CHAPTER 33

Milk and Milk Products Marketing

ARTICLE 1

State Dairy Commission—General Provisions [Repealed]

**SECTIONS 39‑33‑10 to 39‑33‑30.** Repealed by 1986 Act No. 540, Part II, Section 32B, eff June 18, 1986, which became law without the Governor's signature.

Editor's Note

Former Section 39‑33‑10 was entitled "Definitions" and was derived from 1962 Code Section 32‑1611; 1953 (48) 279; 1955 (49) 496; 1961 (52) 512; 1981 Act No. 82, Section 1.

Former Section 39‑33‑20 was entitled "Products covered by this article" and was derived from 1962 Code Section 32‑1612; 1961 (52) 512; 1981 Act No. 82, Section 1.

Former Section 39‑33‑30 was entitled "State Dairy Commission; creation; membership; terms; vacancies; organization; quorum; per diem and expenses; staff" and was derived from 1962 Code Section 32‑1613; 1952 Code Sections 32‑1628 to 32‑1630; 1950 (46) 2003; 1953 (48) 279; 1955 (49) 496; 1961 (52) 512; 1981 Act No. 82, Section 1.

See Sections 46‑49‑10 et seq. for provisions covering subject matter similar to that which was formerly governed by this article.

**SECTION 39‑33‑31.** Repealed by 1986 Act No. 540, Part II, Section 32B, eff June 18, 1986, which became law without the Governor's signature.

Editor's Note

Former Section 39‑33‑31 was derived from 1985 Act No. 201, Part II, Section 36B.

This section formerly provided for the continuation of service of producer members of the State Dairy Board and for the termination of the terms of certain other members.

**SECTIONS 39‑33‑40 to 39‑33‑120.** Repealed by 1986 Act No. 540, Part II, Section 32B, eff June 18, 1986, which became law without the Governor's signature.

Editor's Note

Former Section 39‑33‑40 was entitled "Annual budget; assessments for operation of Commission; Dairy Commission Account" and was derived from 1962 Code Section 32‑1614; 1955 (49) 496; 1961 (52) 512; 1981 Act No. 82, Section 1.

Former Section 39‑33‑50 was entitled "General powers and duties; state‑wide purchasing and production incentive plans; Producer Settlement Fund" and was derived from 1962 Code Section 32‑1615; 1952 Code Section 32‑1631; 1950 (46) 2003; 1953 (48) 279; 1955 (49) 496; 1961 (52) 512; 1981 Act No. 82, Section 1.

Former Section 39‑33‑60 was entitled "Fixing of minimum prices paid by distributors to producers; public hearings" and was derived from 1981 Act No. 82, Section 1.

Former Section 39‑33‑70 was entitled "Investigational hearings" and was derived from 1981 Act No. 82, Section 1.

Former Section 39‑33‑80 was entitled "Licensees required to maintain records; Commission to have access; price information public; penalties" and was derived from 1981 Act No. 82, Section 1.

Former Section 39‑33‑90 was entitled "Distributors required to obtain license" and was derived from 1981 Act No. 82, Section 1.

Former Section 39‑33‑100 was entitled "Penalties" and was derived from 1981 Act No. 82, Section 1.

Former Section 39‑33‑110 was entitled "Solicitation or collusion to violate provisions" and was derived from 1981 Act No. 82, Section 1.

Former Section 39‑33‑120 was entitled "Commission shall promulgate regulations" and was derived from 1981 Act No. 82, Section 1.

See Sections 46‑49‑10 et seq. for provisions covering subject matter similar to that which was formerly governed by this article.

ARTICLE 11

Butterfat Content and Weight of Milk

**SECTION 39‑33‑1210.** Fraudulent manipulation of Babcock test or records or payment on basis other than true measurement shall be unlawful.

It shall be unlawful for any person, by himself or as the officer, servant, agent or employee of any person, receiving, buying or paying for milk, cream or other dairy products on the butterfat basis thereof (a) to underread, overread or otherwise to fraudulently manipulate the Babcock or other test approved by the Commissioner of Agriculture used to determine the per cent of fat in milk, cream or other dairy products, (b) to falsify the record thereof or (c) to pay on the basis of any measurement or weight except the true measurement or weight as determined and authorized by the Commissioner of Agriculture.

HISTORY: 1962 Code Section 32‑1607; 1952 Code Section 32‑1607; 1951 (47) 541.

**SECTION 39‑33‑1220.** Employment of licensed tester.

Every milk plant, creamery, shipping station, other factory or person or agent receiving, buying or paying for milk, cream or other dairy products on the basis of butterfat content shall have in its employ at least one licensed tester who shall supervise and be responsible for the accurate and correct operation of the Babcock or other test to determine the fat content of such products.

HISTORY: 1962 Code Section 32‑1608; 1952 Code Section 32‑1608; 1951 (47) 541.

**SECTION 39‑33‑1230.** Issuance, term and renewal of license of tester.

The license shall be issued by the Commissioner of Agriculture upon receipt of a properly executed application form and upon the passing satisfactorily of an examination prescribed by the Commissioner and after having satisfactorily completed a special training course for tester conducted by the dairy department of Clemson University. The license shall be valid for the term of one year and shall be revoked by the Commissioner upon evidence that the licensee has failed to comply with the rules and regulations under which the license was granted. Unless revoked the license shall be renewed annually upon application from the licensee.

HISTORY: 1962 Code Section 32‑1609; 1952 Code Section 32‑1609; 1951 (47) 541.

**SECTION 39‑33‑1240.** Hauler or receiver shall not manipulate weights or samples.

It shall be unlawful for a hauler of milk, cream or other dairy products or any other person or agent, receiving such products by weight or butterfat content, fraudulently to manipulate the weight of milk, cream or other dairy products of any patron, to take an unfair sample thereof or fraudulently to manipulate such samples in any manner. In case weighing and sampling is done by a hauler, he shall hold a license for a weighman and sampler as set out in Section 39‑33‑1260.

HISTORY: 1962 Code Section 32‑1609.1; 1952 Code Section 32‑1609.1; 1951 (47) 541.

**SECTION 39‑33‑1250.** Equipment of receiver or buyer; testing; condemnation.

It shall be the responsibility of the receivers or buyers to provide equipment necessary to obtain accurate weights and accurate and representative samples for determining the butterfat content of milk or cream received and paid for on the basis of weight and test. The Commissioner of Agriculture shall cause to be made such tests for accuracy on any equipment necessary or incidental to the ascertainment of accurate weights and the taking of accurate representative samples for determining the butterfat content of milk or cream in the State, and he shall condemn any equipment found to be of doubtful accuracy in weighing, sampling or testing for butterfat when the basis of payment is weight and butterfat content, if the receiver or buyer has been given a reasonable time to correct or replace such equipment.

HISTORY: 1962 Code Section 32‑1609.2; 1952 Code Section 32‑1609.2; 1951 (47) 541.

**SECTION 39‑33‑1260.** Employment and licenses of weighmen and samplers.

Every milk plant, creamery, shipping station or other factory or person or agent receiving, buying or paying for milk, cream or other dairy products on the basis of butterfat content, shall have in its employ at least one licensed weighman and sampler who shall supervise and be responsible for accurate weights and representative samples of all milk or cream received and paid for on the basis of weight and butterfat content. The license shall be issued by the Commissioner of Agriculture or his authorized agent upon receipt of a properly executed application form and upon the passing satisfactorily of an examination prescribed by the Commissioner. This license shall be valid for the term of one year and shall be revoked by the Commissioner upon evidence that the licensee has failed to comply with the rules and regulations under which the license was granted. Unless revoked this license shall be renewed annually upon application from the licensee.

HISTORY: 1962 Code Section 32‑1609.3; 1952 Code Section 32‑1609.3; 1951 (47) 541.

**SECTION 39‑33‑1270.** Temporary permit to test, weigh or sample prior to license examination.

Any person who shall desire to test, weigh or sample either milk or cream prior to taking the necessary examination for a license may apply to the Commissioner of Agriculture for a temporary permit. Such permit when issued shall entitle the holder to test, weigh or sample milk or cream until the date specified for taking the examination as prescribed by the Commissioner. A permit holder shall bear the same responsibilities as a licensee in complying with all of the provisions of this article.

HISTORY: 1962 Code Section 32‑1609.4; 1952 Code Section 32‑1609.4; 1951 (47) 541.

**SECTION 39‑33‑1280.** Promulgation of rules and regulations.

The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this article that shall govern the granting of licenses under this article and shall establish and promulgate rules and regulations not inconsistent with this article which shall govern the manner of weighing and testing, including, but not in limitation thereof, the taking of samples, the location where the testing of such samples shall be made and the length of time samples of milk or cream shall be held after testing. The Commissioner of Agriculture shall consult and cooperate with the dairy department of Clemson University in specifying the technical methods and procedure for accurately determining the butterfat content of dairy products.

HISTORY: 1962 Code Section 32‑1609.5; 1952 Code Section 32‑1609.7; 1951 (47) 541.

**SECTION 39‑33‑1290.** Interference with enforcement of article.

It shall be unlawful for any person, either for himself or as an officer, servant, agent or employee of any other person, to interfere in any manner with any duly authorized agent of the Commissioner of Agriculture, to refuse entry to such agent or to interfere in any way so as to hinder or prevent such agent from carrying out any of the provisions of this article.

HISTORY: 1962 Code Section 32‑1609.6; 1952 Code Section 32‑1609.8; 1951 (47) 541.

**SECTION 39‑33‑1300.** Duty of prosecuting attorneys regarding enforcement of article.

It shall be the duty of every prosecuting attorney to whom the Commissioner of Agriculture shall report any violation of the provisions of this article to cause proceedings to be commenced against the persons so violating the provisions of this article and to prosecute them to final termination, according to the laws of the State.

HISTORY: 1962 Code Section 32‑1609.7; 1952 Code Section 32‑1609.9; 1951 (47) 541.

**SECTION 39‑33‑1310.** Report of receipts and expenditures.

The Commissioner of Agriculture shall include in his annual report a classified report showing the total receipts and expenditures under the provisions of this article.

HISTORY: 1962 Code Section 32‑1609.8; 1952 Code Section 32‑1609.10; 1951 (47) 541.

**SECTION 39‑33‑1320.** Penalties.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction, for the first offense shall be fined not less than twenty‑five dollars nor more than one hundred dollars or be imprisoned not less than ten days nor more than thirty days, in the discretion of the court, and for the second or any subsequent offense shall be fined not less than one hundred dollars nor more than two thousand dollars or be imprisoned for not less than thirty days nor more than two years, or be both fined and imprisoned, in the discretion of the court.

HISTORY: 1962 Code Section 32‑1609.9; 1952 Code Section 32‑1609.11; 1951 (47) 541; 1953 (48) 42.

ARTICLE 13

Bottles, Cans and Other Containers

**SECTION 39‑33‑1510.** Placing offensive material in milk containers shall be unlawful.

It shall be unlawful for any person to place or permit to be placed in any milk container designed to be again used in the production, sale or delivery of milk or other dairy products in the State or the police jurisdiction of the State swill, offal, kerosene, gasoline, food products other than milk, coal dust, ashes or other offensive material. Any person violating the provisions of this section shall be punished, upon conviction, by a fine of not exceeding one hundred dollars or imprisonment not exceeding thirty days.

HISTORY: 1962 Code Section 32‑1641; 1952 Code Section 32‑1641; 1942 Code Section 5129‑15; 1937 (40) 401.

**SECTION 39‑33‑1520.** Trafficking in shipper's milk cans without consent or defacing cans shall be unlawful.

It shall be unlawful for any person, without the consent of the agent of the owner or shipper, to use, sell, dispose of, buy or traffic in any milk or cream can belonging to any dealer or shipper of milk or cream residing in this State or elsewhere who may ship milk or cream to any place within this State, having the name or initials of the owner or such dealer or shipper stamped, marked or fastened on such can or wilfully to mar, erase or change by re‑marking or otherwise such name or initials of any such owner, dealer or shipper so stamped, marked or fastened upon such can. Any person who shall violate any provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one hundred dollars, nor less than ten dollars, or by imprisonment not exceeding thirty days.

HISTORY: 1962 Code Section 32‑1642; 1952 Code Section 32‑1642; 1942 Code Section 5129‑12; 1932 Code Section 1346; Cr. C. '22 Section 236; 1918 (30) 846.

**SECTION 39‑33‑1530.** Possession of milk can without consent shall be presumptive evidence of unlawful trafficking.

The fact that any person, without the consent of the owner, dealer or shipper thereof, either uses, sells, disposes of, buys, traffics in or has in his possession or under his control any such milk or cream can shall be presumptive evidence of the unlawful use, sale, purchase of or traffic in such can.

HISTORY: 1962 Code Section 32‑1643; 1952 Code Section 32‑1643; 1942 Code Section 5129‑12; 1932 Code Section 1346; Cr. C. '22 Section 236; 1918 (30) 846.

**SECTION 39‑33‑1540.** Unauthorized use of stamped bottles of other dealers in milk in same county shall be unlawful.

It shall be unlawful for any person regularly engaged in the retail sale of milk, either on his own account or in a representative capacity for some other, to use in such business bottles or other containers wherein or whereon is indelibly stamped or fixed the name or trademark of some other person likewise engaged in the same county in the retail sale of milk, unless such containers shall have been acquired by such person from the one whose name or trademark is impressed upon such bottle or container or unless such person has the written permission of the person whose name or trademark is impressed upon such bottle or container to use such bottle or container. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than five dollars nor more than fifty dollars or to imprisonment of not less than five days nor more than fifteen days.

HISTORY: 1962 Code Section 32‑1644; 1952 Code Section 32‑1644; 1942 Code Section 5129‑13; 1932 Code Section 1347; 1931 (37) 312.

**SECTION 39‑33‑1550.** Use of milk containers of others shall be unlawful.

It shall be unlawful for any person to bottle milk or other dairy products in any bottle not the property of such person or to use milk bottles, milk cans or milk bottle crates not the property of such person.

HISTORY: 1962 Code Section 32‑1646; 1952 Code Section 32‑1646; 1942 Code Section 5129‑15; 1937 (40) 401.

**SECTION 39‑33‑1560.** Sale or shipment of milk container by one other than dealer shall be unlawful.

It shall be unlawful for any person to collect, have or possess milk bottles, milk cans or milk bottle crates for sale or for exchange for a consideration or for shipment within the State or from the State, excepting only wholesale and retail dealers in milk bottles, milk cans and milk bottle crates who pay a license to the city or town in which they operate and who purchase milk bottles, milk cans and milk bottle crates from the manufacturers or their representatives for the purpose of resale to dairymen and persons operating milk depots.

HISTORY: 1962 Code Section 32‑1647; 1952 Code Section 32‑1647; 1942 Code Section 5129‑15; 1937 (40) 401.

**SECTION 39‑33‑1570.** Possession of milk containers of another for more than seven days shall be unlawful.

It shall be further unlawful for any person to retain possession of any milk bottles, milk cans or milk bottle crates not his property for a period longer than seven days. But this section shall not apply to any retail consumer who purchased the milk which came in any such bottle.

HISTORY: 1962 Code Section 32‑1648; 1952 Code Section 32‑1648; 1942 Code Section 5129‑15; 1937 (40) 401.

**SECTION 39‑33‑1580.** Penalties for violating Sections 39‑33‑1550 to 39‑33‑1570.

Any person violating any of the provisions of Sections 39‑33‑1550 to 39‑33‑1570 shall be punished upon conviction by a fine not exceeding two hundred dollars or imprisonment not exceeding sixty days, either or both, or any portion of either or both, in the discretion of the court.

HISTORY: 1962 Code Section 32‑1649; 1952 Code Section 32‑1649; 1942 Code Section 5129‑15; 1937 (40) 401.

**SECTION 39‑33‑1590.** Certain sections shall be cumulative.

Sections 39‑33‑1510 and 39‑33‑1550 to 39‑33‑1580 shall be in addition to all other laws for the protection of owners of milk bottles, milk cans and milk bottle crates.

HISTORY: 1962 Code Section 32‑1650; 1952 Code Section 32‑1650; 1942 Code Section 5129‑15; 1937 (40) 401.

ARTICLE 15

Inspection and Miscellaneous Prohibitions

**SECTION 39‑33‑1710.** Purchasers shall retain samples of milk and cream paid for on basis of butterfat content.

All persons in this State purchasing milk or cream for manufacture, sale or shipment and paying for it on the basis of the butterfat contained therein, as determined by test, shall take or cause to be taken in the places where such milk or cream is purchased or tested a representative sample of all such milk or cream, and if any be left on hand after a shipment is made, a representative sample of this shall likewise be taken. Such sample shall be not less than two ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation and the escape of any of the contents thereof. All samples of milk or cream so taken shall be plainly marked or labeled, and such mark or label shall be entered upon the records of the purchaser to correspond with the name of the person from whom such purchase was made, together with the weight of the milk or cream, if any, which is left on hand after shipment is made. Such samples shall then be protected from extremes of heat and cold and held until five P. M. of the following day, except that all such samples taken on a day preceding a holiday shall be held until five P. M. of the next day following such a holiday. During the period mentioned such samples shall be subject to inspection by the Department of Agriculture and shall be opened only in the presence of the Commissioner of said Department or his duly authorized representative. Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one hundred dollars or by imprisonment for a period not exceeding thirty days for each and every offense so committed.

HISTORY: 1962 Code Section 32‑1601; 1952 Code Section 32‑1601; 1942 Code Section 5129; 1932 Code Section 5129; 1930 (36) 1351; 1936 (39) 1615; 1941 (42) 119.

**SECTION 39‑33‑1720.** Sale or delivery of certain milk shall be unlawful.

It shall be unlawful for any person knowingly to sell, expose for sale or deliver for domestic use or to be converted into any product of human food whatsoever any (a) unclean, impure, unwholesome, adulterated or skimmed milk, (b) milk from which has been held back what is known as strippings or (c) milk taken from an animal having disease, sickness, ulcers or abscesses. But this section shall not prohibit the sale of buttermilk or of skimmed milk when sold as such.

For the purposes of this section, milk which is proven by any reliable test or analysis to contain less than three per cent of butterfat and eight and one‑half per cent solids other than butterfat shall be regarded as "skimmed milk." The Commissioner of Agriculture and all inspectors and chemists employed under Chapter 27 of Title 46 shall be charged with the enforcement of this section.

HISTORY: 1962 Code Section 32‑1602; 1952 Code Section 32‑1602; 1942 Code Sections 5128‑27, 5129‑2; 1932 Code Sections 1455, 1542; Cr. C. '22 Sections 398, 401; Cr. C. '12 Sections 406, 411; Cr. C. '02 Section 308; 1896 (22) 215; 1904 (24) 531; 1907 (25) 528; 1913 (28) 35; 1917 (30) 51; 1924 (33) 971.

**SECTION 39‑33‑1730.** Combinations of certain ingredients with butter or cheese prohibited.

No person shall combine any animal fat, vegetable oil or other substance with butter or cheese.

HISTORY: 1962 Code Section 32‑1604; 1952 Code Section 32‑1604; 1942 Code Section 5129‑4; 1932 Code Section 1457; Cr. C. '22 Section 403; Cr. C. '12 Section 413; Cr. C. '02 Section 310; 1896 (22) 215.