

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0201

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1071** - 2/20/2009

Introduced by: The Committee on Appropriations at the request of the Department of
Agriculture

1 FOR AN ACT ENTITLED, An Act to revise certain fees, licenses, and other requirements for
2 milk plants and dairy farms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 40-32-2 be amended to read as follows:

5 40-32-2. Terms as used in this chapter, mean:

6 (1) ~~"Creamery," any place where cream, delivered by two or more persons, is churned~~
7 ~~into butter for commercial purposes;~~

8 ~~—(2)—"Cream station," any place other than a creamery where deliveries of cream are made~~
9 ~~by two or more producers except to a duly authorized agent of a common carrier~~

10 "Bulk milk pick-up tanker," any vehicle, including the truck, tank, and those
11 appurtenances necessary for the tank's use, used by a bulk milk hauler or sampler to
12 transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving
13 station, or transfer station;

14 ~~(3)~~(2) "Dairy farm," any place or premise where one or more cows, sheep, or goats are kept



1 and from which a part or all of the milk or milk products are produced and sold, or
2 offered for sale to a milk plant;

3 ~~(4)~~(3) "Dairy fieldman," a person employed by the milk plant to determine if a producer is
4 maintaining satisfactory production requirements in accordance with this chapter and
5 the rules adopted thereunder;

6 ~~(5)~~(4) "Department," the Department of Agriculture;

7 ~~(6)~~(5) "Grade A," any milk or milk product that complies with the standards set forth in ~~the~~
8 ~~United States Public Health Service pasteurized milk ordinance in effect on January~~
9 ~~1, 1988, and the requirements stated in chapter 39-6~~ any rules promulgated pursuant
10 to § 39-6-9;

11 ~~(7)~~(6) "Manufacturing grade," any milk or milk product subject to the requirements of
12 chapter 40-32 that is produced for processing and manufacturing into products for
13 human consumption not subject to Grade A requirements stated in chapter 39-6;

14 ~~(8)~~(7) "Marketing organization," an entity established for the purpose of procuring farm
15 produced milk and offering for sale that milk to a milk plant, receiving station, or
16 transfer station;

17 ~~(9)~~(8) "Milk distributor," any person who purchases milk or milk products and transports
18 them to a retail dealer or a consumer;

19 ~~(10)~~(9) "Milk plant," any place where milk or milk products are delivered or
20 processed for commercial purposes;

21 (10) "Milk transport tank," any vehicle, including the truck and tank, used by a bulk milk
22 hauler or sampler to transport bulk shipments of milk and milk products, from a milk
23 plant, receiving station, or transfer station to another milk plant, receiving station, or
24 transfer station;

(11) "Pasteurization," the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
*145°F (63°C)	30 minutes
*161°F (72°C)	15 seconds
191°F (89°C)	1 second
194°F (90°C)	0.5 second
201°F (94°C)	0.1 second
204°F (96°C)	0.05 second
212°F (100°C)	0.01 second

* If the fat content of the milk product is ten percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F (3°C). However, eggnog shall be heated to at least the following temperature and time specifications:

Temperature	Time
155°F (69°C)	30 minutes
175°F (80°C)	25 seconds
180°F (83°C)	15 seconds

Nothing in this definition ~~may be construed as barring~~ bars any other pasteurization process which has been recognized by the Food and Drug Administration to be equally efficient and which is approved by the regulatory agency;

(12) "Pasteurization unit," a unit of equipment that pasteurizes milk and milk products that meets the 3-A accepted practices for the sanitary construction, installation,

1 testing, and operation of a pasteurizer;

2 (13) "Producer," any person who operates a dairy farm and provides, sells, or offers milk
3 for sale;

4 (14) "Receiving station," any place, premise, or establishment where raw milk is received,
5 collected, handled, stored, or cooled and prepared for further transporting;

6 (15) "Secretary," the secretary of agriculture;

7 (16) "Single-service article fabricating plant," any plant manufacturing single-service
8 articles expected to be in contact with Grade A milk and milk products;

9 (17) "Transfer station," any place, premise, or establishment where milk or milk products
10 are transferred directly from one milk tank truck to another.

11 Section 2. That § 40-32-4 be amended to read as follows:

12 40-32-4. Any person engaged in the operation of a ~~creamery, cream station,~~ receiving
13 station, transfer station, bulk milk pick-up tanker, milk transport tank, plant fabricating
14 single-service articles or milk distributor in South Dakota, or any person buying milk ~~or cream~~
15 produced in South Dakota, or any person selling milk or milk products, shall, before beginning
16 business, obtain from the secretary a license for each place of business owned or operated by
17 such person in South Dakota, and for each ~~creamery, cream station,~~ milk distributor, or milk
18 plant buying or selling milk or milk products in South Dakota.

19 Section 3. That § 40-32-5 be amended to read as follows:

20 40-32-5. The license fee for the following facilities requiring licenses is as follows:

21 ~~—Milk plant~~ \$100.00

22 (1) In-state milk processing plant (by pounds of milk or milk product produced):

23 (a) Less than 100,000 pounds per day - \$250

24 (b) 100,000 to 500,000 pounds, inclusive, per day - \$500

- 1 (c) Over 500,000 pounds per day - \$1,000
- 2 (2) Out-of-state milk processing plants or marketing organization - \$250
- 3 (3) Receiving station ~~100.00~~ - \$250
- 4 (4) Plant fabricating single-service articles ~~100.00~~ - \$250
- 5 (5) Milk distributor ~~50.00~~ - \$250
- 6 (6) Transfer station ~~50.00~~ - \$100
- 7 ~~Cream station 25.0~~
- 8 (7) Bulk milk pick-up tanker or milk transport tank - \$50

9 Section 4. That § 40-32-6 be amended to read as follows:

10 40-32-6. Each license for a ~~creamery, cream station, or~~ milk plant shall record the name of

11 the person owning or operating the ~~place~~ plant licensed, ~~its~~ the plant's place of business, the

12 location ~~thereof~~ of the plant, the name of the manager ~~thereof~~, and the number of the license.

13 Each license so issued shall constitute a license to the manager or agent of the place of business

14 named ~~therein~~ in the license and one license shall be sufficient for all manufacturing processes

15 of milk or milk products, ~~except that a cream station license shall entitle the licensee to operate~~

16 ~~only a cream station~~. Each license issued shall be posted in the office of the plant licensed.

17 Section 5. That § 40-32-7 be amended to read as follows:

18 40-32-7. No license for a ~~creamery, cream station, or~~ milk plant ~~shall be~~ is transferable from

19 one person to another, but may be transferred from one location to another in the same

20 municipality with the approval of the secretary of agriculture.

21 Section 6. That § 40-32-10.1 be amended to read as follows:

22 40-32-10.1. A producer engaged in the business of producing milk and offering for sale such

23 milk to a milk plant, ~~creamery, or cream station~~ for purposes other than Grade A milk as set

24 forth in chapter 39-6 and before ~~such~~ the milk is to be transported from the premises of ~~such~~ the

1 producer, shall obtain a permit from the secretary.

2 Section 7. That § 40-32-10.7 be amended to read as follows:

3 40-32-10.7. Any person performing the duties of a dairy fieldman shall first obtain a license
4 by applying on a form provided by the secretary of agriculture. Upon receipt of the application
5 and a fee of ~~twenty-five~~ fifty dollars, the secretary shall determine if the applicant is competent
6 and qualified before issuing the license. Each license for a dairy fieldman is valid for one year
7 or any fraction thereof and terminates on July first of each year.

8 Section 8. That § 40-32-12 be amended to read as follows:

9 40-32-12. Applications for a tester and grader's license shall be made on forms prescribed
10 and provided by the secretary of agriculture. Upon receipt of an application and a fee of
11 ~~twenty-five~~ fifty dollars, each applicant shall be given an examination prescribed by the
12 secretary. The examination shall determine the applicant's knowledge of South Dakota laws
13 pertaining to the dairy industry and shall contain an actual demonstration by the applicant,
14 sampling, testing, and grading ~~cream and~~ milk.

15 Section 9. That § 40-32-13 be amended to read as follows:

16 40-32-13. ~~Licenses will~~ Applications for a sampling and grading license shall be made on
17 forms prescribed and provided by the secretary of agriculture. A license shall be issued to
18 persons for sampling and grading of ~~cream or milk at a creamery, cream station,~~ milk plant, or
19 for the operator of a bulk tank truck picking up milk at the farm, upon satisfactory completion
20 of that part of the examination pertaining to sampling and grading, and upon receipt of the
21 application and a fee of fifty dollars. These licenses ~~will~~ shall be stamped, "For sampling and
22 grading only."

23 Section 10. That § 40-32-18 be amended to read as follows:

24 40-32-18. The secretary of agriculture may promulgate rules pursuant to chapter 1-26 as may

be needed to:

- (1) Determine and define grades of milk ~~and cream~~ and price differentials to be paid between grades;
- (2) Determine and define methods of testing and grading and records to be kept of such testing and grading;
- (3) Define individual milk products and set standards for each;
- (4) Determine and define methods of production, manufacture, and processing of milk and milk products;
- (5) Determine and define construction and sanitation standards for dairy farms; ~~creameries, and milk plants, and cream buying stations;~~
- (6) Determine and define construction and sanitation standards for equipment used on dairy farms, ~~in creameries, and milk plants, and cream buying stations;~~ including transportation equipment for milk and milk products;
- (7) Determine and define proper container capacities, labeling, and advertising;
- (8) Determine and define duties and responsibilities of a dairy fieldman; and
- (9) Review and approve plans and specifications prior to construction.

Section 11. That § 40-32-25 be amended to read as follows:

40-32-25. A milk plant or marketing organization of milk, milk products, sheep milk, or goat milk that processes or markets Manufacturing Grade or Grade A milk shall pay an inspection service fee for each dairy farm. The inspection fee shall be ~~fifty~~ one hundred dollars per Grade A or ~~twenty-five~~ fifty dollars per Manufacturing Grade dairy farm and be paid semiannually by July first and January first to the secretary. In addition, beginning on January 1, 2010, each milk buyer shall pay a monthly raw milk assessment fee on all milk purchased from South Dakota producers, which shall be paid by the beginning of each month to the secretary.

1 The secretary of agriculture shall promulgate rules pursuant to chapter 1-26 to establish the raw
2 milk assessment fee which may not exceed one cent per hundredweight on all milk purchased.

3 Section 12. That § 40-32-26 be amended to read as follows:

4 40-32-26. A reinspection fee of ~~seventy-five~~ two hundred dollars per inspection shall be paid
5 to the secretary by the milk plant or marketing organization for each dairy farm inspection
6 exceeding the required biannual Grade A or annual Manufacturing Grade farm facility
7 inspection resulting from adverse actions such as farm permit suspension, degrade, or unsanitary
8 conditions to be corrected within a specified period of time.

9 Section 13. That § 40-32-27 be amended to read as follows:

10 40-32-27. ~~Milk plants~~ Each milk plant requiring inspection service from the department on
11 pasteurization units shall annually pay ~~one hundred~~ two hundred fifty dollars per pasteurization
12 unit to the secretary. The inspection fee shall be paid annually and is due July first of each year.
13 A one-hundred-fifty-dollar resealing fee for any pasteurization unit shall be assessed to the plant
14 and billed at the end of the month for nonroutine equipment checks.

15 Section 14. That § 40-32-29 be amended to read as follows:

16 40-32-29. Funds collected pursuant to ~~§§ 40-32-25 to 40-32-27 inclusive~~, this chapter shall
17 be deposited with the state treasurer in a special fund known as the dairy inspection fund.
18 Expenditures of these funds shall be made pursuant to provisions of chapter 4-7, not to exceed
19 ~~thirty~~ fifty percent of the total dairy program budget. The department shall provide the dairy
20 industry and the Legislature an annual report of the previous year's activities.

21 Section 15. That § 40-32-30 be repealed.

22 ~~40-32-30. The payment of the initial inspection fee pursuant to §§ 40-32-25 and 40-32-27~~
23 ~~is due July 30, 1988.~~