

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1170
(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact sections 4-30-01, 4-30-02, 4-30-02.1, 4-30-03.1, 4-30-03.2, 4-30-03.3, 4-30-03.4, 4-30-03.5, 4-30-03.6, 4-30-03.7, 4-30-03.8, 4-30-13.1, 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-36.4, 4-30-37, 4-30-38, 4-30-47, and 4-30-48 of the North Dakota Century Code, relating to elimination of references to the sale of cream and to update references to federal laws and regulations; and to repeal sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code, relating to standards for production and sale of cream.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the department.
2. "Cheese factory" means a place where cheese is made for commercial purposes.
3. "Commissioner" means the agriculture commissioner of ~~agriculture~~ or the commissioner's designee.
4. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
5. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.
6. ~~"Cream station" means any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.~~
7. ~~"Creamery" means a place where butter is made for commercial purposes.~~
8. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
9. 7. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
10. 8. "Department" means the department of agriculture.
11. 9. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
12. 10. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.

- ~~13.~~ 11. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but 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, or concentrated milk; provided, however, that this term shall not be construed to mean or include:
- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. 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 milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
- ~~14.~~ 12. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
- ~~15.~~ 13. "Ice cream plant" means a place where ice cream is made for commercial purposes.
- ~~16.~~ 14. "Ice milk plant" means a place where ice milk is made for commercial purposes.
- ~~17.~~ 15. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
- a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
 - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
- ~~18.~~ 16. "Milk ~~or cream~~ hauler" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
- ~~19.~~ 17. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.

- ~~20.~~ 18. "Milk solids or total solids" means the total amount of solids in milk.
- ~~21.~~ 19. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
- ~~22.~~ 20. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.
- ~~23.~~ 21. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
- ~~24.~~ 22. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
- ~~25.~~ 23. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.
- ~~26.~~ 24. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
- ~~27.~~ 25. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
- ~~28.~~ 26. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
- ~~29.~~ 27. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~30.~~ 28. "Retail" means the sale of milk or milk products directly to the consumer.
- ~~31.~~ 29. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~32.~~ 30. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~33.~~ 31. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.

- ~~34.~~ 32. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~35.~~ 33. "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.
- ~~36.~~ 34. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~37.~~ 35. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, ~~cream station~~, milk plant, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk ~~or cream~~ from a dairy producer.

SECTION 3. AMENDMENT. Section 4-30-02.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02.1. Records release required with application for licensure. A purchaser of milk ~~or cream~~ in North Dakota shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 4. AMENDMENT. Section 4-30-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.1. Financial condition - Assurance of prompt payment. Each applicant for a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall have first satisfied the department that the applicant's financial condition is such as to reasonably assure prompt payment to the dairy producers for purchased milk ~~and cream~~.

SECTION 5. AMENDMENT. Section 4-30-03.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.2. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited. Each applicant for a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited financial statement an applicant may file other forms of security as provided in section 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

SECTION 6. AMENDMENT. Section 4-30-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.3. Surety bond, trustee agreement, other security or assurances. In all cases where it appears that the financial condition of any applicant or licensee who purchases milk ~~or cream~~ from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk ~~or cream~~ to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4-30-03.2, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk ~~or cream~~ from dairy producers during the previous year. Where payment for milk ~~or cream~~ purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk ~~or cream~~. Where payment for milk ~~or cream~~ purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk ~~or cream~~. Where the period of payment for milk ~~or cream~~ purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk ~~or cream~~ for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk ~~and cream~~ at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to ~~the seller that dairy producer~~ for all milk ~~or cream~~ purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.
2. The providing of an amount of protection for dairy producers, from whom milk ~~or cream~~ is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department.
 - b. Bonds of the United States deposited with the department.
 - c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department.
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.

3. The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall make and file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

SECTION 7. AMENDMENT. Section 4-30-03.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.4. Financial basis for license - Statement to producer - Notification to department. All milk ~~or cream~~ purchasers licensed under section 4-30-02 shall inform producers delivering milk ~~and cream~~ of the financial basis on which the license was issued including the type and amount of security, if any, filed under section 4-30-03.3 by a written statement to each producer patron at least once every year. No person may receive milk ~~or cream~~ which will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

SECTION 8. AMENDMENT. Section 4-30-03.5 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.5. Additional security. Whenever the department determines that the value of milk ~~or cream~~ purchased or received from producers has increased or that an increase may reasonably be anticipated, so that the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4-30-03.3, the department shall require additional security as will afford producers the protection intended by section 4-30-03.3. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department pursuant to this section.

SECTION 9. AMENDMENT. Section 4-30-03.6 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.6. Filing of security before license year. Surety bonds or other security for the license year must be filed with the department not later than the first day of the month before the beginning of each license year. If any applicant or licensee who purchases or receives milk ~~or cream~~ from dairy producers has not filed a surety bond or other security, and has not been relieved from filing a surety bond or other security, by the first day of the month of the license year, the department shall notify producers selling milk ~~or cream~~ to the applicant or licensee that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk ~~or cream~~ purchases, for the license year.

SECTION 10. AMENDMENT. Section 4-30-03.7 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.7. Failure to file security - Notice to producers. Whenever an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.6 or the department's demand for additional security, the department shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk ~~or cream~~ is sold or delivered to the applicant or licensee reside, a notice stating that the department made demand or request of the applicant or licensee; that the applicant or licensee has failed to comply; that the department does not have on file a surety bond or other security as demanded; and that adequate security to protect producers may not be available to them. In addition to published notice to producers, the department shall send by registered mail, a copy of the notice to each producer delivering milk ~~or cream~~ to the applicant or licensee as may be able to be determined from available records and the notice must be addressed to the producer's last known place of residence.

SECTION 11. AMENDMENT. Section 4-30-03.8 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.8. Out-of-state dealers, processors, or producers not exempt. Sections 4-30-03.1 through 4-30-03.10 apply to all milk ~~or cream~~ purchasers licensed under section 4-30-02 doing business in whole or in part within the state. The protection to producers afforded by sections 4-30-03.1 through 4-30-03.10 is available to the producers of any state selling milk ~~or cream~~ to any licensee licensed under section 4-30-02, but the surety bond or other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of producers who are located within this state.

SECTION 12. AMENDMENT. Section 4-30-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-13.1. Commissioner to investigate complaint. Upon receiving a ~~written~~ statement claiming that any provision of this chapter or the rules of the department have been violated, the commissioner shall investigate the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that a provision of this chapter or the rules of the department have been violated, the commissioner may take any action deemed appropriate.

SECTION 13. AMENDMENT. Section 4-30-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to that described in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, where appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 14. AMENDMENT. Section 4-30-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk. ~~All milk samples must be kept for at least twenty-four hours after testing has been completed.~~

SECTION 15. AMENDMENT. Section 4-30-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1989~~ 1999 Recommendations of the United States Public Health Service" including "Grade "A" Condensed and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement 1" and all supplements added thereto except that the minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The commissioner may adopt as department regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 16. AMENDMENT. Section 4-30-36.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Supplies - ~~1989~~ 1999 revision corrected Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 17. AMENDMENT. Section 4-30-36.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~1989~~ 1995 Edition".

SECTION 18. AMENDMENT. Section 4-30-36.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of ~~1989~~ 1999" and its supplements and follow the procedures standards set by "Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments 1999 revisions".

SECTION 19. AMENDMENT. Section 4-30-37 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules ~~and regulations~~ of the department must be kept by each business sampling or testing milk ~~or cream~~ for at least twelve months in a manner approved by the commissioner.

SECTION 20. AMENDMENT. Section 4-30-38 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-38. Transportation of milk ~~and cream~~ for manufacturing, processing, or bottling purposes - Commissioner to adopt rules. The commissioner may adopt rules governing the transportation of milk ~~and cream~~ to be used for manufacturing, processing, or bottling purposes. No facility or vehicle ~~shall~~ may be used or operated in violation of these rules.

SECTION 21. AMENDMENT. Section 4-30-47 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk ~~or cream~~ sold or offered for sale at the request of the owner and in the owner's presence, a sample of such milk ~~or cream~~ obtained as provided in ~~sections 4-30-19 and section~~ section 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must accompany each sample a statement giving the name and address of the seller and the buyer of the milk ~~or cream~~ in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in the

commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk ~~or cream~~. The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

SECTION 22. AMENDMENT. Section 4-30-48 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk ~~or cream~~ as provided in section 4-30-47, then the party selling or offering for sale such milk ~~or cream~~ may require that the buyer or prospective buyer forward to the department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of sections 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

SECTION 23. REPEAL. Sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code are repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1170.

House Vote: Yeas 94 Nays 0 Absent 4

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State