

32.394 GRADE A PASTEURIZED MILK.

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

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

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

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

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

Subd. 5. **Sales as Grade A milk.** No person shall sell, offer or expose for sale, any milk, milk products or goat milk labeled Grade A, unless the milk, milk products or goat milk have been produced and processed in accordance with the requirements of Minnesota law and rule. Any processor desiring to use the Grade A label on milk, milk products or goat milk shall make application for a permit to the commissioner on a form prescribed and furnished by the commissioner. The permit shall be issued by the commissioner when the commissioner has determined that the applicant has complied with the requirements of Minnesota law and rule. Permits shall not be transferable with respect to person or location. A permit may be suspended by the commissioner upon failure by the holder of the permit to comply with any of the terms of Minnesota law and rule or for interference with inspection, and may be revoked by the commissioner for due cause after the holder of the permit has been given the opportunity for a hearing, in which case the holder of the permit shall be given a notice in writing of the time and place of such hearing at least seven days before the date of such hearing.

Subd. 6. **Inspection service.** To assure compliance with the laws and rules governing the production, handling, processing, and sale of Grade A milk, Grade A milk products and Grade A goat milk, the commissioner is hereby authorized to provide a service to be performed by trained and duly qualified milk sanitarians, for the inspection of such milk, milk products and goat milk, and of the premises and plants

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

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

Subd. 8. **Grade A inspection fees.** A processor or marketing organization of milk, milk products, sheep milk, or goat milk who wishes to market Grade A milk or use the Grade A label must apply for Grade A inspection service from the commissioner. A pasteurization plant requesting Grade A inspection service must hold a Grade A permit and pay an annual inspection fee of no more than \$500. For Grade A farm inspection service, the fee must be no more than \$50 per farm, paid annually by the processor or by the marketing organization on behalf of its patrons. For a farm requiring a reinspection in addition to the required biannual inspections, an additional fee must be paid by the processor or by the marketing organization on behalf of its patrons. The fee for reinspection of a farm with fewer than 100 cows is \$60 per reinspection. The fee for reinspection of a farm with 100 or more cows is \$150 per reinspection.

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

An application for initial certification or biennial recertification, or for recertification following suspension or revocation of a permit shall be accompanied by an annual fee based on the number of analysts approved and the number of specific tests for which they are approved. The fee is not less than \$150 or more than \$200 for each analyst approved and not less than \$35 or more than \$50 for each test approved. The commissioner may annually adjust assessments within the limits established by this subdivision to meet the cost recovery of the services required by this subdivision.

Subd. 8b. **Manufacturing grade farm certification.** A processor or marketing organization of milk, milk products, sheep milk, or goat milk who wishes to market other than Grade A milk must apply for a manufacturing grade farm certification inspection from the commissioner. A manufacturing plant that pasteurizes milk or milk by-products must pay an annual fee based on the number of pasteurization units. This fee must not exceed \$140 per unit. The fee for farm certification inspection must not be more than \$25

per farm to be paid annually by the processor or by the marketing organization on behalf of its patrons. For a farm requiring more than the one inspection for certification, a reinspection fee of \$45 must be paid by the processor or by the marketing organization on behalf of its patrons.

Subd. 8c. **Grade A or manufacturing grade raw milk.** Grade A or manufacturing grade raw milk must not have been stored longer than 72 hours when it is picked up at the farm by the receiving plant. The commissioner or an agent of the commissioner may waive the 72-hour time limit in a case of hardship, emergency, or natural disaster. On farms permitted or certified for bulk tank storage, the milk may only be picked up from approved bulk milk tanks in proper working order.

Subd. 8d. **Processor assessment.** (a) A manufacturer shall pay to the commissioner a fee for fluid milk processed and milk used in the manufacture of fluid milk products sold for retail sale in Minnesota in an amount not less than five cents and not more than nine cents per hundredweight as set by the commissioner's order except that beginning July 1, 2003, the fee is set at seven cents per hundredweight and thereafter no change within any 12-month period may be in excess of one cent per hundredweight.

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

(c) The commissioner may create within the department a dairy consulting program to provide assistance to dairy producers who are experiencing problems meeting the sanitation and quality requirements of the dairy laws and rules.

The commissioner may use money appropriated from the dairy services account created in subdivision 9 to pay for the program authorized in this paragraph.

Subd. 8e. **Farm bulk milk pickup tankers.** Farm bulk milk pickup tankers, milk transports, and tankers used to transport milk products must be inspected and obtain a permit issued by the commissioner annually by July 1. The owner or operator must pay a \$25 permit fee per tanker to the commissioner. The commissioner may appoint such persons as the commissioner deems qualified to make inspections.

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

The fees for services performed by the activities of this section must be deposited in the agricultural fund and constitute a separate account to be known as the dairy services account, which is hereby created. Money in the account, including interest earned, is appropriated to the commissioner to administer this chapter.

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

Subd. 11. **Waiver of rules; water well distance requirement.** A dairy farmer who wishes to be permitted to produce grade A milk may not be denied the grade A permit solely because of provisions in rules adopted by the commissioner of health requiring a minimum distance between a water well and a dairy barn. To be eligible for a grade A permit, the following conditions must be met:

(1) the water well must have been in place prior to January 1, 1974;

(2) the water well must comply with all rules of the commissioner of health other than the minimum distance requirement; and

(3) water from the well must be tested at least once every six months in compliance with guidelines established by the commissioner of agriculture unless the water from the well meets water quality requirements for three consecutive years, in which case the water must be tested only once every 12 months until the water fails to meet water quality requirements during one of the tests.

Subd. 12. **Water testing guidelines.** The commissioner of agriculture, in consultation with the commissioner of health, shall establish guidelines for the testing required under section 32.394, subdivision 11, clause (3).

History: 1945 c 384 s 5; 1949 c 403 s 1; 1953 c 536 s 4; 1953 c 752 s 1; 1955 c 379 s 1; 1959 c 400 s 1; 1961 c 113 s 1; 1967 c 219 s 7-11; 1971 c 703 s 1,2; 1973 c 123 art 5 s 7; 1975 c 412 s 21-23; 1977 c 120 s 1,2; 1983 c 300 s 20; 1985 c 248 s 70; 1986 c 444; 1987 c 384 art 3 s 1; 1987 c 396 art 11 s 11-13; 1990 c 511 s 7-10; 1991 c 254 art 3 s 18-20; 1992 c 544 s 2,3; 1993 c 65 s 4,5; 1993 c 172 s 29; 1997 c 187 art 1 s 1; 1997 c 216 s 55; 1999 c 231 s 68; 1Sp2001 c 2 s 59-61; 2003 c 107 s 22,23; 2003 c 128 art 3 s 31-33; 2007 c 45 art 1 s 42; 2009 c 94 art 1 s 81