

## CHAPTER 4.1-25 DAIRY PRODUCT REGULATION

### 4.1-25-01. Definitions.

1. "Cheese factory" means a facility that makes cheese for commercial purposes.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Condensery" means a facility where condensed or evaporated milk is produced.
4. "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.
5. "Dairy farm" means a place where one or more dairy animals are kept.
6. "Dairy product" includes 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.
7. "Department" means the department of agriculture.
8. "Distributor" means a person that provides storage, transportation, delivery, or distribution of dairy products to any person who sells dairy products.
9. "Drying plant" means a facility that manufactures dry milk products by removing water from milk or milk products.
10. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination of them, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from those products, to which has been added, blended, or compounded with, any fat or oil, other than milk fat, to imitate a dairy product. "Filled dairy products" may not be construed to mean or include:
  - a. Any distinctive proprietary food compound not readily mistaken for a dairy product, if the 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, if the fats or oils other than milk fat contained in the 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-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or
  - c. Margarine.
11. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a rating of the quality of the product.
12. "Ice cream plant" means a facility that makes ice cream for commercial purposes.
13. "Ice milk plant" means a facility that makes ice milk for commercial purposes.
14. "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.
15. "Milk hauler" means a person that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
  16. "Milk plant or bottling plant" means a facility where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
  17. "Milk solids or total solids" means the total amount of solids in milk.
  18. a. "Pasteurization" as applied to milk or skim milk means either:
    - (1) 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 that temperature continuously for at least thirty minutes; or
    - (2) 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 that temperature continuously for at least fifteen seconds in approved and properly operated equipment.
  - b. When applied to cream for butter making, "pasteurization" means the cream must 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.
  - c. This subsection may not be construed as barring any other process that 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 commissioner.
  19. "Pasteurized milk ordinance" means the 2017 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.
  20. "Peddler" means a person that purchases milk or milk products and sells the milk or milk products directly to consumers at any place other than from a store, stand, or other fixed place of business.
  21. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
  22. "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 that changes the natural, physical, or chemical properties of the original product.
  23. "Producer dairy" means a dairy farm that sells milk or cream to a dairy plant for processing or manufacturing.
  24. "Producer-processor" or "producer-distributor" means a producer that is also a processor or distributor.
  25. "Raw milk or raw milk products" means products that have not been treated by the process of pasteurization.
  26. "Retail" means the sale of milk or milk products directly to the consumer.
  27. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use of raw milk or milk products from a dairy farm to a dairy facility.
  28. "Sampling" means a procedure taking a portion of milk or milk products for grading or testing.
  29. "Shared animal ownership agreement" means any contractual arrangement under which an individual:
    - a. Acquires an ownership interest in a milk-producing animal;

- b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and
  - c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.
30. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
31. "Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.
32. "Testing" means an examination of milk or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition of the product.
33. "Wholesale" means the sale of milk or milk products to a retail dealer for resale.

#### **4.1-25-02. Licenses required - Fees - Term.**

1. The license required by this section must be obtained for each place of business in this state owned or operated by:
  - a. A producer-processor, peddler, or distributor;
  - b. A person purchasing milk or milk products for processing or manufacturing;
  - c. A person owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, or milk plant;
  - d. A person owning, operating, or leasing any other business engaged in the processing or manufacturing of milk or milk products; and
  - e. An organization acquiring milk or milk products on its own behalf or as an agent of others.
2. Application for a license must be made to the commissioner upon forms prescribed by the commissioner. An application for a license constitutes the implied consent of the applicant for department inspections. If the commissioner finds the applicant conforms to the North Dakota laws and the rules of the commissioner, the commissioner shall issue a license to conduct the operations listed on the license.
3. If a licensee wishes to conduct operations other than those listed on an existing license, the licensee may make an application to the commissioner for a license to conduct additional operations. If the commissioner finds the additional operations are in conformance with North Dakota laws and the rules of the commissioner, the commissioner shall approve them.
4. The license must be posted conspicuously in each licensed business.
5. All licenses issued under this section expire on the thirtieth day of June of each year and are not transferable.
6. The license fee is twenty-five dollars.
7. Every organization acquiring milk or milk products as an agent of others is deemed to be a purchaser of milk from a dairy producer.

#### **4.1-25-03. Financial records release authorization with application for licensure.**

A purchaser of milk in North Dakota shall file with the license application a release authorizing the commissioner to access 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, conducting an investigation of a complaint against the applicant due to a complaint, or when evidence is obtained 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.

#### **4.1-25-04. Financial condition - Assurance of prompt payment.**

Each applicant for a license under section 4.1-25-02 who intends to purchase milk from dairy producers shall satisfy the department that the financial condition of the applicant is adequate to assure prompt payment to the dairy producers for purchased milk.

#### **4.1-25-05. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited.**

Each applicant for a license under section 4.1-25-02 who purchases milk from a dairy producer annually shall 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 applicant for which the statement is rendered, prepared as of the close of the most recent fiscal year of the applicant. In lieu of filing an audited financial statement, an applicant may file other forms of security as provided in section 4.1-25-06. All audited financial statements must be reviewed by the Bank of North Dakota. All statements under this section are confidential and not open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

#### **4.1-25-06. Surety bond, trustee agreement, or other security or assurances.**

If it appears the financial condition of any applicant or licensee who purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4.1-25-05, 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 from dairy producers during the previous year. If payment for milk 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. If payment for milk 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. If the period of payment for milk 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 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 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 that dairy producer for all milk purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers may not exceed the amount of the bond.
2. Providing an amount of protection for dairy producers equal to the amount of protection provided in subsection 1. The security must 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 have regularly reported quotations, deposited with the department; or
  - 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 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 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 at least annually shall render a true and correct account of trustee dealings to the department and to the dairy producers.

**4.1-25-07. Financial basis for license - Statement to producer - Notification to department.**

All milk purchasers licensed under section 4.1-25-02 shall inform producers of the financial basis on which the license was issued, including the type and amount of security, if any, filed under section 4.1-25-06, by an annual written statement to each producer. A person may not receive milk that 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.

**4.1-25-08. Additional security.**

When the department determines the value of milk purchased or received from producers has increased or an increase reasonably may be anticipated, so the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4.1-25-06, the department shall require additional security to afford producers the protection intended by section 4.1-25-06. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department under this section.

**4.1-25-09. Filing of security before license year.**

An applicant or licensee shall file bonds or other security for the license year with the department by the first day of June immediately preceding the beginning of each license year. If an applicant or licensee fails to file a surety bond or other security by July first of the license year and has not been relieved from filing a surety bond or other security, the department shall notify producers that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk purchases for the license year.

**4.1-25-10. Failure to file security - Notice to producers.**

1. If an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4.1-25-09 or fails to comply with a demand for additional security, the department shall publish in newspapers having circulation in the areas where the producers whose milk is sold or delivered to the applicant or licensee reside, a notice stating:
  - a. The department made a demand for additional security from the applicant or licensee;
  - b. The applicant or licensee has failed to comply;
  - c. The department does not have on file a surety bond or other security as demanded; and
  - d. Adequate security to protect producers may not be available to them.
2. In addition to a published notice to producers, the department shall send, by registered mail, a copy of the notice to each producer delivering milk to the applicant or licensee as determined from available records. The notice must be addressed to the producer's last-known address.

**4.1-25-11. Out-of-state dealers, processors, or producers not exempt.**

Sections 4.1-25-04 through 4.1-25-13 apply to all milk purchasers licensed under section 4.1-25-02 doing business in this state. The protection to producers afforded by sections 4.1-25-04 through 4.1-25-13 is available to the producers of any state selling milk to any licensee licensed under section 4.1-25-02, but the surety bond or other security required by

sections 4.1-25-06 and 4.1-25-08 is payable only for the benefit of producers who are located within this state.

**4.1-25-12. Entry, inspection, and investigation.**

Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner under this section is confidential and may be used only for the administration of this chapter. The department or the commissioner may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk marketing board, or in any court proceeding in which the department or the commissioner is a party. This chapter does not prevent the department or the commissioner from using the information to compile or disseminate general statistical data so long as the data does not reveal individual information for any licensee or license applicant.

The commissioner may subpoena and take the testimony under oath of persons believed by the commissioner to have information needed in administering and enforcing this chapter.

**4.1-25-13. Records and reports.**

Licensees shall maintain the records the commissioner deems necessary to assure the financial condition of the licensee is adequate to assure prompt payment to producers.

**4.1-25-14. Department to become trustee upon default in required security.**

If a licensee defaults on any of the required security provisions, the licensee is deemed to be insolvent for purposes of this chapter. The claim for relief for damages and the amount recovered in any action for the conversion of milk or milk products, purchased by the licensee while the license is in effect, and the assets of the licensee not subjected to any claim in federal bankruptcy court by a secured or general creditor within four months of the appointment of the department as trustee under this chapter, constitute a trust fund in the hands of the department for all persons having a claim for relief against the licensee on the required security.

**4.1-25-15. Application by department for appointment of trustee - Hearing - Appointment.**

Upon the insolvency of a licensee as defined in section 4.1-25-14, the department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of the department as trustee. Upon notice to the licensee as the court prescribes, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine the application. If it appears to the court the licensee is insolvent within the meaning of this chapter and it is in the best interest of persons holding claims against the licensee that the department execute the trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed in the manner set out in this chapter without further direction from the court.

**4.1-25-16. Notice to file claims - When claims barred.**

The department, as trustee, shall notify all persons having claims against the licensee personally by certified mail to file the claims with the department. Any person who fails to file a claim with the department and to surrender any receipts obtained from the licensee within thirty days after receiving notice is barred from pursuing the claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

**4.1-25-17. Remedy of claimants - Separate action by claimant permissible.**

A claimant has no separate claim for relief against the required security of a licensee unless the department fails or refuses to apply for appointment as trustee under this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue concurrently with the department any other remedy the claimant or claimants may have against the licensee, or against the property of the licensee, for the whole of their claim or claims or for any deficiency that occurs after payments have been made from the trust fund.

**4.1-25-18. Appeal or compromising of action by department.**

The department may prosecute an action for any claims arising under this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise the action whenever it is in the best interests of the claimants. Upon payment to the department of the amount of any compromise, or of the full amount of any required security, the department may exonerate the person compromising or paying from further liability growing out of the action.

**4.1-25-19. Claims collections to be deposited in Bank of North Dakota.**

All money collected and received by the department as trustee must be deposited in the Bank of North Dakota.

**4.1-25-20. Trust fund report - Notice to claimants - Approving or modifying report.**

Upon recovery of the trust fund, or so much as is possible to recover, or as is necessary to pay all outstanding claims, the department shall file a report in court showing the amount payable upon each claim, after recognizing any proper liens, pledges, assignments, or deductions with legal interest. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in a manner the department deems fair and equitable. Once the report is received from the department, the court shall notify all claimants by mail to appear on a day fixed in the notice and show cause why the report should not be approved and the funds distributed as outlined in the report. Upon such hearing the court shall approve or modify the report as justice may require and shall issue an order directing the distribution of the fund and discharging the department as trustee.

**4.1-25-21. Attorney general to represent department and may employ assistants - Department need not pay court costs.**

The attorney general shall represent the department in any action or proceeding brought under section 4.1-25-14, and may employ outside legal assistance when necessary. The attorney general may deduct the expense of retaining outside legal assistance from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought under section 4.1-25-14 when the fee, cost, or disbursement accrues to the state or to a county of the state.

**4.1-25-22. License needed to sample, haul, or test - Training - Examination - Term - Fee.**

A person may not sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of the substitute. An applicant shall file an application with the department stating the type of sampling, hauling, or testing for which the applicant wishes to be licensed. Before a license is issued, the applicant shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and administered by the department. The applicant must show knowledge of the requirements of this chapter and must prove by actual demonstration that the applicant is competent and qualified to perform each type of sampling and testing listed on the

application. The commissioner shall issue a license which states the types of sampling, hauling, or testing for which the applicant is qualified. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee, after receiving additional training and passing the required examinations. Examinations must be given by the department at times and places as the department shall determine. A licensee is not required to take additional examinations when renewing a license unless required by the commissioner. All testers and samplers shall attend a training session sponsored by the department every two years. Retraining or retesting or both may be required when the commissioner reasonably determines it to be necessary. Licenses issued under this section expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The annual license fee is ten dollars. A five dollar penalty fee is applied if renewals are not paid by January thirty-first.

**4.1-25-23. Commissioner to investigate complaint.**

The commissioner shall investigate any complaint claiming any provision of this chapter or the rules of the commissioner have been violated. If the commissioner finds a provision of this chapter or the rules of the commissioner have been violated, the commissioner may take any action deemed appropriate.

**4.1-25-24. Inspections.**

Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

**4.1-25-25. Suspension or revocation of license - Judicial review - Emergency order.**

Any proceedings under this chapter for the suspension or revocation of a license, or to determine compliance with this chapter or the rules and orders of the commissioner, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be made as provided. When an emergency exists requiring immediate action to protect the public health and safety, without notice or hearing, the commissioner may issue an order reciting the existence of the emergency and requiring action be taken to protect the public health and safety. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

**4.1-25-26. 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 those described in the Standard Methods, a copy of which must be kept on file in the department. Any equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products not conforming to the requirements of this chapter may not 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, when appropriate, may check calibration of farm bulk milk tanks and equipment.



#### **4.1-25-27. 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 Standard Methods. Records must be kept, which readily identify the sample, with those items used to determine payment for the milk. Those items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

#### **4.1-25-28. Standards for the production of manufacturing grade milk - Minimum standards of rules.**

At a minimum, rules governing the production and processing of milk for manufactured dairy products must comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

#### **4.1-25-29. Standards for dairy manufacturing or processing - Minimum standards of rules.**

At a minimum, rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products must comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. A plant may not be operated or any dairy products sold in violation of these rules.

#### **4.1-25-30. Standards for grade A milk and milk products - Adoption of rules.**

Only grade A milk may be sold as a 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 pasteurized milk ordinance which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO". The commissioner may adopt rules imposing other standards in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, saleability, and promotion of grade A milk and milk products.

#### **4.1-25-31. 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 Shippers - 2017 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

#### **4.1-25-32. 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 Standard Methods and the procedures outlined in the public health service food and drug administration publication entitled "Evaluation of Milk Laboratories - 2017 Edition".

#### **4.1-25-33. Grade A pasteurized milk ordinance.**

Dairy producers, processors, and manufacturers shall comply with the pasteurized milk ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2017 Revision".

**4.1-25-34. Quality records to be kept - Term.**

Adequate records for testing and grading in conformance with this chapter and the rules of the commissioner must be kept by each business sampling or testing milk for at least twelve months in a manner approved by the commissioner.

**4.1-25-35. Milk haulers - License required - Commissioner to adopt rules.**

A person may not own or operate any tank truck, bulk milk truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall adopt rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the commissioner is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample or test milk or milk products issued pursuant to section 4.1-25-22.

**4.1-25-36. Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.**

Any milk or milk products produced or kept under unclean or unsanitary conditions or; produced from animals that are diseased or fed unwholesome, impure, or toxic feed; or milk that tastes from colostrum, must be deemed impure and unwholesome. Milk or milk product that is deemed to be adulterated, impure, or unwholesome may not be transported, stored, sold, or offered for sale in this state.

**4.1-25-37. Sale of milk or milk products in violation of this chapter prohibited.**

A person may not sell, or offer for sale, any milk or milk product, their imitations or substitutes, that is produced, processed, manufactured, transported, or stored, in violation of the laws of this state or the rules of the commissioner, or which do not subscribe to the definition as stated in this chapter or defined by the commissioner.

**4.1-25-38. Exception for uses as directed by physicians.**

This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when those products are prominently labeled to show their composition and the fact the products are sold customarily for use as directed by order of a physician and are prepared and designed for medicinal or special dietary use.

**4.1-25-39. Sale of foods not imitation milk, imitation milk products, or filled dairy products.**

This chapter does not prohibit the manufacture or sale of proprietary foods that are clearly not imitation milk, imitation milk products, or filled dairy products; which do not contain imitation milk, imitation milk product, or filled dairy product; and which are not conducive to substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

**4.1-25-40. Shared animal ownership agreement - Raw milk.**

It is not a violation of this chapter to transfer or obtain raw milk under a shared animal ownership agreement. A person may not resell raw milk or raw milk products obtained under a shared animal ownership agreement.

**4.1-25-41. Labeling and identity standards.**

A person who sells milk or milk products at retail in the state shall comply with the labeling standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner.

**4.1-25-42. Reports - Blanks - When made - Contents.**

The commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and

producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of those businesses shall report to the commissioner on the last days of June and of December of each year, or immediately upon cessation of operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such period.

**4.1-25-43. Test results disputes.**

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 sold or offered for sale at the request of the owner and in the owner's presence, a sample of the milk obtained as provided in section 4.1-25-27 and mutually agreed upon by the interested parties as being a representative sample must be sealed and mailed by the buyer to the office of the commissioner. Each sample mailed to the commissioner must include a statement giving the name and address of the seller and the buyer of the milk in question, the net weight, the percentage and amount of butterfat contained, 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 shall determine the percentage of butterfat contained in the sample and shall 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. The percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the official butterfat test and any other tests required must be in an amount as set by rule of the commissioner, considering the actual costs of the test, and the fee must be mailed to the commissioner at the time of forwarding the sample for the official butterfat or other test.

**4.1-25-44. Test sample disputes.**

If the buyer and seller do not agree upon a sample of milk as provided in section 4.1-25-43, the party selling or offering for sale that milk may require that the buyer or prospective buyer to forward the sample taken to the department in compliance with section 4.1-25-27. Each sample so forwarded must include an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of section 4.1-25-27, and the statement must contain all information required in section 4.1-25-43, except that the signature of the seller is not required. Each sample must be tested and reported on as prescribed in section 4.1-25-43, and the percentage of butterfat determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

**4.1-25-45. Standards considered minimum - Municipality may provide more stringent standards.**

The standards in this chapter constitute only minimum standards. This chapter may not be construed to prevent any municipality from providing, by ordinance, more stringent or comprehensive standards than are contained within this chapter. Neither this chapter nor in the rules of the commissioner may be construed to prevent any person concerned with the dairy business from using standards, inspections, or other practices or procedures that are more stringent or comprehensive.

**4.1-25-46. Fees and penalties collected to be placed in general fund.**

All fees and penalties collected under this chapter must be deposited with the state treasurer and credited to the general fund.

**4.1-25-47. Disposal of illegal milk or milk products - Seizure.**

Any milk or cream offered for sale in violation of any provision of this chapter or the rules of the commissioner must be colored with a harmless food coloring and returned to the seller. In

addition, any milk or milk product that is in violation of any provision of this chapter or the rules of the commissioner may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as provided in chapter 19-02.1.

**4.1-25-48. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty.**

A person violating any provision of this chapter or any rule or order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32. If a civil penalty is imposed by the commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The commissioner may suspend or revoke a license issued under this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter or rules or orders of the commissioner.

**4.1-25-49. State's attorney's endorsement to complaint unnecessary upon violation of chapter.**

A complaint made for a violation of this chapter does not require the endorsement of the state's attorney, but when the court hearing a complaint made is satisfied of the truthfulness of the complaint, the court shall issue a warrant.

**4.1-25-50. Rules.**

The commissioner may adopt rules under chapter 28-32 to implement this chapter.

**4.1-25-51. Shared animal ownership agreement rules limitation.**

Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts, limits, or imposes additional requirements on any person transferring or obtaining raw milk in accordance with the terms of a shared animal ownership agreement.

**4.1-25-52. Enforcement.**

The commissioner shall administer and supervise the enforcement of this chapter, provide for periodic inspections and investigations deemed necessary to ensure compliance with this chapter or the rules under this chapter, receive and provide for the investigation of complaints; and provide for the institution and prosecution of civil or criminal actions or both. This chapter and the rules under this chapter may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Filled dairy products, imitation milk, or imitation milk products, illegally held or otherwise in violation of this chapter may be seized and disposed under an appropriate court order.