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**Testimony of Doug Goehring
Commissioner of Agriculture
Administrative Rules Committee
Roughrider Room
September 1, 2009**

Chairman Fischer and committee members, I am Doug Goehring, the North Dakota Commissioner of Agriculture.

Thank you for this opportunity to meet before your committee. I am here to discuss the changes in the Title 7 (Agriculture Commissioner) as they pertain to dairy regulations and to address any concerns you might have.

I believe one of the concerns voiced at your last meeting was in regard to the authority of the North Dakota Department of Agriculture to license dairy farms. In order for any producers to sell raw milk in the state they must have a permit. The general authority is based on current law NDCC §4-30-55.1, §4-30-27, §4-30-28, and §4-30-36.

This requirement is based on the rule before you today in 7-03.2-05-01. In 4-30-36 the state adopted the Grade A standards of the Pasteurized Milk Ordinance (PMO). The PMO requires that all milk producers hold a valid permit to sell milk. I have included a copy of page 11 and 12 of the PMO for your review.

One of the main reasons we are updating these rules is the federal Food and Drug Administration (FDA) has requested that we update the regulations because many of them are outdated. Without adopting these rules we may be jeopardizing our producer's ability to ship Grade A milk across state lines.

I have reviewed and discussed the rule with Wayne Carlson, our director for the dairy department. I am very aware of what the dairy industry is going through and our intent is not to increase our authority over the dairy industry or impose unnecessary rules on them that makes it more difficult during these tough economic times.

The rule before you does not change what we are currently doing. I do not believe these rules are an added burden to dairy producers.

Chairman Fischer and committee members, I ask for a favorable action on these rules. I would be happy to answer any questions you may have.

PP. WHEY PRODUCTS: Whey products mean any fluid product removed from whey; or made by the removal of any constituent from whey; or by the addition of any wholesome substance to whey or parts thereof.

PP-1. Grade "A" Whey Products: Grade "A" whey products means any fluid product removed from whey; or made by the removal of any constituent from whey; or by the addition of any wholesome substance to whey or parts thereof which have been manufactured under the provisions of this *Ordinance*.

PP-2. Dry Whey Products: Dry whey products mean products resulting from the drying of whey or whey products and any product resulting from the combination of dry whey products with other wholesome dry ingredients.

PP-3. Grade "A" Concentrated (Condensed) and Dry Whey and Whey Products: Grade "A" concentrated (condensed) and dry whey and whey products means concentrated (condensed) or dry whey and whey products, which complies with the applicable provisions of this *Ordinance*. The words "concentrated (condensed) and dry milk products" shall be interpreted to include concentrated (condensed) and dry whey and whey products.

SECTION 2. ADULTERATED OR MISBRANDED MILK OR MILK PRODUCTS

No person shall, within the ... of ...¹, or its jurisdiction, produce, provide, sell, offer, or expose for sale or have in possession with intent to sell any milk or milk product, which is adulterated or misbranded. Provided, that in an emergency, the sale of pasteurized milk and milk products, which do not fully meet the requirements of this *Ordinance*, may be authorized by the Regulatory Agency.

Any adulterated or misbranded milk or milk products, may be impounded by the Regulatory Agency and disposed of in accordance with applicable laws or regulations.

ADMINISTRATIVE PROCEDURES

This Section of the *Ordinance* shall be used in impounding the milk or milk products of, or preferring charges against, persons who adulterate or misbrand their milk or milk products; or label them with any grade designation not authorized by the Regulatory Agency under the terms of this *Ordinance*; or who sell or deliver ungraded milk or milk products, except as may be permitted under this Section in an emergency. An emergency is defined as a general and acute shortage in the milk shed, not simply one (1) distributor's shortage.

SECTION 3. PERMITS

It shall be unlawful for any person who does not possess a permit from the Regulatory Agency of the ... of ...¹ to manufacture, bring into, send into or receive into the ... of ...¹ or its jurisdiction, for sale, or to sell, or offer for sale therein or to have in storage any milk or milk products, defined in this *Ordinance*. Provided, that grocery stores, restaurants, soda fountains and similar

establishments where milk or milk products are served or sold at retail, but not processed may be exempt from the requirements of this Section. Provided further, that brokers, agents, and distributors representing, buying from, and/or selling condensed and dry milk products from or to a milk plant having a valid permit are not required to have a permit.

Only a person who complies with the requirements of this *Ordinance* shall be entitled to receive and retain such a permit. Milk plants, receiving stations and transfer stations permitted under the NCIMS HACCP Program shall meet the applicable provisions of this *Ordinance*, including Appendix K. Permits shall not be transferable with respect to persons and/or locations.

Provided, that the manufacture of condensed and dry milk products, which do not meet the requirements of this *Ordinance* for Grade "A" condensed or dry milk products and which are intended for other uses, shall not be construed to violate the terms of this *Ordinance*, if such products are processed, packaged and stored separately and are plainly identified.

It shall be unlawful for any person to manufacture in a milk plant under a permit for Grade "A" condensed or dry milk products in the...of...¹ or its jurisdiction any condensed and dry milk products which do not meet the requirements of this *Ordinance* for Grade "A" condensed or dry milk products without a permit from the Regulatory Authority who shall require that such condensed and dry milk products be processed, packaged and stored separately from Grade "A" condensed or dry milk products and that each container of such products be plainly marked in such a manner as to prevent confusion of the product with Grade "A" condensed or dry milk products.

The Regulatory Agency shall suspend such permit, whenever it has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this *Ordinance*; or whenever the permit holder has interfered with the Regulatory Agency in the performance of its duties. Provided, that the Regulatory Agency shall, in all cases, except where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection/audit, serve upon the holder a written notice of intent to suspend permit, which notice shall specify with particularity the violation(s) in question and afford the holder such reasonable opportunity to correct such violation as may be agreed to by the parties, or in the absence of agreement, fixed by the Regulatory Agency, before making any order of suspension effective. A suspension of permit shall remain in effect until the violation(s) has been corrected to the satisfaction of the Regulatory Agency.

Upon notification, acceptable to the Regulatory Agency, by any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the Regulatory Agency shall within seventy-two (72) hours proceed to a hearing to ascertain the facts of such violation(s) or interference and upon evidence presented at such hearing shall affirm, modify or rescind the suspension or intention to suspend.

Upon repeated violation(s), the Regulatory Agency may revoke such permit following reasonable notice to the permit holder and an opportunity for a hearing. This Section is not intended to preclude the institution of court action as provided in Sections 5 and 6.

ADMINISTRATIVE PROCEDURES

ISSUANCE OF PERMITS: Every milk producer, milk distributor, bulk milk hauler/sampler, milk tank truck⁵, milk transportation company and each milk plant, receiving station, transfer

station, milk tank truck cleaning facility operator shall hold a valid permit. The permit for a milk tank truck(s) may be issued to the milk transportation company. Milk producers who transport milk or milk products only from their own dairy farms; employees of a milk distributor or milk plant operator who possesses a valid permit; and employees of a milk transportation company that possesses a valid permit and transports milk or milk products from a milk plant, receiving station or transfer station shall not be required to possess a bulk milk hauler/sampler's permit. Grocery stores, restaurants, soda fountains and similar establishments where milk and milk products are served or sold at retail, but not processed, may be exempt from the requirements of this Section.

While compliance with the requirements for Grade "A" condensed and dry milk products is necessary to receive and retain a permit for these products, it is not the intent of this *Ordinance* to limit the production of a milk plant that condenses and/or dries milk or milk products, to Grade "A" products.

The manufacture of ungraded products for other uses in milk plants operating under a permit for the manufacture of Grade "A" condensed and dry milk products is allowed under conditions specified in Section 7 of this *Ordinance* and whereby such products are processed, packaged, and stored separately. In such cases, a second permit is required, which is issued with the understanding that ungraded products will be handled in such a manner so as to avoid confusion with the Grade "A" production.

Either or both permits may be temporarily suspended for the violation of any applicable provision of this *Ordinance*, or revoked for a serious or repeated violation. Suspension of permits for violation of sanitation Items of Section 7 is provided for in Section 5. In addition, the Regulatory Agency may, at any time, institute court action under the provisions of Section 6. There is no specific frequency for the issuance of permits. This should be in accordance with the policies of the Regulatory Agency and in agreement with those employed for the issuance of permits under this *Ordinance*.

SUSPENSION OF PERMIT: When any requirement(s) of this *Ordinance* is violated, the permit holder is subject to the suspension of their permit.

The Regulatory Agency may forego suspension of the permit, provided the milk or milk product in violation is not sold or offered for sale as Grade "A" milk or milk product. A Regulatory Agency may allow the imposition of a monetary penalty in lieu of a permit suspension, provided the milk or milk product in violation is not sold or offered for sale as Grade "A" milk or milk product. Except, that a milk producer may be assessed a monetary penalty in lieu of permit suspension for violative counts provided:

1. If the monetary penalty is due to a violation of the bacterial or cooling temperature standards, the Regulatory Agency shall conduct an inspection of the facility and operating methods and make the determination that the conditions responsible for the violation have been corrected. Samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period in order to determine compliance with the appropriate standard as determined in accordance with Section 6 of this *Ordinance*.
2. If the monetary penalty is due to a violation of the somatic cell count standard, the Regulatory Agency shall verify that the milk supply is within acceptable limits as prescribed in Section 7 of this *Ordinance*. Samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period in order to determine