1, is effective the first day of the third month after the governor certifies by executive order published in the State Register that all states in which processors licensed in Minnesota sell milk have in effect content requirements identical to those in subdivisions 1 to 1g. See Laws 1986, chapter 354, section 2.

### 32.392 APPROVAL OF DAIRY PLANTS.

No person shall operate a dairy plant in this state unless the dairy plant, and the equipment, water supply and plumbing system connected therewith shall have been first approved by the commissioner and a permit issued to operate the same. At the time of filing the application for a permit, the applicant shall submit to the commissioner duplicate floor plans of such plant which shall show the placement of equipment, the source of water supply and method of distribution, and the location of the plumbing system, including the disposal of wastes. All new construction or alteration of any existing dairy plants shall be made only with the approval of the commissioner and duplicate plans for such construction or alteration shall be submitted to the commissioner for approval. Any permit may be revoked by the commissioner for due cause after the holder of the permit has been given the opportunity for a hearing, in which case the holder of the permit shall be notified in writing, at least seven days prior to the date of such hearing, of the time and place of such hearing.

**History:** 1945 c 384 s 3; 1949 c 403 s 1; 1953 c 536 s 2; 1955 c 658 s 1; 1967 c 219 s 6; 1986 c 444

### 32.393 LIMITATION ON SALE.

Subdivision 1. **Pasteurization.** No milk, fluid milk products, goat milk, or sheep milk shall be sold, advertised, offered or exposed for sale or held in possession for sale

for the purpose of human consumption in fluid form in this state unless the same has been pasteurized and cooled, as defined in section 32.391; provided, that this section shall not apply to milk, cream, skim milk, goat milk, or sheep milk occasionally secured or purchased for personal use by any consumer at the place or farm where the milk is produced.

**Subd. 2. Labels.** All pasteurized milk, fluid milk products, goat milk, or sheep milk sold, offered or exposed for sale or held in possession for sale shall be labeled or otherwise designated as pasteurized milk, pasteurized fluid milk products, pasteurized goat milk, or pasteurized sheep milk, and in case of pasteurized fluid milk products the label shall also state the name of the specific product.

**History:** 1945 c 384 s 4; 1949 c 403 s 1; 1953 c 536 s 3; 1986 c 444; 1990 c 511 s 6

### 32.394 GRADE A PASTEURIZED MILK.

**Subdivision 1. Grade A pasteurized bacteria counts.** Grade A pasteurized milk, fluid milk products and goat milk are Grade A raw milk, fluid milk products and goat milk for pasteurization which have been pasteurized, cooled and prepared for distribution in a dairy plant approved by the commissioner, the bacterial count of which at no time after pasteurization and until delivery exceeds 20,000 bacteria per milliliter. The coliform count must not exceed ten per milliliter except that bulk tank transport shipments must not exceed 100 per milliliter. The standard plate count standard shall be omitted in the case of sour cream, cultured buttermilk, other cultured fluid milk products and cultured goat milk; provided further that the commissioner may prescribe standards and rules adopted in accordance with law more stringent than those imposed by this subdivision.

**Subd. 2. Grade A raw bacteria counts.** Grade A raw milk or goat milk for pasteurization purposes is raw milk or goat milk which complies with all the requirements for its production, the bacterial count of which does not exceed 100,000 bacteria per milliliter prior to commingling with other producer milk at which time the bacteria count must not exceed 300,000 per milliliter prior to pasteurization. The commissioner may prescribe standards and rules adopted in accordance with law more stringent than those imposed by this subdivision.

**Subd. 3.** Nothing in this section shall be construed to mean compulsory grading of pasteurized milk, pasteurized fluid milk products, pasteurized goat milk, raw milk for pasteurization, or raw goat milk for pasteurization; such grade shall apply only to pasteurized milk, pasteurized fluid milk products, pasteurized goat milk, raw milk for pasteurization, or raw goat milk for pasteurization on which the grade is declared on the label.

**Subd. 4. Rules.** The commissioner shall by rule promulgate identity, production and processing standards for milk, milk products and goat milk which are intended to bear the Grade A label.

In the exercise of the authority to establish requirements for Grade A milk, milk products and goat milk, the commissioner may adopt definitions, standards of identity, and requirements for production and processing contained in the "Grade A Pasteurized Milk Ordinance" of the United States Department of Health and Human Services, in a manner provided for and not in conflict with law.

**Subd. 5.** No person shall sell, offer or expose for sale, any milk, milk products or goat milk labeled Grade A, unless the milk, milk products or goat milk have been produced and processed in accordance with the requirements of Minnesota law and rule. Any processor desiring to use the Grade A label on milk, milk products or goat milk shall make application for a permit to the commissioner on a form prescribed and furnished by the commissioner. The permit shall be issued by the commissioner when the commissioner has determined that the applicant has complied with the requirements of Minnesota law and rule. Permits shall not be transferable with respect to person or location. A permit may be suspended by the commissioner upon failure by the holder of the permit to comply with any of the terms of Minnesota law and rule or for interfer-

ence with inspection, and may be revoked by the commissioner for due cause after the holder of the permit has been given the opportunity for a hearing, in which case the holder of the permit shall be given a notice in writing of the time and place of such hearing at least seven days before the date of such hearing.

Subd. 6. To assure compliance with the laws and rules governing the production, handling, processing, and sale of Grade A milk, Grade A milk products and Grade A goat milk, the commissioner is hereby authorized to provide a service to be performed by trained and duly qualified milk sanitarians, for the inspection of such milk, milk products and goat milk, and of the premises and plants where such milk, milk products and goat milk are produced, handled and processed. Such service shall be for acquainting the processor and producers with the requirements for a Grade A milk supply, for preliminary inspection to determine if a processor has brought the processor's farms and plant to the state of compliance which will qualify the processor's products for the Grade A label, and for continuous inspection to assure that any farms and plants so accepted and all products therefrom so labeled shall remain in compliance. Said Grade A processor shall provide a continuous field service to assist the producers, who sell their milk to the processor's plant, to attain and to maintain compliance with Grade A requirements. Any person who performs such field service for such Grade A processor first shall obtain a permit therefor from the commissioner. Any person desiring to secure such permit shall make application therefor on a form provided by the commissioner, and before a permit is issued the commissioner shall determine that the applicant is competent and qualified to perform such field service. Said permit shall not be transferable and may be revoked for due cause after the holder of the permit has been given the opportunity for a hearing in which case the holder of the permit shall be given a notice in writing of the time and place of such hearing at least seven days before the date of such hearing.

Subd. 7. The aforesaid state service shall be available to all processors who wish to use the Grade A label on their milk, milk products and goat milk and who have not available to them substantially equivalent service, imposed with equal effectiveness by a city within the state.

Subd. 8. **Grade A inspection fees.** A processor or marketing organization of milk, milk products, sheep milk, or goat milk who wishes to market Grade A milk or use the Grade A label must apply for Grade A inspection service from the commissioner. A pasteurization plant requesting Grade A inspection service must hold a Grade A permit and pay an annual inspection fee of no more than \$500. For Grade A farm inspection service, the fee must be no more than \$50 per farm, paid annually by the processor or by the marketing organization on behalf of its patrons. For a farm requiring a reinspection in addition to the required biannual inspections, an additional fee of no more than \$25 per reinspection must be paid by the processor or by the marketing organization on behalf of its patrons. The Grade A farm inspection fee must not exceed the lesser of (1) 40 percent of the department's actual average cost per farm inspection or reinspection; or (2) the dollar limits set in this subdivision. No fee increase may be implemented until after the commissioner has held three or more public hearings.

Subd. 8a. A laboratory, before conducting a test the results of which are to be used in the enforcement of requirements for distribution of milk, milk products or goat milk under the Grade A label, must be certified as meeting the requirements for laboratory approval that are established by rule of the commissioner, and must receive a permit from the commissioner. The permit shall remain valid without renewal unless suspended or revoked by the commissioner for failure to comply with the requirements. Satisfactory analytical procedures and results for split samples, the nature, number and frequency of which shall be in accordance with rules established by the commissioner, shall be required of a certified laboratory for retention of its certification and permit.

An application for initial certification or for recertification following suspension or revocation of a permit shall be accompanied by a fee of not less than \$100 nor more than \$350. The fee for each set of split samples shall be not less than \$25 nor more than \$75. The commissioner may annually adjust assessments within the limits established by this subdivision to meet the cost of the services required by this subdivision.



A certified laboratory of record on June 5, 1975 shall be issued a permit without having to pay the initial certification fee.

**Subd. 8b. Manufacturing grade farm certification.** A processor or marketing organization of milk, milk products, sheep milk, or goat milk who wishes to market other than Grade A milk must apply for a manufacturing grade farm certification inspection from the commissioner. A manufacturing plant that pasteurizes milk or milk by-products must pay an annual fee based on the number of pasteurization units. This fee must not exceed \$140 per unit. The fee for farm certification inspection must not be more than \$25 per farm to be paid annually by the processor or by the marketing organization on behalf of its patrons. For a farm requiring more than the one inspection for certification, a reinspection fee of no more than \$25 must be paid by the processor or by the marketing organization on behalf of its patrons. The fee must be set by the commissioner in an amount necessary to cover 40 percent of the department's actual cost of providing the annual inspection but must not exceed the limits in this subdivision. No fee increase may be implemented until after the commissioner has held three or more public hearings.

**Subd. 8c. Grade A or manufacturing grade raw milk.** Grade A or manufacturing grade raw milk must not have been stored longer than 76 hours when it is picked up at the farm by the receiving plant. The commissioner or an agent of the commissioner may waive the 76-hour time limit in a case of hardship, emergency, or natural disaster. On farms permitted or certified for bulk tank storage, the milk may only be picked up from approved bulk milk tanks in proper working order.

**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.

**Subd. 10. [Repealed, 1961 c 147 art 5 s 7]**

**Subd. 11. Waiver of rules; water well distance requirement.** A dairy farmer who wishes to be permitted to produce grade A milk may not be denied the grade A permit

solely because of provisions in rules adopted by the commissioner of health requiring a minimum distance between a water well and a dairy barn. To be eligible for a grade A permit, the following conditions must be met:

- (1) the water well must have been in place prior to January 1, 1974;
- (2) the water well must comply with all rules of the commissioner of health other than the minimum distance requirement; and
- (3) water from the well must be tested at least once every six months in compliance with guidelines established by the commissioner of agriculture.

Subd. 12. **Water testing guidelines.** The commissioner of agriculture, in consultation with the commissioner of health, shall establish guidelines for the testing required under section 32.394, subdivision 11, clause (3). The guidelines are not subject to chapter 14.

**History:** 1945 c 384 s 5; 1949 c 403 s 1; 1953 c 536 s 4; 1953 c 752 s 1; 1955 c 379 s 1; 1959 c 400 s 1; 1961 c 113 s 1; 1967 c 219 s 7-11; 1971 c 703 s 1,2; 1973 c 123 art 5 s 7; 1975 c 412 s 21-23; 1977 c 120 s 1,2; 1983 c 300 s 20; 1985 c 248 s 70; 1986 c 444; 1987 c 384 art 3 s 1; 1987 c 396 art 11 s 11-13; 1990 c 511 s 7-10; 1991 c 254 art 3 s 18-20; 1992 c 544 s 2,3; 1993 c 65 s 4,5; 1993 c 172 s 29

### 32.395 MILK OTHER THAN GRADE A.

Subdivision 1. Pasteurized milk, fluid milk products and goat milk, other than Grade A, are raw milk, fluid milk products and goat milk for pasteurization which have been pasteurized, cooled and prepared for distribution in a plant approved by the commissioner, the bacterial count of which at no time after pasteurization and until delivery, exceeds 50,000 bacteria per milliliter, standard plate count, as determined by averaging the logarithms of the results of the last four consecutive tests of samples taken on separate days, except that such average may be over 50,000 bacteria per milliliter if the last individual result is 50,000 bacteria per milliliter or lower, and not more than one of the last four coliform counts of which shall exceed ten per milliliter unless the last individual result is ten per milliliter or lower; provided that the standard plate count standard shall be omitted in the case of sour cream, cultured buttermilk, other cultured fluid milk products and cultured goat milk.

Subd. 2. Raw milk or raw goat milk for pasteurization purposes, other than Grade A, is raw milk or raw goat milk which complies with all the requirements for its production, the bacterial count of which does not exceed 500,000 bacteria per milliliter, standard plate count or direct microscopic clump count, as determined by averaging the logarithms of the results of the last four consecutive tests of samples taken on separate days, except that such average may be over 500,000 bacteria per milliliter if the last individual result is 500,000 bacteria per milliliter or lower.

Subd. 3. The commissioner is authorized to promulgate by rule production and processing standards for pasteurized milk, pasteurized fluid milk products, pasteurized goat milk, raw milk for pasteurization and raw goat milk for pasteurization.

Subd. 4. The commissioner may authorize, in respect to raw milk or raw goat milk for pasteurization purposes, any other method or methods of determining bacterial count.

**History:** 1945 c 384 s 6; 1953 c 536 s 5; 1985 c 248 s 70; 1986 c 444

### 32.396 [Repealed, 1953 c 536 s 6]

### 32.397 ENFORCEMENT STANDARDS.

The standards set forth in sections 32.391 to 32.398 and rules adopted thereunder by the commissioner shall be the only such standards for use in the state of Minnesota. No municipality or other subdivision of state government shall provide, by ordinance more stringent or comprehensive standards than are contained in sections 32.391 to 32.398 and rules adopted thereunder by the commissioner.

**History:** 1945 c 384 s 9; 1961 c 147 art 5 s 5; 1967 c 219 s 12; 1985 c 248 s 70

**32.398 ENFORCEMENT AND VIOLATIONS.**

Subdivision 1. **Enforcement.** The commissioner shall enforce the provisions of sections 32.391 to 32.398.

Subd. 2. **Violations and penalties.** Any person violating any of the provisions of sections 32.391 to 32.398 shall be deemed guilty of a misdemeanor.

**History:** 1945 c 384 s 8,10; 1961 c 144 art 2 s 20

**32.40** [Repealed, 1949 c 176 s 10]

**32.401 MILK AND CREAM FOR MANUFACTURING.**

Subdivision 1. **Standards, grades, and price differentials.** In order to protect the public health and welfare, to promote the interests of the dairy industry in Minnesota, and to secure uniformity, the commissioner of agriculture may adopt standards, grades and price differentials between various grades of milk and cream for milk and cream purchased for manufacturing purposes. Before adopting any standards, grades, or price differentials for milk and cream, the commissioner shall hold a public hearing thereon, as provided by law. Until such standards, grades and price differentials are made and filed, the standards, grades, and price differential heretofore made by the commissioner remain in effect except as otherwise prescribed by law.

Subd. 2. **Statement of purchases furnished to seller.** All milk or cream purchased for manufacturing purposes shall be purchased on the basis of the standards, grades, and price differentials between grades so adopted. Every purchaser of milk or cream for manufacturing purposes shall, at time of payment therefor, furnish the person from whom purchased a statement showing the date of grading, the grade, and the price paid therefor. The statement may be included on the check delivered by the purchaser to the seller in payment of the milk or cream.

Subd. 3. **Enforcement.** The commissioner of agriculture shall enforce the provisions of this section.

Subd. 4. **Penalties.** Any person, firm, or corporation violating any provision of this section or a rule, standard, or price differential duly adopted by the commissioner is guilty of a misdemeanor.

Subd. 5. **Application.** This section shall not apply to any action now pending in any of the courts of this state, or to any cause of action arising, or violation which occurred, prior to April 18, 1955.

**History:** 1947 c 396 s 1-4; 1949 c 196 s 2; 1953 c 197 s 1; 1955 c 481 s 1; 1961 c 113 s 1; 1961 c 144 art 2 s 21; 1961 c 147 art 5 s 6; 1976 c 61 s 1; 1985 c 248 s 70

**32.41** [Repealed, 1949 c 176 s 10]

**32.411 UNIFORM QUALITY STANDARDS FOR MILK, CREAM, FLUID MILK PRODUCTS.**

Subdivision 1. **Requirements.** For the purpose of maintaining uniform quality standards in the purchase of milk, cream, and fluid milk products for manufacturing purposes or for resale to another for manufacturing purposes, the requirements set forth in subdivisions 2 to 4 shall be complied with.

Subd. 2. **Record of quality tests.** Every licensed purchaser of milk, cream and fluid milk products for manufacturing purposes or for resale to another for manufacturing purposes, herein called licensed purchaser, shall demand and receive with the first milk or cream delivery received from a producer a copy of the record of quality tests of the producer's milk or cream made by a former licensed purchaser during the three months immediately preceding such delivery, unless the producer has not delivered such products to any other purchaser during that period. If the previous purchaser, after receiving a written request for such record from the producer or from the new purchaser, refuses or is unable to comply with such request, the new purchaser shall immediately report such failure or refusal to the commissioner.

**Subd. 3. Establishment of new quality records.** If a milk or cream producer fails to deliver the quality records or quality tests, the licensed purchaser shall establish a new producer's quality record in lieu thereof, by taking the first four consecutive deliveries from such producer and making on such products all tests required by law and by rules thereunder relating to milk, cream, and fluid milk products for manufacturing purposes administered by the commissioner of agriculture. The establishment of such records shall be immediately reported to the commissioner by the new purchaser.

**Subd. 4. Change of purchasing plants.** The changing of purchasing plants for manufacturing purposes to which a producer of milk, cream, and fluid milk products makes delivery, shall not alter the status of such producer's previous quality record for purposes of section 32.401, and rules thereunder administered by the commissioner.

**Subd. 5. Penalty.** Any licensed purchaser of milk, cream, or fluid milk products who neglects to furnish to any milk or cream producer upon written request a copy of a record of quality tests and farm inspections, or any licensed purchaser or producer who fails to comply with this section, is guilty of a misdemeanor.

**Subd. 6. Commissioner.** For the purposes of this section "commissioner" means commissioner of agriculture.

**History:** 1955 c 208 s 1,2; 1959 c 97 s 1,2; 1961 c 113 s 1; 1985 c 248 s 70; 1986 c 444

### **32.415 MILK FOR MANUFACTURING; QUALITY STANDARDS.**

(a) The commissioner may adopt rules to provide uniform quality standards, and producers of milk used for manufacturing purposes shall conform to the standards contained in Subparts D, E, and F of the United States Department of Agriculture Consumer and Marketing Service Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, Vol. 37 Federal Register, No. 68, Part II, April 7, 1972, with the following exceptions:

- (1) inspections of producers shall begin not later than January 1, 1984;
- (2) producers shall comply with the standards not later than July 1, 1985, except as otherwise allowed under the standards; and
- (3) the commissioner shall develop methods by which producers can comply with the standards without violation of religious beliefs.

(b) The commissioner shall perform or contract for the performance of the inspections necessary to implement this section or shall certify dairy industry personnel to perform the inspections.

(c) The commissioner and other employees of the department shall make every reasonable effort to assist producers in achieving the milk quality standards at minimum cost and to use the experience and expertise of the University of Minnesota and the agricultural extension service to assist producers in achieving the milk quality standards in the most cost-effective manner.

(d) The commissioner shall consult with producers, processors, and others involved in the dairy industry in order to prepare for the implementation of this section including development of informational and educational materials, meetings, and other methods of informing producers about the implementation of standards under this section.

**History:** 1983 c 232 s 1; 1984 c 640 s 32; 1990 c 511 s 11

### **32.417 INVESTMENT REIMBURSEMENTS TO MANUFACTURED MILK PRODUCERS.**

An operator of a dairy farm that produces milk for sale in cans may apply for a reimbursement in the amount of \$100 for the first \$500 or fraction thereof, and ten percent of the next \$2,000, of the net expenditures by the operator for any capital improvements or equipment installed primarily for the purpose of conforming to the standards adopted in section 32.415. No reimbursement may be made to an applicant unless:

- (a) the applicant provides receipts for the expenditures;
- (b) a dairy inspector authorized by the commissioner certifies that the applicant's dairy operation complies with the standards adopted in section 32.415 as a result of the installation of the improvements or equipment; and
- (c) the expenditures for the improvements and equipment were made on or after the effective date of this section but before July 1, 1985.

The commissioner shall provide an application form for the reimbursement program. By January 1, 1984, the commissioner shall adopt emergency rules under sections 14.29 to 14.36 which provide reimbursement application and payment procedures, and eligibility criteria based on an applicant's need for a reimbursement. Notwithstanding the provisions of section 14.35, the rules shall be effective until July 1, 1985. No reimbursement application may be approved after June 30, 1985.

**History:** 1983 c 232 s 2; 1984 c 640 s 32

- 32.42 [Repealed, 1949 c 176 s 10]
- 32.43 [Repealed, 1957 c 91 s 1]
- 32.44 [Repealed, 1957 c 91 s 1]
- 32.45 [Repealed, 1957 c 91 s 1]
- 32.46 [Repealed, 1957 c 91 s 1]
- 32.47 [Repealed, 1957 c 91 s 1]

## BUTTER

### 32.471 BUTTERFAT CONTENT OF BUTTER.

Subdivision 1. **Prohibition.** A person may not manufacture for sale, or sell, or have in possession with intent to sell:

- (1) dairy or creamery butter that contains less than 80 percent butterfat by weight or has been manufactured from milk or cream that has not been pasteurized in accordance with the provisions of sections 32.391 and 32.392; or
- (2) light butter that does not meet the requirements of section 32.474.

Subd. 2. Any person violating any provision of this section shall be guilty of a misdemeanor.

**History:** (3821) 1921 c 495 s 32; 1937 c 55 s 1; 1947 c 104 s 1; 1949 c 193 s 1; 1971 c 23 s 4; 1971 c 565 s 1; 1985 c 248 s 70; 1990 c 407 s 1

- 32.472 [Repealed, 1983 c 300 s 28]
- 32.473 [Repealed, 1983 c 300 s 28]

### 32.474 LIGHT BUTTER.

Subdivision 1. **Definition.** "Light butter" means a food produced to resemble butter that contains 52 percent butterfat, with one-third fewer calories, made from milk or cream, or both, that has been pasteurized in accordance with sections 32.391 and 32.392, that may contain one or more of the optional dairy ingredients described in subdivision 3, and that may contain other optional ingredients described in subdivision 4.

Subd. 2. **Vitamin A added.** Light butter must have vitamin A added, if necessary, to provide 15,000 international units per pound within limits of good manufacturing practices.

Subd. 3. **Dairy ingredients.** Light butter may contain the following dairy ingredients: part skim milk, skim milk, buttermilk, whey, and whey-derived ingredients.

Subd. 4. **Other ingredients.** Light butter may contain the following optional ingredients: water, salt or salt substitutes, bacterial cultures, nutritive sweeteners, emulsifiers and stabilizers, safe and suitable color additives, natural flavors, and safe and suitable

ingredients that improve texture, prevent syneresis, or extend the shelf life of the product.

**History:** 1990 c 407 s 2

### 32.475 BUTTER, GRADING AND LABELING.

**Subdivision 1. Definitions.** As used in this section, score or grade means the grading of butter by its examination for flavor and aroma, body and texture, color, and salt, and by the use of other tests or procedures approved by the commissioner of agriculture, for ascertaining the quality of butter in whole or in part.

**Subd. 2. Minnesota grades.** It is unlawful to sell, offer or expose for sale, or have in possession with intent to sell any butter at retail unless it has been graded and labeled with such grades as follows:

- (a) Grade, Minnesota, AA — 93 score
- (b) Grade, Minnesota, A — 92 score
- (c) Grade, Minnesota, B — 90 score
- (d) Grade, Minnesota, undergrade — all butter below Minnesota B.

For the purposes of this section "sale at retail" shall include all sales to a restaurant or eating establishment that serves butter to its patrons or that uses butter in the preparation of any food which is served to its patrons.

**Subd. 3. United States grades.** United States AA, A and B grades, or as such grades may be amended or as they may be administered by the United States Department of Agriculture, shall be accepted in lieu of the corresponding Minnesota AA, A and B grades, but all United States grades below B shall, for the purpose of this section, correspond to Minnesota undergrade.

**Subd. 4. Methods and procedures, promulgation by commissioner of agriculture.** Methods and procedures to be used for ascertaining quality, grades, grading, labeling, and for arbitrating disputes with respect to grades may be promulgated by the commissioner of agriculture.

**Subd. 5. Foreign butter.** Butter from outside of the state of Minnesota sold within this state shall comply with the state grade and labeling standards provided in this section; and, unless marked with United States AA, A, and B grades, shall indicate the grade in a manner equivalent to the requirements for butter manufactured and sold within this state.

**Subd. 6. Advertisement for retail sale, indication of grade.** Any advertisement of butter offered for sale at retail to the public at a given price shall plainly and conspicuously indicate the grade of such butter.

**Subd. 7. Penalty.** Any person violating any provision of this section shall be guilty of a misdemeanor.

**History:** 1955 c 219 s 1; 1957 c 145 s 1; 1971 c 23 s 5

### 32.48 [Repealed, 1947 c 275 s 1]

## CHEESE

### 32.481 CHEESE.

**Subdivision 1. Definition.** "Cheese" as used in sections 32.481 to 32.485 includes all varieties of cheese, cheese spreads, cheese foods, cheese compounds, or processed cheese, made or manufactured in whole or in part from cow's, goat's, or sheep's milk.

**Subd. 2. Reduced fat cheese; light cheese.** (a) "Reduced fat cheese" or "light cheese" is a product prepared from milk and other ingredients by the processing procedures set by rule or by an alternate procedure that produces a finished cheese having the same or substantially the same flavor, body, and texture characteristics as the referenced standardized variety on the labels of the reduced fat cheese.

(b) Reduced fat cheese must contain at least one-third less than the minimum milkfat content required of the referenced standardized variety. The moisture content of the reduced fat cheese must not exceed 125 percent of the maximum allowable moisture of the referenced standardized variety. The principal display panel must bear the name "reduced fat ..... cheese" or "light ..... cheese," the blank to be filled with the varietal name of the referenced standardized cheese all in the same size type. The principal display panel must also contain a statement declaring the amount of fat reduction as a percentage or fraction of the referenced standardized variety in a type size not less than one-half that of the name of the reduced fat cheese. All other label information must be as stated in section 32.483 or as required by Code of Federal Regulations, title 21, and as adopted by rule.

**History:** 1947 c 184 s 1; 1990 c 407 s 3

### 32.482 MANUFACTURE OF CHEESE, REQUIREMENTS IN PROCESS.

No person, firm, or corporation shall manufacture, transport, sell, offer, or expose for sale or have in possession with intent to sell, at retail to a consumer any cheese which has not been (a) manufactured from milk or milk products which have been pasteurized in accordance with sections 32.391 and 32.392 or (b) subjected to a heat treatment equivalent to pasteurization during the process of manufacture or processing, or (c) subjected to an aging process whereby it has been kept for at least 60 days after manufacture at a temperature not lower than 35 degrees Fahrenheit. Any cheese which has been made from unpasteurized milk and which has been repackaged, handled or processed in any manner so as to obliterate or destroy its date of manufacture shall be labeled to show the true date of manufacture or in lieu thereof bear a statement that such cheese is more than 60 days of age.

**History:** 1947 c 184 s 2; 1955 c 484 s 1; 1959 c 29 s 1

### 32.483 STATEMENT BY MANUFACTURER.

Each cheese or packaged cheese sold, offered, or exposed for sale or held in possession with intent to sell at either retail or wholesale, within this state, shall have affixed thereto by the manufacturer a statement clearly setting forth:

(a) The factory number where manufactured, or in states where official factory numbers are not assigned, the name of the manufacturer and address of the plant where manufactured; provided, however, that in case of process cheese, cheese spreads, cheese foods and cheese compounds, the name and address of the jobber or distributor may be substituted for the name of the manufacturer and address of the plant where manufactured;

(b) The name of the variety or the distinctive name of the product and the word "Pasteurized" if made from pasteurized milk;

(c) The name of the variety or the distinctive name of the product and the date of manufacture if made from unpasteurized milk;

(d) The name of the variety or the distinctive name of the product and the word "Pasteurized" if made from milk which is pasteurized in the curd form during the making process.

When a cheese is repackaged or divided into wholesale cuts, the distributor shall affix to each package or cut a label containing the information required in clause (b) or (c), which appears on the original cheese, together with the name and address of the distributor. When selling cheese to the consumer, that portion to which the label is affixed shall be sold last.

**History:** 1947 c 184 s 3

### 32.484 ENFORCEMENT.

The commissioner of agriculture shall be charged with the enforcement of sections 32.481 to 32.483 and shall have authority to promulgate in the manner provided by law all such rules as are necessary to the enforcement thereof.

**History:** 1947 c 184 s 4; 1961 c 113 s 1; 1961 c 144 art 2 s 19; 1985 c 248 s 70

**32.485 VIOLATIONS; PENALTIES.**

Any person violating any of the provisions of sections 32.481 to 32.484 shall be guilty of a misdemeanor.

*History: 1947 c 184 s 5*

**32.486 CULTURED DAIRY FOOD; FARMSTEAD CHEESE.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Cultured dairy food" means a dairy product other than a grade A cultured dairy product.

(c) "Minnesota farmstead cheese" means cheese manufactured within the state of Minnesota on the same farm on which the milk is produced that is used in the manufacture.

Subd. 1a. **Processing requirements.** (a) Milk used to manufacture Minnesota farmstead cheese may not be more than 48 hours old when used.

(b) Before requiring pasteurization, the commissioner shall provide a plan at least 60 days before the next inspection to the manufacturer to assist the manufacturer in meeting the processing and facility requirements. The commissioner may require pasteurization if test samples demonstrate cheese and cultured dairy foods are not free of pathogens. The commissioner must inspect facilities at least four times each year.

Subd. 2. **Use of name restricted.** No cheese or packaged cheese that is sold, offered, or exposed for sale or held in possession with intent to sell at either retail or wholesale within this state may be labeled or described as "Minnesota farmstead cheese" unless it meets the criteria set forth in subdivision 1, and the manufacturer has obtained a written permit to use the name from the commissioner of agriculture, or the commissioner's designate.

Subd. 3. **Permit.** The commissioner or the commissioner's designate shall issue a permit authorizing the use of the name "Minnesota farmstead cheese" upon application made therefor on forms furnished by the commissioner, if the commissioner or the commissioner's designate is satisfied that the cheese manufactured by the applicant meets the requirements prescribed by subdivision 1. The commissioner or the commissioner's designated agents shall inspect the farm at reasonable times to insure compliance with subdivision 1. The permit may be suspended or revoked by the commissioner if the commissioner finds that the permittee is not in compliance with subdivision 1.

*History: 1977 c 114 s 1; 1986 c 444; 1989 c 123 s 1,2; 1991 c 327 s 1*

**32.49** [Renumbered 32.5311]

**32.491** [Renumbered 32.401]

**32.492** [Renumbered 32.411]

**32.494** [Renumbered 32.207]

**32.50** Subdivision 1. [Repealed, 1961 c 147 art 4 s 2]

Subd. 2. [Renumbered 32.201]

Subd. 3. [Omitted 32.48 Repealed, 1947 c 275 s 1]

Subd. 4. [Repealed, 1949 c 196 s 3]

Subd. 5. [Renumbered 32.205]

Subd. 6. [Renumbered 32.101]

Subd. 7. [Renumbered 32.534]

Subd. 8. [Repealed, 1961 c 147 art 3 s 3]

Subd. 9. [Repealed, 1961 c 147 art 3 s 3]

Subd. 10. [Repealed, 1961 c 147 art 2 s 2]

Subd. 11. [Renumbered 32.90]



**32.51 Subdivision 1.** [Renumbered 32.021 subdivision 1]

Subd. 2. [Repealed, 1961 c 147 art 2 s 2]

Subd. 3. [Repealed, 1949 c 196 s 3]

Subd. 4. [Repealed, 1961 c 147 art 2 s 2]

Subd. 5. [Repealed, 1961 c 147 art 2 s 2]

Subd. 6. [Repealed, 1961 c 147 art 2 s 2]

Subd. 7. [Repealed, 1961 c 147 art 2 s 2]

**32.511 Subdivision 1.** [Renumbered 32.021 subd 2]

Subd. 2. [Renumbered 32.01 subd 12]

**32.52 Subdivision 1.** [Repealed, 1961 c 147 art 4 s 2]

Subd. 2. [Omitted 32.48 Repealed, 1947 c 275 s 1]

Subd. 3. [Renumbered 32.102]

**FILLED DAIRY PRODUCTS****32.529 CITATION; MINNESOTA FILLED DAIRY PRODUCTS ACT.**

Sections 32.53 to 32.534 may be cited as the Minnesota filled dairy products act.

*History: 1953 c 157 s 1; 1961 c 147 art 6 s 1***32.53 PURPOSE.**

It is the purpose of sections 32.53 to 32.534 to protect the public from confusion, fraud, and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods.

*History: 1953 c 157 s 2; 1983 c 202 s 1***32.531 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 32.53 to 32.534, the terms defined in this section have the meanings given them. .

Subd. 2. **Person.** "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and other business units, devices, or arrangements.

Subd. 3. **Dairy product.** "Dairy product" includes, but is not limited to, milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, concentrated milk, and forms of dairy products for which no standard of identity exists which are manufactured principally from milk or milk-derived ingredients, provided milk-derived ingredients are not used at levels in excess of those permitted in similar standardized dairy products. •

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's designee.

Subd. 5. **Artificial dairy product.** "Artificial dairy product" means any food which by its composition, intended use, sensory qualities, physical properties, package, or label description purports to resemble or imitate any dairy product listed in subdivision 3. "Artificial dairy product" does not include:

(1) any distinctive proprietary food compound not readily mistaken for a dairy product, which is customarily used on the order or advice of a physician and is prepared and designed for medicinal or special dietary use and predominantly so labeled; or

(2) any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milk fat contained in the product do not exceed the amount of cocoa fat naturally present in the chocolate or cocoa used and the food oil, not in excess of .01 percent of the weight of the finished product, used as a carrier of the vitamins.

Subd. 6. **Milk.** "Milk" means milk, skim milk, cream, lowfat milk, nonfat dry milk, and any fluid derivative of the listed items.

**Subd. 7. Milk-derived ingredients.** "Milk-derived ingredients" means buttermilk, whey, products derived from whey, casein, lactose, lacto albumen, and any fluid derivative of the listed items.

**History:** 1953 c 157 s 3; 1961 c 113 s 1; 1983 c 202 s 2

### **32.5311 ARTIFICIAL DAIRY PRODUCTS, RESTRICTIONS AS TO MANUFACTURE, SALE, OR EXCHANGE.**

**Subdivision 1. Unlawful act.** It is unlawful for any person, firm or corporation, directly or through an employee or agent, or as the employee or agent of another, to knowingly manufacture, sell, exchange, or possess an artificial dairy product which does not adhere to the labeling requirements for artificial dairy products in subdivisions 2 to 5.

**Subd. 2. Required statement.** The statement "an artificial dairy product" must be indicated in the upper 30 percent of the principal display panel of the package or container of an artificial dairy product. The statement may not be less than one-half of the size of the product name, but in no event smaller than one-quarter of an inch or 18-point type, and must be of similar type, style, and color.

**Subd. 3. Federal requirements.** Artificial dairy products must comply with the applicable federal requirements set forth in section 403 of the federal Food, Drug and Cosmetic Act, and Code of Federal Regulations, title 21, sections 101 and 105.

**Subd. 4. Product name.** The product name of an artificial dairy product must be presented in bold face type on the principal display panel and must be in lines generally parallel to the base of the container or package.

**Subd. 5. Exempt products.** Nonliquid toppings, dry coffee whiteners, frozen liquid whiteners, dips, dressings, and margarine-type products are not subject to the requirements in this section or section 32.5312.

**History:** (3926) 1923 c 126 s 1; 1925 c 203 s 1; 1953 c 157 s 4; 1969 c 721 s 1; 1983 c 202 s 3; 1986 c 444

### **32.5312 INGREDIENT AND NUTRITIONAL VALUES.**

**Subdivision 1. Statement of differences.** An artificial dairy product must have on the principal display panel information which will provide the major differences between the artificial dairy product and the dairy product it resembles. The information must be in a type size which is at least 25 percent of the name of the artificial dairy product, but not less than one-eighth of an inch. This information shall include the difference in the fat or oil used and the major difference in the basic ingredients used to replace nonfat milk solids.

**Subd. 2. Nutritional panel.** A nutritional panel must be provided on an artificial dairy product which indicates the quantitative nutritional differences between the artificial dairy product and the dairy product it resembles in comparative columns. The nutrients to be included are those for which a U. S. Recommended Daily Allowance has been established.

**Subd. 3. Exemption.** This section does not apply to any package containing an individual serving of less than one-half ounce or one-half fluid ounce of an artificial dairy product for use in a restaurant, institution, or passenger carrier, and not otherwise packaged for sale at retail.

**History:** 1983 c 202 s 4

### **32.532 ENFORCEMENT.**

The commissioner is authorized and directed to administer and supervise the enforcement of sections 32.53 to 32.534; to provide for such periodic inspections and investigations as the commissioner may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both. The provisions of these sec-

tions may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Artificial dairy products involved in a violation of these sections are subject to seizure and disposition in accordance with an appropriate court order or a rule adopted by the commissioner. The commissioner may adopt emergency or permanent rules necessary to implement and administer sections 32.53 to 32.534.

**History:** 1953 c 157 s 6; 1983 c 202 s 5; 1984 c 640 s 32; 1986 c 444

### 32.533 OPERATION AND EFFECT.

Sections 32.53 to 32.534 are supplemental to all other laws relating to artificial dairy products not expressly referred to therein, and to all laws relating to the manufacture, sale, exchange, or transportation of artificial dairy products within or outside the state of Minnesota, and shall not be construed to modify, repeal, or in any wise affect any part or provisions of any such laws not expressly repealed therein.

**History:** 1953 c 157 s 8; 1961 c 147 art 6 s 2; 1983 c 202 s 6

### 32.534 PENALTY.

Any person, whether individually or as a member or employee of a partnership, or as an officer, agent, or employee of a corporation who directs or knowingly permits any violation of any of the provisions of sections 32.53 to 32.534, or who aids or assists therein, either on the person's own behalf or in the interests of the person's employer or principal shall, upon the first conviction thereof, be subject to a fine of not more than \$100, or to imprisonment in the county jail for not more than 30 days, or both; and upon each subsequent conviction thereof, shall be subject to a fine of not less than \$3,000 nor more than \$10,000, or to imprisonment in the county jail for not less than six months nor more than one year, or both.

**History:** (3927) 1923 c 126 s 2; 1953 c 157 s 5; 1984 c 628 art 3 s 11; 1986 c 444

## FROZEN DAIRY FOODS

### 32.55 DEFINITIONS; FROZEN DAIRY FOODS.

Subdivision 1. **Terms.** For the purposes of subdivisions 2 to 13 and sections 32.56 to 32.645, and acts amendatory thereof, the terms defined in subdivisions 2 to 13, and acts amendatory thereof, have the meanings given them.

Subd. 2. **Frozen food.** "Frozen foods" means ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, fruit sherbets, water ices, frozen malted milk, frozen milk shakes, frozen malts, frozen yogurt, frozen low-fat yogurt, frozen non-fat yogurt, reduced-fat ice cream, low-fat ice cream, nonfat ice cream, or any frozen food for which the commissioner has established a standard of identity, but shall not include frozen vegetables, fruits, meats, poultry, or bakery products.

Subd. 3. **Milk products.** "Milk products" means pure, clean, and wholesome cream, dried cream, plastic cream — sometimes known as concentrated milk fat, butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated 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, whey, concentrated whey, and dry whey, and shall include any of the foregoing products from which lactose has been wholly or partially removed.

Subd. 4. **Mix, ice cream mix.** "Mix" means the unfrozen combination of all ingredients of a frozen food with or without fruit, fruit juices, candy, nut meats, flavoring, or coloring. "Ice cream mix" means the mix from which ice cream is frozen, made from a combination of milk products and such other ingredients in such quantities as are consistent with such ingredients and quantities in definitions and standards established by the commissioner. Ice cream mix in concentrated or condensed form shall contain such relative amounts of ingredients that, when diluted according to directions, it shall comply with the definition of ice cream mix.

Subd. 5. **Mix base; ice cream mix base.** "Mix base" means mix powder or dry base and is the product resulting from the removal of water from mix and contains not more than five percent of moisture.

"Ice cream mix base" means ice cream powder or dry ice cream mix and is the product resulting from the removal of water from ice cream mix and contains not more than five percent of moisture.

Subd. 6. [Repealed, 1965 c 119 s 7]

Subd. 7. [Repealed, 1965 c 119 s 7]

Subd. 8. [Repealed, 1965 c 119 s 7]

Subd. 9. [Repealed, 1965 c 119 s 7]

Subd. 10. [Repealed, 1965 c 119 s 7]

Subd. 11. [Repealed, 1965 c 119 s 7]

Subd. 12. **Imitation ice cream.** "Imitation ice cream" means any frozen substance, mixture or compound regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen and which is not a frozen food as provided for in this section.

Subd. 13. **Manufacture.** "Manufacture" means processing or freezing, or both.

Subd. 14. **Frozen yogurt; frozen low-fat yogurt; frozen nonfat yogurt.** "Frozen yogurt," "frozen low-fat yogurt," or "frozen nonfat yogurt" means a frozen dairy food made from a mix containing safe and suitable ingredients including, but not limited to, milk products. All or a part of the milk products must be cultured with a characterizing live bacterial culture that contains the lactic acid producing bacteria *Lactobacillus bulgaricus* and *Streptococcus thermophilus* and may contain other lactic acid producing bacteria.

Subd. 15. **Reduced-fat ice cream.** "Reduced-fat ice cream" means a frozen food that is made from the same ingredients and in the same manner as for ice cream except that:

- (1) milkfat content is more than two percent but not more than seven percent;
- (2) total milk solids content per gallon before the addition of bulky flavors is not less than .46 pounds and not less than 1.3 pounds of food solids per gallon; and
- (3) the weight per gallon is not less than 4.0 pounds.

Subd. 16. **Low-fat ice cream.** "Low-fat ice cream" means a frozen food that is made from the same ingredients and in the same manner as ice cream except that:

- (1) milkfat content is more than 0.5 percent but not more than 2.0 percent;
- (2) total milk solids content per gallon before the addition of bulky flavors is not less than .49 pounds and not less than 1.3 pounds of total food solids per gallon; and
- (3) the weight per gallon is not less than 4.0 pounds.

Subd. 17. **Nonfat ice cream.** "Nonfat ice cream" means a frozen food that is made from the same ingredients and in the same manner as for ice cream except that:

- (1) milkfat content is less than 0.5 percent;
- (2) total milk solids content per gallon before the addition of bulky flavors is not less than .45 pounds and not less than 1.3 pounds of total food solids per gallon; and
- (3) the weight per gallon is not less than 4.0 pounds.

**History:** (3827-6) 1937 c 101 s 1; 1941 c 62 s 1; 1949 c 658 s 1; 1955 c 538 s 1-3; 1957 c 263 s 1; 1961 c 144 art 1 s 4; 1961 c 533 s 1-9; 1965 c 119 s 1-3,6; 1967 c 434 s 1,2; 1990 c 407 s 4-8

### 32.555 COMPLIANCE WITH FEDERAL REGULATIONS.

(a) Frozen yogurt, frozen low-fat yogurt, and frozen nonfat yogurt must comply with Code of Federal Regulations, title 21, and sections 32.55 to 32.90.

(b) Reduced-fat ice cream, low-fat ice cream, and nonfat ice cream must comply with the frozen dessert provisions in Code of Federal Regulations, title 21, part 135.

**History:** 1990 c 407 s 9

**32.56 MANUFACTURERS OF FROZEN FOODS TO OBTAIN LICENSE.**

No person shall manufacture frozen foods, mix, ice cream mix, mix base, or ice cream mix base for resale, without first having obtained a license therefor from the department of agriculture, which is charged with the duty and power of administering and enforcing the provisions of sections 32.56 to 32.64. The commissioner shall establish standards in the manner provided in section 31.10, and acts amendatory thereof, for frozen foods for which no Minnesota standards exist. In the exercise of the authority to establish standards for frozen foods, the commissioner shall adopt definitions and standards of identity established pursuant to the federal Food, Drug and Cosmetic Act insofar as said definitions and standards do not conflict with law. Nothing in sections 32.56 to 32.64 shall apply to educational institutions or to charitable, fraternal or religious organizations not regularly engaged in the manufacture of frozen foods, mix, ice cream mix, mix base, or ice cream mix base or to private homes manufacturing for their own use.

**History:** (3827-7) 1937 c 101 s 2; 1961 c 113 s 1; 1961 c 147 art 7 s 1; 1965 c 119 s 4

**32.57 INSPECTION OF FROZEN FOODS.**

No frozen foods not manufactured in this state shall be sold, offered, exposed, exchanged, or held in possession with intent to sell within this state, unless the same are first inspected and registered with the department of agriculture, as provided in section 32.59.

**History:** (3827-8) 1937 c 101 s 3; 1961 c 113 s 1

**32.58** [Repealed, 1971 c 339 s 27]

**32.59 NONRESIDENT MANUFACTURER LICENSE.**

Any person who manufactures frozen foods, mix, ice cream mix, mix base, or ice cream mix base outside of the state, for sale within the state, shall apply for registration with the department of agriculture in the form and with the information the commissioner requires. Samples of all frozen foods, mix, ice cream mix, mix base, or ice cream mix base, so manufactured for sale and sold within this state, must be submitted to the department. Each application for registration must be accompanied by a fee of \$200, which is the registration fee if a certificate of registration is granted. If the department of agriculture finds that the samples submitted are up to the accepted standards and otherwise comply with the laws of this state, it shall issue to the applicant a certificate of registration. The penalty for a late registration application is \$50 if the registration is not renewed by January 1 of any year.

**History:** (3827-10) 1937 c 101 s 5; 1955 c 538 s 6; 1955 c 820 s 4; 1961 c 113 s 1; 1969 c 1148 s 12; 1974 c 2 s 6; 1975 c 412 s 24; 1981 c 356 s 268; 1983 c 293 s 56; 1987 c 358 s 87

**32.60** [Repealed, 1971 c 339 s 27]

**32.61 LICENSES; REVOCATION, SUSPENSION.**

The department of agriculture shall have the power to suspend or revoke any license or certificate of registration thus granted, for failure to comply with the provisions of sections 32.56 to 32.64, or rules made thereunder.

**History:** (3827-12) 1937 c 101 s 7; 1955 c 538 s 7; 1961 c 113 s 1; 1961 c 147 art 7 s 2; 1985 c 248 s 70

**32.62 CONTAINERS, LABELS.**

**Subdivision 1. Contents of labels.** All cans or containers used in the sale or distribution of mix, ice cream mix, mix base, or ice cream mix base shall bear a label attached to the same giving the following information:

- (1) Name of product;
- (2) Percentage of milk fat contained in product;
- (3) Percentage of total solids in products;
- (4) Statement of net contents; and
- (5) Name and address of manufacturer or distributor.

Every package of frozen foods packed by the manufacturer shall bear a label. The label shall give the name of the product, the name and address of the manufacturer or distributor, a statement of the net contents, and such other information as the commissioner may require pursuant to section 31.12, and acts amendatory thereof. When the name and address of the distributor is given on the label of mix, ice cream mix, mix base, ice cream mix base or frozen foods, the name and address of the manufacturer also shall be given or in lieu of the name and address of the manufacturer an identification number or code assigned by the commissioner of agriculture may be used to represent such manufacturer.

**Subd. 2. Frozen foods, restrictions.** (1) No person shall sell, advertise or expose for sale, or offer for sale a frozen food, or mix, or mix base therefor, unless it conforms to a standard of identity prescribed by the commissioner in accordance with law.

(2) When ice milk is sold, offered or exposed for sale in a package form, there shall be conspicuously printed thereon in ink upon a contrasting background, in type not less than 24-point Gothic capitals, the words "ice milk." When ice milk is served to a consumer, the owner, operator or manager of such retail establishment shall have signs conspicuously posted on the inside of such retail establishment with lettering large enough to be distinctly seen and read containing the words "ice milk sold here." Such signs shall remain posted so long as ice milk is sold or offered for sale to consumers.

(3) No person shall sell, advertise or offer or expose for sale any imitation ice cream.

(4) No person shall sell, offer for sale or advertise for sale any frozen food or mix, or mix base therefor, if the brand name of the frozen food, or mix, or mix base or label upon it, or the advertising accompanying it, shall give a false indication of origin, character, composition, name of manufacturer, or is otherwise false or misleading in any particular.

**History:** (3827-13) 1937 c 101 s 8; 1949 c 229 s 2; 1953 c 518 s 3; 1955 c 538 s 8,9; 1961 c 533 s 10; 1965 c 119 s 5; 1967 c 434 s 3; 1974 c 170 s 1

### 32.63 PLANTS KEPT SANITARY.

Any plant or establishment for the manufacture of frozen foods, mix, ice cream mix, mix base, or ice cream mix base operated under the provisions of sections 32.56 to 32.64 shall be so located, constructed, and equipped that it may be kept in a clean and sanitary condition, in accordance with the rules promulgated by the commissioner in the manner provided by law.

**History:** (3827-14) 1937 c 101 s 9; 1955 c 538 s 10; 1961 c 147 art 7 s 3; 1985 c 248 s 70

### 32.64 PASTEURIZATION.

**Subdivision 1.** All mix or ice cream mix shall be pasteurized. Pasteurization is hereby defined as the process of heating every particle of mix or ice cream mix in properly operated equipment approved by the commissioner to such temperatures and holding for such times as have been recognized by the United States public health service and which have been adopted by the commissioner in accordance with law. Nothing contained in this definition shall be construed as excluding any other process which has been demonstrated to be equally efficient and is approved by the commissioner.

**Subd. 2.** Immediately after pasteurization such mix or ice cream mix shall be cooled in properly operated equipment approved by the commissioner to such temperature as the commissioner shall prescribe by rule and held at or below that temperature until frozen.

Subd. 3. A recording thermometer record chart, properly dated, of each batch of mix or ice cream mix pasteurized for use in the manufacture of frozen foods, mix base, or ice cream mix base, shall be available at the plant of pasteurization at all reasonable times, for inspection by the department of agriculture.

Subd. 4. At no time after pasteurization shall frozen foods, mix, ice cream mix, reconstituted mix base, or reconstituted ice cream mix base have a bacterial count or a coliform count exceeding standards set forth in rules adopted by the commissioner in accordance with law. Such tests shall be made of a representative sample of frozen foods, mix, ice cream mix, mix base, reconstituted mix base, ice cream mix base, or reconstituted ice cream mix base taken from an unbroken package in the possession of the manufacturer, but in the event that no unbroken package is available when sample is requested, then it shall be taken from a broken package in the possession of the manufacturer.

**History:** (3827-15) 1937 c 101 s 10; 1955 c 538 s 11; 1961 c 113 s 1; 1963 c 34 s 1; 1967 c 434 s 4-6; 1985 c 248 s 70

### 32.645 PENALTIES.

Subdivision 1. Any person licensed under the provisions of sections 28A.04, 28A.14, 32.56, and 32.59, who knowingly violates, or who directs or knowingly permits any officer, agent, or employee to violate section 32.62, subdivision 2, clause (1) or (3), shall be guilty of a gross misdemeanor and upon conviction thereof, be punished by a fine of not more than \$3,000, or 30 days imprisonment in the county jail, or both. For each subsequent offense, in addition to any fine or imprisonment imposed under this subdivision, upon conviction thereof, the commissioner of agriculture shall revoke or withhold issuing to such offender any license required under the provisions of sections 28A.04, 28A.14, 32.56, and 32.59, and in such case of revocation of license the commissioner shall not issue any license for the operation of such frozen food manufacturing plant for a period of one year from the date of such revocation.

Subd. 2. Any person violating section 32.62, subdivision 2, clause (2) or (4), for each first offense shall, upon conviction thereof, be punished by a fine of not less than \$25 nor more than \$200 and for each subsequent offense, upon conviction thereof, by a fine of not less than \$100 nor more than \$250, or 30 days imprisonment in the county jail, or both.

**History:** (3827-16) 1937 c 101 s 11; 1953 c 518 s 4; 1973 c 35 s 14; 1984 c 628 art 3 s 11; 1987 c 329 s 21

## 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; or
- (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.

**History:** 1993 c 65 s 8; 1993 c 367 s 30; 1994 c 558 s 1

### **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 eco-

conomic damages and the costs of the action, including reasonable attorneys' fees. A person 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

### **32.75 RECOMBINANT BOVINE GROWTH HORMONE LABELING.**

**Subdivision 1. Definition.** For purposes of this section and sections 32.103, 151.01, and 151.15, "recombinant bovine growth hormone" or "rBGH" means a growth hormone, intended for use in bovine animals, that has been produced through recombinant DNA techniques, described alternately as recombinant bovine somatotropin, or rBST.

**Subd. 2. Labeling.** (a) Products offered for wholesale or retail sale in this state which contain milk, cream, or any product or by-product of milk or cream, which have been processed and handled pursuant to the requirements of this section, may be labeled: "Milk in this product is from cows not treated with rBGH." Labeling of dairy products under this section which are offered for sale within this state may also include an indication that the milk used is "farmer certified rBGH-free." Products offered for wholesale or retail sale in this state need not contain any further label information relative to the use of rBGH in milk production.

(b) The label described in paragraph (a) may appear on the principal display panel, as defined in section 31.01, subdivision 22, of a packaged product, be conspicuously attached to the container of a bulk product, or appear in any advertisement, as defined in section 31.01, subdivision 26, for a product, including media advertising, or displays or placards posted in retail stores.

**Subd. 3. Affidavit; records.** (a) A dairy plant purchasing milk or cream to be used in products labeled pursuant to subdivision 2 shall require an affidavit approved by the commissioner from producers supplying such milk. This affidavit must be signed by the producer or authorized representative and state that all cows used in the producer's dairy operations have not and will not be treated with rBGH, without advanced written notice of at least 30 days to the dairy plant.

(b) Dairy plants shall keep original affidavits on file for a period of not less than two years after receiving written notice from the producer of anticipated rBGH use, as provided in paragraph (a). These affidavits and corresponding records must be made available for inspection by the commissioner. Dairy plants supplying milk or cream to a processor or manufacturer of a product to be labeled pursuant to subdivision 2, for use in that product, shall supply a certification to that processor or manufacturer stating that producers of the supplied milk or cream have executed and delivered affidavits pursuant to paragraph (a).

**Subd. 4. Separation of nontreated cows and milk.** All milk or cream from non-rBGH-treated cows used in manufacturing or processing of products labeled pursuant to subdivision 2, or milk or cream supplied by a producer under an affidavit pursuant to subdivision 3, must be kept fully separate from any other milk or cream through all stages of storage, transportation, and processing until the milk or resulting dairy products are in final packaged form in a properly labeled container. Records of the separation must be kept by the dairy plant and product processor or manufacturer at all stages and made available to the commissioner for inspection.

**History:** 1994 c 632 art 2 s 14

**PENALTIES**

**32.90 PENALTY.**

Any person, firm, corporation, association or copartnership violating any of the provisions of this chapter or any amendatory act for which no specific penalty is provided shall be guilty of a misdemeanor.

**History:** 1949 c 122 s 1; 1971 c 23 s 6