

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJM
10-20-92

Emergency Rules
10 Working Days

RULE REVIEW CHECKLIST

File No. 1959
DATE RECEIVED 10-16-92
REVIEW DATE
DUE DATE 10-30-92
(DIS)APPROVED 10-29-92
WITHDRAWN

Docket No. 05 0009 0986
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 10-20-92
REVISOR (DIS)APPROVED 10-23-92
FILED W/SEC. OF STATE ~~10-28-92~~ 10-29-92
RETURNED TO AGENCY 10-30-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
June 8, 1992 Date published in State Register
✓ Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
1992 Laws of MN Statutory Authority Chapter 602, Section 4
✓ Small Business Statement
September 22, 1992 Expenditure of public money statement
Signature

NA Statement of Need and Reasonableness (if applicable)
Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
August 19, 1992 Dated 30/25 days before adoption
Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
August 24, 1992 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
October 7, 1992 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Paul Strandberg Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if

STATE OF MINNESOTA

Office of the Attorney General

TO : CAROL MILLIGAN
Agriculture Planning Division
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul

DATE : October 29, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Class I Milk

The above-referenced rule has been approved as to its legality by the Attorney General on October 29, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

Enclosures
cc: Paul Strandberg
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.rules.bc7

Department of Agriculture

Adopted Emergency Rules Relating to Class I Milk

Rules as Adopted

1535.4000 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1535.4000 to 1535.4560 [Emergency]. Terms used in parts 1535.4000 to 1535.4560 [Emergency] that are not otherwise defined in this part have the meanings given in the federal milk marketing order.

Subp. 2. **Applicable Class I milk.** "Applicable Class I milk" means milk that is processed into Class I products at plants in Minnesota.

Subp. 3. **Class I milk.** "Class I milk" means all skim milk and butterfat classified as Class I by section 1068.40(a) and other applicable sections of the federal milk marketing order.

Subp. 4. **Class I Minnesota premium.** "Class I Minnesota premium" means the amount the Class I Minnesota minimum price of $13.20 per hundredweight exceeds the order Class I price announced for Zone 1, at 3.5 percent butterfat in the month.

Subp. 5. **Class I products.** "Class I products" means fluid milk products as defined in section 1068.15 of the federal milk marketing order, except when moved in bulk, tanker form.

Subp. 6. **Commissioner.** "Commissioner" means the Minnesota commissioner of agriculture or the commissioner's designee.

Subp. 7. **Cooperative association.** "Cooperative association" means an organization recognized as a cooperative association by the United States Department of Agriculture that causes milk belonging to its members to be utilized by the cooperative association directly or delivered to other handlers and collects payment on behalf of its members.

Subp. 8. **Eligible producer.** "Eligible producer" means a person who possesses a grade A permit issued by the Minnesota Department of Agriculture and produces grade A milk on a farm

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located in Minnesota.

Subp. 9. **Eligible producer milk.** "Eligible producer milk" means grade A milk produced by an eligible producer in Minnesota.

Subp. 10. **Equalization fund.** "Equalization fund" means the Minnesota Class I premium equalization fund created under part 1535.4260 [Emergency].

Subp. 11. **Exempt milk.** "Exempt milk" means milk that was produced, processed, packaged, and sold at the farm where produced, directly to consumers or which was used on the farm.

Subp. 12. **Federal milk marketing order.** "Federal milk marketing order" means the Upper Midwest Federal Milk Marketing Order, Code of Federal Regulations, title 7, section 1068, or any successor order regulating milk produced and marketed in Minnesota, issued by the United States Secretary of Agriculture under the authority of the Agricultural Marketing Agreement Act of 1937, United States Code, title 7, section 601, et seq.

Subp. 13. **Handler.** "Handler" means a person acting as the operator of a Minnesota pool plant or a cooperative association who qualifies and acts as a regulated handler under section 1068.9(b) or 1068.9(c) of the federal milk marketing order.

Subp. 14. **Member cooperative association.** "Member cooperative association" means a cooperative organization that does not act as a handler under the Minnesota producer premium program, but instead authorizes another handler to market its milk. A member cooperative association may not draw from the equalization fund directly, but may collect payment in aggregate for members from its designated handler, who will act as its agent and receive and distribute the Minnesota producer premium payment rate to the member cooperative association as directed by the program.

Subp. 15. **Minnesota pool plant.** "Minnesota pool plant" means:

A. a pool distributing plant or pool unregulated plant that processes Class I products in Minnesota; or

B. a handler or cooperative association that buys milk from eligible producers.

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Subp. 16. **Minnesota producer premium payment rate.** "Minnesota producer premium payment rate" means the rate per hundredweight of milk to be paid to eligible producers resulting from the Class I Minnesota premium.

Subp. 17. **Plant.** "Plant" means the land, buildings, surroundings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Plant does not include separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another.

Subp. 18. **Pool distributing plant.** "Pool distributing plant" means a plant located in Minnesota where milk is received from producers or other plants for processing into Class I products.

Subp. 19. **Pool unregulated plant.** "Pool unregulated plant" means a plant or cooperative association that processes milk into Class I products in Minnesota but is not regulated under section 1068.7 of the federal milk marketing order. This definition encompasses the plant definitions for nonpool and producer-handler plants under sections 1068.8 and 1068.10 of the federal milk marketing order.

Subp. 20. **Processed.** "Processed," in reference to milk, means converted by a handler from raw, unprocessed milk from any source, regardless of the state of origin, into Class I products at a plant in Minnesota.

Subp. 21. **Program.** "Program" means the Minnesota producer premium program under parts 1535.4000 to ~~1535.4540~~ 1535.4560 [Emergency] and Minnesota Statutes, section 32A.071.

Subp. 22. **Purchased.** "Purchased," in reference to milk, means delivery to a Minnesota pool plant that processes milk into Class I products.

EXAMPLE: A North Dakota grade A dairy farmer sells milk to a Minnesota processor of Class I dairy products. The milk is

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considered milk purchased in Minnesota for Class I use.

1535.4020 [Emergency] REPORTS OF RECEIPTS AND UTILIZATION; POOL DISTRIBUTING AND POOL UNREGULATED PLANTS THAT PROCESS CLASS I MILK.

Subpart 1. **Monthly reports.** On or before the 15th day of any month, each handler that operates a pool distributing plant or a pool unregulated plant in Minnesota during the preceding month shall report the following information for that month to the commissioner in the detail and on forms prescribed by the commissioner:

A. total Class I milk disposed as fluid milk products on routes;

B. total Class I packaged sales to other plants, listed by plant, specifying:

(1) sales to handlers inside Minnesota; and

(2) sales to handlers outside Minnesota;

C. total Class I packaged receipts from other plants, listed by plant, specifying:

(1) receipts from handlers inside Minnesota; and

(2) receipts from handlers outside Minnesota;

D. total receipts of milk from all sources;

E. total receipts of milk from Minnesota eligible producers for which the handler made payment to the producers or the member cooperative association;

F. receipts of milk from other Minnesota pool plants listed by handler, cooperative association, and plant; and

G. receipts from other sources or handlers, listed by plant.

Handlers regulated under the federal milk marketing order may satisfy part or all of this reporting requirement by submitting to the commissioner a complete copy of the report ~~entitled "Report~~ of receipts and utilization." The handler shall submit the copy that has been accepted and verified for accuracy by the market administrator of the federal milk marketing order.

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Subp. 2. **Handler report of eligible receipts.** The total receipts under subpart 1, item E, must include receipts from member cooperative associations on whose behalf the handler markets milk and issues ~~payment~~ payments. ~~These~~ Receipts must be listed by member cooperative ~~association~~ associations.

1535.4030 [Emergency] REPORT OF RECEIPTS OF MINNESOTA ELIGIBLE MILK.

Subpart 1. **Monthly report of receipts.** A handler not covered under the reporting requirements in part 1535.4020 [Emergency] who purchased milk from Minnesota eligible producers in the preceding month shall complete a report of receipts. The report must be delivered to the commissioner no later than the close of business on the 15th day of the month, for the preceding month, in the manner and on the form prescribed by the commissioner with respect to each Minnesota pool plant operated by the handler. The handler shall also list the member cooperative associations and the respective pounds of eligible producer milk the handler markets for the member cooperative associations. The report must include the following information:

A. total receipts of milk from all sources;

B. total receipts of milk from Minnesota eligible producers, for which the handler made payment to the producers or the member cooperative association;

C. receipts of milk from other Minnesota pool plants, listed by handler, cooperative association, and plant; and

D. receipts from other sources or handlers, listed by plant.

Subp. 2. **~~Handler~~ Report of eligible receipts.** The total receipts of milk in subpart 1, item B, must include receipts from member cooperative associations on whose behalf the handler markets milk and issues payments. Receipts must be listed by member cooperative associations.

1535.4040 [Emergency] PRODUCER PAYROLL REPORTS.

Each handler, cooperative association, and member cooperative association shall report with respect to producers

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on or before the 22nd day of the month the handler's or association's producer payroll for the preceding month. The payroll must show for each eligible producer the Minnesota producer premium payment rate, the total amount, in hundredweight, of milk to which the Minnesota producer premium payment rate applied, the dates of delivery of each amount of milk, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the amount of milk delivered by the eligible producer. All producer payroll information required by state or federal milk marketing orders must accompany the report under this part.

1535.4050 [Emergency] OTHER REPORTS.

A handler shall report to the commissioner, in the manner and on forms prescribed by the commissioner, additional information necessary to administer this program.

1535.4060 [Emergency] RECORDS AND FACILITIES.

A handler shall maintain and make available to the commissioner during the usual hours of business all records and facilities necessary to verify the data reported under parts 1535.4020 to 1535.4040 [Emergency].

1535.4100 [Emergency] BASIS OF CLASSIFICATION.

Milk required to be reported by a handler under part 1535.4020 [Emergency] must be classified each month under part 1535.4110 [Emergency]. If any of the water contained in the milk from which a product is made is removed before the product is used or disposed of by a handler, the pounds of skim milk used or disposed of in the product must be considered to be an amount equivalent to the nonfat milk solids contained in the products plus all the water originally associated with the solids.

1535.4110 [Emergency] CLASSES OF UTILIZATION.

Milk subject to classification by part 1535.4100 [Emergency] must be classified as Class I, Class II, or Class III according to the classification rules of the federal milk

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marketing order as interpreted by the market administrator of the federal milk marketing order.

1535.4120 [Emergency] APPLICABLE CLASS I MILK.

Applicable Class I milk must be calculated from the report filed by a handler under part 1535.4020 [Emergency] for a pool distributing or pool unregulated plant that processed Class I milk in the preceding month. Applicable Class I milk at a pool distributing plant or pool unregulated plant must be calculated by the commissioner under items A to C.

A. Add the total under part 1535.4020 [Emergency], subpart 1, items A and B.

B. Subtract the total Class I packaged receipts from other plants under part 1535.4020 [Emergency], subpart 1, item C.

C. The resulting difference represents the total amount of Class I applicable milk at the individual plant by hundredweight.

1535.4130 [Emergency] RESPONSIBILITIES OF HANDLERS AND RECLASSIFICATION OF MILK.

All milk received at a pool distributing plant or pool unregulated plant must be applicable Class I milk unless the handler satisfies the commissioner that the milk should be classified otherwise.

1535.4200 [Emergency] CLASS I MINNESOTA MINIMUM PRICE.

The Class I Minnesota minimum price is $13.20 per hundredweight, as required by Minnesota Statutes, section 32A.071.

1535.4210 [Emergency] CALCULATING THE CLASS I MINNESOTA PREMIUM.

The Class I Minnesota premium each month is the amount, if any, by which the Class I Minnesota minimum price exceeds the announced Class I price for the month in the federal milk marketing order. The Class I Minnesota premium must not be adjusted for location, butterfat, or any other component or service provided by the handler or cooperative association.

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1535.4220 [Emergency] ANNOUNCEMENT OF CLASS I MINNESOTA PREMIUM.

On or before the fifth day of each month, the commissioner shall publicly announce the Class I Minnesota premium calculated under part 1535.4210 [Emergency] for the following month and notify Class I processors by telephone, facsimile, or first class mail of that premium.

1535.4230 [Emergency] CALCULATING MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall calculate the Minnesota producer premium payment rate each month according to items A to E.

A. Multiply the total hundredweight of applicable Class I milk reported to the commissioner, by the Class I Minnesota premium for the month.

B. Add an amount equal to not less than one-half of the unobligated balance of the equalization fund.

C. Divide the resulting amount by the total hundredweight of Minnesota eligible producer milk reported to the commissioner.

D. Subtract not less than ~~one-half~~ 1/100 of a cent nor more than ~~1-1/2-cents-per-hundredweight~~ 99/100 of a cent.

E. The resulting price per hundredweight, in whole cents, is the Minnesota producer premium payment rate for the month.

1535.4240 [Emergency] ANNOUNCEMENT OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall publicly announce the Minnesota producer premium payment rate on or before the ~~16th~~ 18th day after the end of each month to which the Minnesota producer premium payment rate applies, and notify affected handlers by telephone, facsimile, or first class mail.

1535.4250 [Emergency] ADJUSTMENTS TO MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

Adjustments for butterfat or other milk components to the Minnesota producer premium payment rate announced under part

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1535.4240 [Emergency] are not allowed.

1535.4260 [Emergency] EQUALIZATION FUND; FISCAL AGENT.

The commissioner shall designate a fiscal agent to create and maintain a separate account known as the "Minnesota Class I premium equalization fund," into which the fiscal agent shall deposit all payments made by handlers under parts 1535.4310 [Emergency], 1535.4320 [Emergency], and 1535.4370 [Emergency], and out of which, at the direction of the commissioner, the fiscal agent shall make all payments under part 1535.4330 [Emergency].

1535.4270 [Emergency] CARRYOVER OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall direct the fiscal agent to withhold payments from the equalization fund if the Minnesota producer premium payment rate is less than ~~five-cents~~ one cent per hundredweight. The commissioner shall direct the fiscal agent to hold the money in the equalization fund until the sum of the Minnesota producer premium payment rate from two or more months equals or exceeds ~~five-cents~~ one cent per hundredweight. If the sum of two or more months of the Minnesota producer premium payment rate equals or exceeds ~~five-cents~~ one cent per hundredweight, the commissioner shall direct the fiscal agent to pay out the total. The commissioner shall direct the fiscal agent to pay out the Minnesota producer premium payment rate for the month of June of each fiscal year and any accumulated money from previous months even if the accumulated Minnesota producer premium payment rate is less than ~~five-cents~~ one cent per hundredweight.

1535.4300 [Emergency] NET POOL OBLIGATION OF HANDLER THAT OPERATES POOL DISTRIBUTING PLANT OR POOL UNREGULATED PLANT.

The net pool obligation of a handler that operates a pool distributing plant or pool unregulated plant having applicable Class I pounds in the preceding month, must be computed according to items A to F.

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A. Multiply the total hundredweights of applicable Class I milk ~~by~~ processed by the handler times the Class I Minnesota premium established for the month by the commissioner.

B. Multiply the total hundredweights of eligible producer milk purchased by the handler times the Minnesota producer premium payment rate.

C. Deduct the total calculated in item B from the total calculated in item A.

D. If the total in item A exceeds the total in item B, the handler shall pay that amount into the equalization fund under part 1535.4310 [Emergency]. The commissioner shall direct the fiscal agent to issue invoices for payments from handlers.

E. If the total in item B exceeds the total in item A, the handler is due that amount from the equalization fund under part 1535.4330 [Emergency] subject to the limitations of part 1535.4270 [Emergency].

F. If a handler that operates a pool distributing plant or pool unregulated plant fails to file the report required under part 1535.4020 [Emergency], the commissioner shall estimate that handler's applicable Class I milk to calculate the handler's net pool obligation to the equalization fund. The commissioner shall direct the fiscal agent to issue a payment invoice based on this estimate.

1535.4310 [Emergency] PAYMENTS TO EQUALIZATION FUND.

A handler with an obligation to the equalization fund as calculated in part 1535.4300 [Emergency] shall, on or before the ~~17th~~ 20th day of each month, pay to the fiscal agent for payment to the equalization fund the amount of its net pool obligation for the preceding month.

1535.4320 [Emergency] PENALTY FOR LATE PAYMENT TO EQUALIZATION FUND.

A handler or cooperative association that has not made remittance for an obligation, calculated pursuant to part 1535.4300 [Emergency], by the close of business on the next business day following the date specified for the payment, is

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subject to a late payment penalty. The unpaid obligation must be increased one percent for each month and any remaining amount due must be increased at a similar rate on the corresponding day of each succeeding month until paid. The amounts payable under this part must be computed monthly on each unpaid obligation, which must include any unpaid charges previously made under this part. Any obligation that was determined at a date later than prescribed by the program because of a handler's failure to submit a report to the commissioner when due must be considered to have been payable by the date it would have been due if the report had been filed when due. Amounts received by the commissioner under this part must be deposited with the fiscal agent in the separate account established in part 1535.4260 [Emergency].

1535.4330 [Emergency] PAYMENTS OUT OF EQUALIZATION FUND.

On or before the ~~18th~~ 25th day of each month, the commissioner shall direct the fiscal agent to make payment out of the equalization fund to each handler who has purchased milk from eligible producers. If the 25th falls on a weekend or holiday, the commissioner shall direct this payment be made on the following regular workday.

Prior to directing the issuance of payments from the equalization fund, the commissioner shall determine the total payments due under items A and B. If the balance in the equalization fund is insufficient to make the payments, the commissioner shall uniformly reduce the payments and direct the completion of the payments as soon as the necessary funds are available. Payments from the equalization fund must be directed by the commissioner according to items A and B.

A. For handlers that operate a pool distributing plant or pool unregulated plant and that are due payment, the commissioner shall direct the fiscal agent to make payment in the amount calculated in part 1535.4300 [Emergency], item E.

B. For handlers that purchased milk from Minnesota eligible producers during the preceding month and filed the

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report under part 1535.4030 [Emergency], the commissioner shall direct the fiscal agent to make payment in the amount calculated by multiplying the total hundredweights in part 1535.4030 [Emergency], subpart 1, item B, times the Minnesota producer premium payment rate per hundredweight.

1535.4340 [Emergency] PAYMENTS TO ELIGIBLE PRODUCERS AND MEMBER COOPERATIVE ASSOCIATIONS BY HANDLERS AND COOPERATIVE ASSOCIATIONS.

A handler or cooperative association shall make payment to each eligible producer or member cooperative association on or before the ~~20th~~ 4th day of each month following the month in which the commissioner has announced the producer premium payment rate for the preceding month at not less than the applicable Minnesota producer premium payment rate established under part 1535.4240 [Emergency]. Payments to an eligible producer or member cooperative association must be accompanied by a document specifying the Minnesota producer premium payment rate, the total hundredweights of milk to which the Minnesota producer premium payment rate applies, the dates of delivery to which the payments pertain, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the total hundredweights of milk delivered by the eligible producer.

1535.4350 [Emergency] PAYMENTS TO ELIGIBLE PRODUCERS BY MEMBER COOPERATIVE ASSOCIATIONS.

A member cooperative association that receives payment of the Minnesota producer premium from a handler shall distribute the payment to eligible producers on or before the ~~22nd~~ 5th day of each month following the month in which the commissioner has announced the producer premium payment rate for the preceding month at not less than the applicable Minnesota producer premium payment rate established under part 1535.4240 [Emergency]. Payments to an eligible producer must be accompanied by a document specifying the Minnesota producer premium payment rate, the total hundredweights of milk to which the Minnesota producer

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premium payment rate applies, the dates of delivery to which the payments pertain, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the total hundredweights of milk delivered by the eligible producer.

1535.4360 [Emergency] ADJUSTMENTS FOR OVERCHARGES OF HANDLER OBLIGATIONS.

A. If a handler has reason to believe there has been an overcharge in the handler's obligation to the equalization fund, the handler shall submit documentation including, but not limited to, federal milk marketing order audit adjustment reports, original production invoices, and other documents required by the commissioner to verify the overcharge. The handler shall reimburse the commissioner for the additional audit expense to verify the overcharge. If verification discloses payment is due from the equalization fund to a handler, the commissioner shall direct the fiscal agent to make the payment to the handler.

B. If the commissioner is required to make payments to a handler according to the program, and an amount is due from the handler to the equalization fund, the commissioner may direct the fiscal agent to issue a credit to the handler for the amount of the payment instead of the payment.

1535.4370 [Emergency] ADJUSTMENTS FOR UNDERCHARGES ON HANDLER OBLIGATIONS.

If verification of reports or payments of a handler or cooperative association by the commissioner discloses an undercharge in the obligation of a handler or cooperative association to the equalization fund, the commissioner shall promptly bill the handler or cooperative association for any unpaid amount. The handler or cooperative association shall, within five days, make payment to the fiscal agent of the amount billed.

1535.4380 [Emergency] UNDERPAYMENT OF MINNESOTA PRODUCER PREMIUM

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PAYMENT RATE.

The commissioner shall verify that handlers, cooperative associations, and member cooperative associations correctly paid eligible producers or member cooperative associations for milk delivered that is entitled to receive the Minnesota producer premium payment rate. If the commissioner determines that the handler, cooperative association, or member cooperative association underpaid the Minnesota producer premium payment rate as required under part 1535.4340 [Emergency] or 1535.4350 [Emergency], it shall make up the payment to the eligible producer, cooperative association, or member cooperative association by the date of the next payment following disclosure of underpayment.

1535.4390 [Emergency] EVIDENCE OF REDUCTION IN OTHER PRODUCER PREMIUMS.

The commissioner shall monitor and review the level of other producer premiums paid by handlers, cooperative associations, and member cooperative associations to assure Minnesota eligible producers that the level of other producer premiums has not been lowered by the handler, cooperative association, or member cooperative association to offset the Minnesota producer premium payment rate. If the commissioner finds evidence of a reduction, the commissioner shall immediately direct the fiscal agent to suspend payments of the Minnesota producer premium payment rate to the handler, cooperative association, or member cooperative association.

1535.4395 [Emergency] EVIDENCE OF INCREASE IN HAULING RATE FROM FARM TO PLANT.

The commissioner shall monitor and review the rates charged to eligible producers for hauling their milk from farm to plant after the effective date of this program. If the commissioner finds a substantial increase or raising of rates without good cause shown, the commissioner shall immediately direct the fiscal agent to suspend payments of the Minnesota producer premium payment rate to the handler until the handler

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demonstrates good cause for the increase or reduces the hauling rate back to the rate charged prior to the increase.

1535.4396 [Emergency] HANDLER RESPONSIBILITY FOR RECORDS AND FACILITIES.

Subpart 1. **Requirement.** A handler shall maintain and retain records of the handler's operations and make the records available to the commissioner. If adequate records of a handler, or records of another person that are relevant to the obligation of the handler, are not maintained and made available, skim milk and butterfat required to be reported by the handler for which adequate records are not available must be considered accounted for or established as used in Class I.

Subp. 2. **Kinds of records.** A handler shall maintain the records in items A and B.

A. A handler shall maintain records of the handler's operations, including, but not limited to, records of purchases, sales, processing, packaging, and disposition, that are necessary to verify whether the handler has an obligation under this program, and, if so, the amount of the obligation. The records must establish for each plant or other receiving point for each month:

(1) the quantities of skim milk and butterfat contained in or represented by products received in any form, including inventories on hand at the beginning of the month according to form, time, and source of each receipt;

(2) the use of all skim milk and butterfat showing the respective quantities of the skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(3) payments to eligible producers, cooperative associations, and member cooperative associations, including:

(a) the amount and nature of any deductions and the disbursement of money deducted; and

(b) the amount of the Minnesota producer premium payment rate disbursed to each eligible producer for each month along with the total amount of milk by hundredweight,

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and the dates of delivery for the volume of milk to which the Minnesota producer premium payment rate applies.

B. A member cooperative association and a producer shall keep other specific records necessary to verify or establish the handler's obligation under the program.

Subp. 3. **Availability of records.** A handler shall make available to the commissioner all records pertaining to the handler's operations and allow access to all facilities during regular working hours or at other reasonable times to permit verification of the information required to be reported by the program or to ascertain the handler's reporting, monetary, or other obligation under the program.

Subp. 4. **Records retention.** Records reported to the commissioner must be retained by the handler for three years.

1535.4400 [Emergency] GENERAL AUTHORITY.

For purposes of the administration and enforcement of this program, the commissioner may examine the books and records of a regulated person, and for that purpose, the commissioner's properly designated employees or agents must be granted full access to the premises and records of all regulated persons.

1535.4520 [Emergency] LIQUIDATION.

If this program ends, the commissioner shall dispose of all funds received under this program, except funds collected to reimburse the department for handler audit as prescribed in part 1535.4360 [Emergency], in an equitable manner, together with claims for any funds unpaid and owing at the time of suspension of the program.

1535.4530 [Emergency] SEVERABILITY OF PROVISIONS.

If a part of this program is held invalid, the remaining parts of the program remain valid and in force and effect. If the application of a part of the program to a person or circumstance is held invalid, the application of that part and of the remaining parts of the program to other persons or circumstances is not affected.

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1535.4540 [Emergency] AUTHORITY TO ENTER INTO AGREEMENTS TO REDUCE COSTS AND DUPLICATION.

The commissioner may enter into agreements with other state or federal agencies in the manner provided in the Agricultural Marketing Agreement Act of 1937, United States Code, title 7, section 610(i), as amended, to exchange information or services for the purposes of reducing regulatory burden and the cost of administration. The commissioner may reimburse other agencies for the reasonable cost of providing these services.

1535.4550 [Emergency] IMPACT OF CLASS I MINNESOTA MINIMUM.

The commissioner may hold a public meeting of the dairy industry to discuss the impact of the program on existing trade practices and commercial transactions. The commissioner shall report to the Minnesota house committee on agriculture and the senate committee on agriculture and rural affairs by summarizing, in writing, the information given by the dairy industry during the meeting.

1535.4560 [Emergency] INVESTIGATION.

Subpart 1. **Authority.** To carry out the commissioner's enforcement duties under parts 1535.4000 to 1535.4560 [Emergency], the commissioner may, upon presenting appropriate credentials, during regular working hours or at other reasonable times, inspect premises subject to the commissioner's enforcement for reasons related to the commissioner's enforcement authority and conduct routine or special audits of relevant papers and records, including business records.

Subp. 2. **Failure to comply.** The commissioner may administer oaths, take and cause to be taken depositions of witnesses, and issue subpoenas, and may petition the district court in the county in which a premises is located to compel compliance with subpoenas or to permit routine or special audits.

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APPROVED AS TO FORM AND LEGALITY
Oct 29 1992
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 29 1992
Joan Anderson Growe
Secretary of State
4:15 PM
PRB

1992 Laws Chapter 602, Section 4

The commissioner of agriculture shall adopt emergency rules and permanent rules to implement subdivision 2 in a manner that minimizes disruption to existing trade practices and commercial transactions, including pooling

Sec. 1 and 14 are effective July 1, 1992
Signed by the Gov. April 29, 1992 8:40 AM

end of comment period Sept 18, 1992

Rules

1535.4560 - Do they have the authority to do that?

~~Not unless it's in their statute.~~

32A.05 sub 3 gives auth for subpoenas, depos etc for any matter covered by 32A.01-09.

ASSOCIATED MILK PRODUCERS, INC.
NORTH CENTRAL REGION
Phone: 507-354-8295 – FAX No: 507-359-8695
P. O. Box 455 New Ulm, Minnesota 56073-0455

September 17, 1992

Carol Milligan
Agriculture Planning Division
Minnesota Department of Agriculture
90 W. Plato Blvd.
St. Paul, MN 55107

Dear Sirs:

The following comments are in regard to "Emergency Rules Implementing the State-Mandated Class I Minnesota Minimum of $13.20".

AMPI is a dairy cooperative whose North Central Region members cover a six state area in the upper midwest. AMPI's Grade "A" members in Minnesota represent approximately 20% of the total Minnesota Grade "A" milk production. The Regional headquarters is located in New Ulm, Minnesota.

We believe the "Proposed Emergency Rules Relating to Class I Milk", as written, are discriminatory towards AMPI, or anyone else that has a higher percentage of Minnesota Class I milk sales compared to Minnesota Grade "A" milk production, than the State as a whole.

As an example, assume the following:

20%	-	State Class I Utilization
40%	-	Cooperative Class I Utilization
$12.00	-	Federal Order 68 Minimum Class I Price
$13.00	-	Cooperative Announced Class I Price
$13.20	-	Mn. Minimum Class I Price

According to the rules the $1.00 cooperative over-order premium, along with the additional 20 cents created by the Mn. minimum Class I price, would be paid into the "Equalization Fund" and redistributed to all Minnesota Grade "A" producers. Without the Minnesota minimum price the co-op's members would have received 40 cents per hundred on all milk ($1.00 X 40%). In the above example the co-op's members would receive 24 cents ($1.20 X 20%).

In the above example the State would have raised prices to bottlers by 20 cents and reduced prices to co-op members by 16 cents. If the rules are adopted as proposed, AMPI will be forced to dramatically cut back sales to Minnesota bottling plants.

We believe the intent of the Law was to create additional Class I money on top of what was already being negotiated by cooperatives and other suppliers when these prices dipped below $13.20 because of competitive and market forces.

We believe the "Rules" should be written to define Class I Minnesota Premium as "the amount the Class I Minnesota minimum price of $13.20 per hundredweight exceeds the announced Class I price of the Upper Midwest Marketing Agency which is composed of most of the cooperative associations in Federal Order 68."

The entities that supply Grade "A" milk to bottling plants in Minnesota have developed long-term supply agreements and over-order premiums to cover our costs of services provided. If this law is administered as proposed, the State will be reducing the income needed to supply milk to bottling plants and actually will be causing suppliers to ship at a loss.

There will be very little incentive for AMPI or others to ship milk to a Minnesota bottling plant if the State takes part of the premium we currently receive and redistributes it to producers who don't ship to Minnesota bottling plants or in some cases don't ship to any bottling plants. They would be receiving payments that we need for specific costs and services rendered.

If the State's minimum Class I price of $13.20 can generate money on top of what suppliers can negotiate, then pooling just that additional money prorata with all Minnesota Grade "A" producers may be the most appropriate means of distribution. Cooperatives have continually negotiated premiums over the Federal Order minimum, however, and we don't believe this money should be redistributed to producers not sharing the cost of providing these services and to the detriment of our members.

AMPI respectfully requests the Department's serious consideration of the above rules change. The disruption we envision by the proposed rules on this issue will far outweigh any potential benefits.

We would also welcome the opportunity to meet if the Department feels further explanation of our concerns is needed.

Sincerely,

Neil S. Gulden
Director, Fluid Marketing

UPPER MIDWEST
MARKETING AGENCY

RECEIVED
SEP 15 1992
PLANNING DIVISION

September 11, 1992

Minnesota Department of Agriculture
Ms. Carol Milligen
90 W. Plato Blvd.
St. Paul, MN. 55107

Dear Ms. Milligen,

The Upper Midwest Marketing Agency (UMMA) has reviewed the Proposed Emergency Rules relating to Class I milk. The Agency (UMMA) would like the Minnesota Department of Agriculture to consider two revisions:

1. 1535.4240 (Emergency) Announcement of Minnesota Producer Premium Payment Rate

   As currently written, the Commissioner shall announce the Minnesota producer premium payment rate on or before the 16th of each month.

   UMMA questions the industry's ability to supply the State of Minnesota with the necessary information to calculate the payment rate by the 16th of each month. The industry's ability to supply this information is dependent on data from such sources as the Market Order Administrator whose timing is independent of the Minnesota program on Class I milk.

   As a result of these constraints, the program would run more successfully if the payment rate announcement were made on the 20th of each month. UMMA requests the rules be so changed.

2. 1535.4270 (Emergency) Carryover of Minnesota Producer Premium Payment Rate.

   As currently written, the state shall direct the fiscal agent to withhold fund payments if the Minnesota premium payment rate is less than 5¢/cwt. Fund payments are withheld for as many months as is necessary to equal or exceed a 5¢/cwt payment rate.

4001 Lexington Avenue North • Arden Hills, MN • 55126-2998

UPPER MIDWEST
MARKETING AGENCY

The following example is offered to illustrate the difficulty of such a rule. The payment rate in April is 2¢/cwt. Then, because of the seasonal nature of milk prices, the payment rate is zero in May-September. In October, the payment rate is 2¢/cwt. In November, the payment rate is 4¢/cwt. Rule 1535.4270 would require making a payment on April, October and November production. Such a situation is possible because of the seasonal nature of milk production.

UMMA requests the rule be rewritten to reflect the following: A fund payment is made every month unless the payment rate cannot be rounded to the nearest cent.

On behalf of the Upper Midwest Marketing Agency, thank you for considering these comments. It is our hope they can be useful in making the program run smoothly and successfully.

Sincerely,

Paul Christ/th

Paul Christ, Chairman
Upper Midwest Marketing Agency

PC/th

Land O'Lakes, Inc.
4001 LEXINGTON AVE. N., ARDEN HILLS, MINNESOTA

Mailing address: P.O. Box 116, Minneapolis, MN 55440-0116

LAW DEPARTMENT

Writer's Direct No.: (612) 481-2855
Telecopy No.: (612) 481-2832

September 14, 1992

Carol Milligan
Agriculture Planning Division
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

RE: Comments to Emergency Rules Implementing Minimum Class I Milk Price

Dear Ms. Milligan:

The following sets forth the separate comments of Land O'Lakes, Inc. with respect to the above-referenced proposed emergency rules. One general comment concerns inter-state transactions. It appears as though a plant located in another state which receives eligible producer milk will collect from the equilization fund to pay the producer, but that same plant has no obligations to pay into the equalization fund. If such is the case, where will the funds come from to cover that difference?

Comments with respect to specific sections are set forth below:

1535.4000 Subp. 7. re definition of cooperative association and Subp. 14 re definition of member cooperative association. We are concerned that these definitions may cause confusion regarding cooperatives and their role under these regulations. This confusion may be avoided by simply including the cooperatives under other defined terms such as "handler", "Minnesota pool plant", "Pool unregulated plant" etc.

Subp. 14 re definition of member cooperative association. The second sentence goes beyond a mere definition but rather describes a member cooperative association's rights to draw funds from the equalization fund. Thus, it should be moved to part 1535.4330 regarding payments out of the equalization fund.

Subp. 17. In line 7, there appears to be a typographical error. The word "filled" should be "fluid". Also, we recommend deletion of the word "received" from that same line since receiving stations are expressly excluded in the last sentence of the definition.

Subp. 18. Insert the term "eligible" in front of the word "milk" in line 14.

Land O'Lakes, Inc.
4001 LEXINGTON AVE. N., ARDEN HILLS, MINNESOTA

Mailing address: P.O. Box 116, Minneapolis, MN 55440-0116

1535.4030. Subpart 1. In line 8, the reference should be to "eligible producer milk" instead of "milk from Minnesota eligible producers".

1535.4300. The limitation "purchased by that handler" should be inserted after the word "milk" in line 33.

1535.4320. With respect to the 1% penalty, there should be an outside time frame, such as 60 days, after which more severe consequences would be imposed, such as revocation of permits.

1535.4395. The term "by the handler" should be inserted after the word "charged" in line 19.

If you would like to discuss any of these suggestions, please do not hesitate to call. Thank you for your consideration.

Very truly yours,

John W. Curran
Counsel, Law Department

c: Paul Christ

Dairies Federation of Minnesota

525 Park Street • Suite 211 • St. Paul, MN 55103
(612) 293-3911

Dairy Fresh Foods
Franklin Foods
Le Sueur Cheese Company

Marigold Foods, Inc.
Meyer Bros. Dairy, Inc.

Oak Grove Dairy
Polka Dot Dairy, Inc.
Schwan's Sales Enterprises, Inc.

WRITTEN STATEMENT IN RE OPINIONS REGARDING
PROPOSED EMERGENCY RULES GOVERNING
STATE-MANDATED MINIMUM CLASS I MILK PRICING

June 24, 1992

RECEIVED
JUN 29 1992
PLANNING DIVISION

Carol Milligan
Agriculture Planning Division
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

Dear Ms. Milligan:

Pursuant to your notice of solicitation of outside information or opinions regarding proposed emergency rules governing state-mandated minimum class I milk pricing, this written statement is being provided by the Dairies Federation of Minnesota. The Dairies Federation of Minnesota is an association of the processors and marketers of milk. Dairies Federation members process and market more than 90% of the milk sold in the state.

Our association understands that the Commissioner was required to adopt rules necessary to implement an over-order premium milk price for Minnesota dairy farmers. We sincerely hope, however, that this law will never have to take effect in Minnesota. The more we have studied the matter of milk pricing and individual state over-order premium prices, the more we become convinced that such schemes are inimical to the success of Minnesota dairy farmers and Minnesota dairy processors.

We come to this conclusion for the following reasons:

1. Recently, at a national conference, it became clear that a number of dairy processing companies outside of Minnesota were researching our market preparatory to moving in and attempting to take our business as soon as Chapter 602 Laws of Minnesota 1992 took effect. These outside firms believe - probably correctly - that

when a minimum price is placed on Minnesota processors, they will be able to not only compete successfully for the share of market which Minnesota dairies have in other states, most specifically Illinois, but also that they will be able to undersell Minnesota dairies in the Twin Cities market. Be assured that they are planning to do just that and the net effect will be that Minnesota-based dairies will be at a competitive disadvantage and will end up buying less milk from Minnesota farmers.

2. Knowing that they will be at a competitive disadvantage, we know that it's also true that some of our members have begun thinking about how to get milk from non-Minnesota dairy farmers when this law takes effect and the price drops below the minimum established. Generally, our members do not want to do that. Some of the firms in the Dairies Federation have been buying milk from Minnesota dairy farmers for generations, but when the State of Minnesota says that the cost of our product will have to be higher than it is for processors in other states, there really isn't much choice.

The problem with Chapter 602 is that, by establishing over-order premiums, the legislature has disrupted the milk pricing system. We are convinced that the net losers in this entire process will be Minnesota dairy farmers.

Our association had opportunities periodically during the legislative session to have input into Chapter 602 and we attempted to do that as best we could. Throughout those discussions we made it clear that our association had no objection to some kind of fee on milk given to dairy farmers, as long as that fee could be close to the consumer end of the production process. In other words, if the state wishes to impose a 2% tax, or so much per gallon, or whatever, we will participate in the collection and turning the funds over to the department to be distributed to dairy farmers. With an over-order premium, however, the legislature has seriously hampered and impacted negatively our ability to do business in Minnesota.

We intend to come to the 1993 legislative session asking for repeal of Chapter 602. Prior to that, we will work as hard as we can to ensure that over-order premiums never take place in Minnesota, since they would so seriously harm Minnesota dairy farmers.

Very truly yours,

Wyman L. Spano
Executive Director

Department : AGRICULTURE

STATE OF MINNESOTA
Office Memorandum

Date : October 14, 1992

To : Patty Nolte
Attorney General's Office

RECEIVED
OCT 15 1992
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55101

From : Carol Milligan
Agriculture Planning Division

Phone : 296-6906

Subject : **Review of Proposed Emergency Rule Governing Class I Milk Pricing**

The Department of Agriculture adopted the above-mentioned emergency rule pursuant to Minnesota Statutes, sections 14.29-14.36. Enclosed with this memo are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

Please contact me if you have any questions.

cc: Newell Searle, Deputy Commissioner
Paul Strandberg, Special Assistant Attorney General
Bill Oemichen, Department Counsel
Bill Coleman, Dairy Division

10-16-92

LIST OF ATTACHED DOCUMENTS

A. Notice of solicitation of outside opinion

B. *State Register* photocopy of notice of solicitation of outside opinion

C. Comments received from solicitation of outside opinion

D. Rule as proposed

E. Notice of intent to adopt emergency rule

F. Affidavit of mailing

G. Mailing List certificate

H. *State Register* photocopy of notice of intent to adopt emergency rule

I. Rule as adopted (four copies)

J. Findings of fact

K. Submissions and comments

L. Declaration of counsel

Department of Agriculture
Dairy and Livestock Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Emergency Rules Governing State-Mandated Minimum Class I Milk Pricing

Notice is hereby given that the State Department of Agriculture is seeking information or opinions from sources outside the department in preparing to propose adoption of emergency rules governing state-mandated minimum class I milk pricing. The adoption is authorized by Laws of Minnesota 1992, chapter 602, section 4, subd. 3, which requires the commissioner to adopt rules necessary to implement an over-order premium milk price for Minnesota dairy farmers.

The State Department of Agriculture requests information and opinions concerning the subject matter of the emergency rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Carol Milligan, Agriculture Planning Division, Minnesota Department of Agriculture, 90 West Plato Blvd., St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at (612) 296-6906 and in person at the above address.

All statements of information and opinions shall be accepted until June 26, 1992. Any written material received by the department shall become part of the rulemaking record to be submitted to the attorney general in the event that the rule is adopted.

June 1, 1992
Date

R. Newell Searle
Deputy Commissioner

Department of Agriculture

Proposed Emergency Rules Relating to Class I Milk

Rules as Proposed (all new material)

1535.4000 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1535.4000 to 1535.4560 [Emergency]. Terms used in parts 1535.4000 to 1535.4560 [Emergency] that are not otherwise defined in this part have the meanings given in the federal milk marketing order.

Subp. 2. **Applicable Class I milk.** "Applicable Class I milk" means milk that is processed into Class I products at plants in Minnesota.

Subp. 3. **Class I milk.** "Class I milk" means all skim milk and butterfat classified as Class I by section 1068.40(a) and other applicable sections of the federal milk marketing order.

Subp. 4. **Class I Minnesota premium.** "Class I Minnesota premium" means the amount the Class I Minnesota minimum price of $13.20 per hundredweight exceeds the order Class I price announced for Zone 1, at 3.5 percent butterfat in the month.

Subp. 5. **Class I products.** "Class I products" means fluid milk products as defined in section 1068.15 of the federal milk marketing order, except when moved in bulk, tanker form.

Subp. 6. **Commissioner.** "Commissioner" means the Minnesota commissioner of agriculture or the commissioner's designee.

Subp. 7. **Cooperative association.** "Cooperative association" means an organization recognized as a cooperative association by the United States Department of Agriculture that causes milk belonging to its members to be delivered to other handlers and collects payment on behalf of its members.

Subp. 8. **Eligible producer.** "Eligible producer" means a person who possesses a grade A permit issued by the Minnesota Department of Agriculture and produces grade A milk on a farm located in Minnesota.

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Subp. 9. **Eligible producer milk.** "Eligible producer milk" means grade A milk produced by an eligible producer in Minnesota.

Subp. 10. **Equalization fund.** "Equalization fund" means the Minnesota Class I premium equalization fund created under part 1535.4260 [Emergency].

Subp. 11. **Exempt milk.** "Exempt milk" means milk that was produced, processed, packaged, and sold at the farm where produced, directly to consumers or which was used on the farm.

Subp. 12. **Federal milk marketing order.** "Federal milk marketing order" means the Upper Midwest Federal Milk Marketing Order, Code of Federal Regulations, title 7, section 1068, or any successor order regulating milk produced and marketed in Minnesota, issued by the United States Secretary of Agriculture under the authority of the Agricultural Marketing Agreement Act of 1937, United States Code, title 7, section 601, et seq.

Subp. 13. **Handler.** "Handler" means a person acting as the operator of a Minnesota pool plant or a cooperative association who qualifies and acts as a regulated handler under section 1068.9(b) or 1068.9(c) of the federal milk marketing order.

Subp. 14. **Member cooperative association.** "Member cooperative association" means a cooperative organization that does not act as a handler under the Minnesota producer premium program, but instead authorizes another handler to market its milk. A member cooperative association may not draw from the equalization fund directly, but may collect payment in aggregate for members from its designated handler, who will act as its agent and receive and distribute the Minnesota producer premium payment rate to the member cooperative association as directed by the program.

Subp. 15. **Minnesota pool plant.** "Minnesota pool plant" means:

A. a pool distributing plant or pool unregulated plant that processes Class I products in Minnesota; or

B. a handler or cooperative association that buys milk from eligible producers.

Subp. 16. **Minnesota producer premium payment rate.**

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"Minnesota producer premium payment rate" means the rate per hundredweight of milk to be paid to eligible producers resulting from the Class I Minnesota premium.

Subp. 17. **Plant.** "Plant" means the land, buildings, surroundings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Plant does not include separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another.

Subp. 18. **Pool distributing plant.** "Pool distributing plant" means a plant located in Minnesota where milk is received from producers or other plants for processing into Class I products.

Subp. 19. **Pool unregulated plant.** "Pool unregulated plant" means a plant or cooperative association that processes milk into Class I products in Minnesota but is not regulated under section 1068.7 of the federal milk marketing order. This definition encompasses the plant definitions for nonpool and producer-handler plants under sections 1068.8 and 1068.10 of the federal milk marketing order.

Subp. 20. **Processed.** "Processed," in reference to milk, means converted by a handler from raw, unprocessed milk from any source, regardless of the state of origin, into Class I products at a plant in Minnesota.

Subp. 21. **Program.** "Program" means the Minnesota producer premium program under parts 1535.4000 to 1535.4540 [Emergency] and Minnesota Statutes, section 32A.071.

Subp. 22. **Purchased.** "Purchased," in reference to milk, means delivery to a Minnesota pool plant that processes milk into Class I products.

EXAMPLE: A North Dakota grade A dairy farmer sells milk to a Minnesota processor of Class I dairy products. The milk is considered milk purchased in Minnesota for Class I use.

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1535.4020 [Emergency] REPORTS OF RECEIPTS AND UTILIZATION; POOL DISTRIBUTING AND POOL UNREGULATED PLANTS THAT PROCESS CLASS I MILK.

Subpart 1. **Monthly reports.** On or before the 15th day of any month, each handler that operates a pool distributing plant or a pool unregulated plant in Minnesota during the preceding month shall report the following information for that month to the commissioner in the detail and on forms prescribed by the commissioner:

A. total Class I milk disposed as fluid milk products on routes;

B. total Class I packaged sales to other plants, listed by plant, specifying:

(1) sales to handlers inside Minnesota; and

(2) sales to handlers outside Minnesota;

C. total Class I packaged receipts from other plants, listed by plant, specifying:

(1) receipts from handlers inside Minnesota; and

(2) receipts from handlers outside Minnesota;

D. total receipts of milk from all sources;

E. total receipts of milk from Minnesota eligible producers for which the handler made payment to the producers;

F. receipts of milk from other Minnesota pool plants listed by handler, cooperative association, and plant; and

G. receipts from other sources or handlers, listed by plant.

Handlers regulated under the federal milk marketing order may satisfy part or all of this reporting requirement by submitting to the commissioner a complete copy of the report entitled "Report of Receipts and Utilization." The handler shall submit the copy that has been accepted and verified for accuracy by the market administrator of the federal milk marketing order.

Subp. 2. **Handler report of eligible receipts.** Total receipts under subpart 1, item E, must include receipts from

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member cooperative associations on whose behalf the handler markets milk and issues payment. These receipts must be listed by member cooperative association.

1535.4030 [Emergency] REPORT OF RECEIPTS OF MINNESOTA ELIGIBLE MILK.

Subpart 1. **Monthly report of receipts.** A handler not covered under the reporting requirements in part 1535.4020 [Emergency] who purchased milk from Minnesota eligible producers in the preceding month shall complete a report of receipts. The report must be delivered to the commissioner no later than the close of business on the 15th day of the month, for the preceding month, in the manner and on the form prescribed by the commissioner with respect to each Minnesota pool plant operated by the handler. The handler shall also list the member cooperative associations and the respective pounds of eligible producer milk the handler markets for the member cooperative associations. The report must include the following information:

A. total receipts of milk from all sources;

B. total receipts of milk from Minnesota eligible producers, for which the handler made payment to the producers or the member cooperative association;

C. receipts of milk from other Minnesota pool plants, listed by handler, cooperative association, and plant; and

D. receipts from other sources or handlers, listed by plant.

Subp. 2. **Handler report of eligible receipts.** The total receipts of milk in subpart 1, item B, must include receipts from member cooperative associations on whose behalf the handler markets milk and issues payments. Receipts must be listed by member cooperative associations.

1535.4040 [Emergency] PRODUCER PAYROLL REPORTS.

Each handler, cooperative association, and member cooperative association shall report with respect to producers on or before the 22nd day of the month the handler's or association's producer payroll for the preceding month. The

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payroll must show for each eligible producer the Minnesota producer premium payment rate, the total amount, in hundredweight, of milk to which the Minnesota producer premium payment rate applied, the dates of delivery of each amount of milk, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the amount of milk delivered by the eligible producer. All producer payroll information required by state or federal milk marketing orders must accompany the report under this part.

1535.4050 [Emergency] OTHER REPORTS.

A handler shall report to the commissioner, in the manner and on forms prescribed by the commissioner, additional information necessary to administer this program.

1535.4060 [Emergency] RECORDS AND FACILITIES.

A handler shall maintain and make available to the commissioner during the usual hours of business all records and facilities necessary to verify the data reported under parts 1535.4020 to 1535.4040 [Emergency].

1535.4100 [Emergency] BASIS OF CLASSIFICATION.

Milk required to be reported by a handler under part 1535.4020 [Emergency] must be classified each month under part 1535.4110 [Emergency]. If any of the water contained in the milk from which a product is made is removed before the product is used or disposed of by a handler, the pounds of skim milk used or disposed of in the product must be considered to be an amount equivalent to the nonfat milk solids contained in the products plus all the water originally associated with the solids.

1535.4110 [Emergency] CLASSES OF UTILIZATION.

Milk subject to classification by part 1535.4100 [Emergency] must be classified as Class I, Class II, or Class III according to the classification rules of the federal milk marketing order as interpreted by the market administrator of the federal milk marketing order.

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1535.4120 [Emergency] APPLICABLE CLASS I MILK.

Applicable Class I milk must be calculated from the report filed by a handler under part 1535.4020 [Emergency] for a pool distributing or pool unregulated plant that processed Class I milk in the preceding month. Applicable Class I milk at a pool distributing plant or pool unregulated plant must be calculated by the commissioner under items A to C.

A. Add the total under part 1535.4020 [Emergency], subpart 1, items A and B.

B. Subtract the total Class I packaged receipts from other plants under part 1535.4020 [Emergency], subpart 1, item C.

C. The resulting difference represents the total amount of Class I applicable milk at the individual plant by hundredweight.

1535.4130 [Emergency] RESPONSIBILITIES OF HANDLERS AND RECLASSIFICATION OF MILK.

All milk received at a pool distributing plant or pool unregulated plant must be applicable Class I milk unless the handler satisfies the commissioner that the milk should be classified otherwise.

1535.4200 [Emergency] CLASS I MINNESOTA MINIMUM PRICE.

The Class I Minnesota minimum price is $13.20 per hundredweight, as required by Minnesota Statutes, section 32A.071.

1535.4210 [Emergency] CALCULATING THE CLASS I MINNESOTA PREMIUM.

The Class I Minnesota premium each month is the amount, if any, by which the Class I Minnesota minimum price exceeds the announced Class I price for the month in the federal milk marketing order. The Class I Minnesota premium must not be adjusted for location, butterfat, or any other component or service provided by the handler or cooperative association.

1535.4220 [Emergency] ANNOUNCEMENT OF CLASS I MINNESOTA PREMIUM.

On or before the fifth day of each month, the commissioner

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shall publicly announce the Class I Minnesota premium calculated under part 1535.4210 [Emergency] for the following month and notify Class I processors by telephone, facsimile, or first class mail of that premium.

1535.4230 [Emergency] CALCULATING MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall calculate the Minnesota producer premium payment rate each month according to items A to E.

A. Multiply the total hundredweight of applicable Class I milk reported to the commissioner, by the Class I Minnesota premium for the month.

B. Add an amount equal to not less than one-half of the unobligated balance of the equalization fund.

C. Divide the resulting amount by the total hundredweight of Minnesota eligible producer milk reported to the commissioner.

D. Subtract not less than one-half cent nor more than 1-1/2 cents per hundredweight.

E. The resulting price per hundredweight, in whole cents, is the Minnesota producer premium payment rate for the month.

1535.4240 [Emergency] ANNOUNCEMENT OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall publicly announce the Minnesota producer premium payment rate on or before the 16th day after the end of each month to which the Minnesota producer premium payment rate applies, and notify affected handlers by telephone, facsimile, or first class mail.

1535.4250 [Emergency] ADJUSTMENTS TO MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

Adjustments for butterfat or other milk components to the Minnesota producer premium payment rate announced under part 1535.4240 [Emergency] are not allowed.

1535.4260 [Emergency] EQUALIZATION FUND; FISCAL AGENT.

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The commissioner shall designate a fiscal agent to create and maintain a separate account known as the "Minnesota Class I premium equalization fund," into which the fiscal agent shall deposit all payments made by handlers under parts 1535.4310 [Emergency], 1535.4320 [Emergency], and 1535.4370 [Emergency], and out of which, at the direction of the commissioner, the fiscal agent shall make all payments under part 1535.4330 [Emergency].

1535.4270 [Emergency] CARRYOVER OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall direct the fiscal agent to withhold payments from the equalization fund if the Minnesota producer premium payment rate is less than five cents per hundredweight. The commissioner shall direct the fiscal agent to hold the money in the equalization fund until the sum of the Minnesota producer premium payment rate from two or more months equals or exceeds five cents per hundredweight. If the sum of two or more months of the Minnesota producer premium payment rate equals or exceeds five cents per hundredweight, the commissioner shall direct the fiscal agent to pay out the total. The commissioner shall direct the fiscal agent to pay out the Minnesota producer premium payment rate for the month of June of each fiscal year and any accumulated money from previous months even if the accumulated Minnesota producer premium payment rate is less than five cents per hundredweight.

1535.4300 [Emergency] NET POOL OBLIGATION OF HANDLER THAT OPERATES POOL DISTRIBUTING PLANT OR POOL UNREGULATED PLANT.

The net pool obligation of a handler that operates a pool distributing plant or pool unregulated plant having applicable Class I pounds in the preceding month, must be computed according to items A to F.

A. Multiply the total hundredweights of applicable Class I milk by the Class I Minnesota premium established for the month by the commissioner.

B. Multiply the total hundredweights of eligible

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producer milk purchased by the handler times the Minnesota producer premium payment rate.

C. Deduct the total calculated in item B from the total calculated in item A.

D. If the total in item A exceeds the total in item B, the handler shall pay that amount into the equalization fund under part 1535.4310 [Emergency]. The commissioner shall direct the fiscal agent to issue invoices for payments from handlers.

E. If the total in item B exceeds the total in item A, the handler is due that amount from the equalization fund under part 1535.4330 [Emergency] subject to the limitations of part 1535.4270 [Emergency].

F. If a handler that operates a pool distributing plant or pool unregulated plant fails to file the report required under part 1535.4020 [Emergency], the commissioner shall estimate that handler's applicable Class I milk to calculate the handler's net pool obligation to the equalization fund. The commissioner shall direct the fiscal agent to issue a payment invoice based on this estimate.

1535.4310 [Emergency] PAYMENTS TO EQUALIZATION FUND.

A handler with an obligation to the equalization fund as calculated in part 1535.4300 [Emergency] shall, on or before the 17th day of each month, pay to the fiscal agent for payment to the equalization fund the amount of its net pool obligation for the preceding month.

1535.4320 [Emergency] PENALTY FOR LATE PAYMENT TO EQUALIZATION FUND.

A handler or cooperative association that has not made remittance for an obligation, calculated pursuant to part 1535.4300 [Emergency], by the close of business on the next business day following the date specified for the payment, is subject to a late payment penalty. The unpaid obligation must be increased one percent for each month and any remaining amount due must be increased at a similar rate on the corresponding day of each succeeding month until paid. The amounts payable under

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this part must be computed monthly on each unpaid obligation, which must include any unpaid charges previously made under this part. Any obligation that was determined at a date later than prescribed by the program because of a handler's failure to submit a report to the commissioner when due must be considered to have been payable by the date it would have been due if the report had been filed when due. Amounts received by the commissioner under this part must be deposited with the fiscal agent in the separate account established in part 1535.4260 [Emergency].

1535.4330 [Emergency] PAYMENTS OUT OF EQUALIZATION FUND.

On or before the 18th day of each month, the commissioner shall direct the fiscal agent to make payment out of the equalization fund to each handler who has purchased milk from eligible producers.

Prior to directing the issuance of payments from the equalization fund, the commissioner shall determine the total payments due under items A and B. If the balance in the equalization fund is insufficient to make the payments, the commissioner shall uniformly reduce the payments and direct the completion of the payments as soon as the necessary funds are available. Payments from the equalization fund must be directed by the commissioner according to items A and B.

A. For handlers that operate a pool distributing plant or pool unregulated plant and that are due payment, the commissioner shall direct the fiscal agent to make payment in the amount calculated in part 1535.4300 [Emergency], item E.

B. For handlers that purchased milk from Minnesota eligible producers during the preceding month and filed the report under part 1535.4030 [Emergency], the commissioner shall direct the fiscal agent to make payment in the amount calculated by multiplying the total hundredweights in part 1535.4030 [Emergency], subpart 1, item B, times the Minnesota producer premium payment rate per hundredweight.

1535.4340 [Emergency] PAYMENTS TO ELIGIBLE PRODUCERS AND MEMBER

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COOPERATIVE ASSOCIATIONS BY HANDLERS AND COOPERATIVE ASSOCIATIONS.

A handler or cooperative association shall make payment to each eligible producer or member cooperative association on or before the 20th day of each month for the preceding month at not less than the applicable Minnesota producer premium payment rate established under part 1535.4240 [Emergency]. Payments to an eligible producer or member cooperative association must be accompanied by a document specifying the Minnesota producer premium payment rate, the total hundredweights of milk to which the Minnesota producer premium payment rate applies, the dates of delivery to which the payments pertain, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the total hundredweights of milk delivered by the eligible producer.

1535.4350 [Emergency] PAYMENTS TO ELIGIBLE PRODUCERS BY MEMBER COOPERATIVE ASSOCIATIONS.

A member cooperative association that receives payment of the Minnesota producer premium from a handler shall distribute the payment to eligible producers on or before the 22nd day of each month for the preceding month at not less than the applicable Minnesota producer premium payment rate established under part 1535.4240 [Emergency]. Payments to an eligible producer must be accompanied by a document specifying the Minnesota producer premium payment rate, the total hundredweights of milk to which the Minnesota producer premium payment rate applies, the dates of delivery to which the payments pertain, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the total hundredweights of milk delivered by the eligible producer.

1535.4360 [Emergency] ADJUSTMENTS FOR OVERCHARGES OF HANDLER OBLIGATIONS.

A. If a handler has reason to believe there has been an overcharge in the handler's obligation to the equalization

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fund, the handler shall submit documentation including, but not limited to, federal milk marketing order audit adjustment reports, original production invoices, and other documents required by the commissioner to verify the overcharge. The handler shall reimburse the commissioner for the additional audit expense to verify the overcharge. If verification discloses payment is due from the equalization fund to a handler, the commissioner shall direct the fiscal agent to make the payment to the handler.

B. If the commissioner is required to make payments to a handler according to the program, and an amount is due from the handler to the equalization fund, the commissioner may direct the fiscal agent to issue a credit to the handler for the amount of the payment instead of the payment.

1535.4370 [Emergency] ADJUSTMENTS FOR UNDERCHARGES ON HANDLER OBLIGATIONS.

If verification of reports or payments of a handler or cooperative association by the commissioner discloses an undercharge in the obligation of a handler or cooperative association to the equalization fund, the commissioner shall promptly bill the handler or cooperative association for any unpaid amount. The handler or cooperative association shall, within five days, make payment to the fiscal agent of the amount billed.

1535.4380 [Emergency] UNDERPAYMENT OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall verify that handlers, cooperative associations, and member cooperative associations correctly paid eligible producers or member cooperative associations for milk delivered that is entitled to receive the Minnesota producer premium payment rate. If the commissioner determines that the handler, cooperative association, or member cooperative association underpaid the Minnesota producer premium payment rate as required under part 1535.4340 [Emergency] or 1535.4350 [Emergency], it shall make up the payment to the eligible

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producer, cooperative association, or member cooperative association by the date of the next payment following disclosure of underpayment.

1535.4390 [Emergency] EVIDENCE OF REDUCTION IN OTHER PRODUCER PREMIUMS.

The commissioner shall monitor and review the level of other producer premiums paid by handlers, cooperative associations, and member cooperative associations to assure Minnesota eligible producers that the level of other producer premiums has not been lowered by the handler, cooperative association, or member cooperative association to offset the Minnesota producer premium payment rate. If the commissioner finds evidence of a reduction, the commissioner shall immediately direct the fiscal agent to suspend payments of the Minnesota producer premium payment rate to the handler, cooperative association, or member cooperative association.

1535.4395 [Emergency] EVIDENCE OF INCREASE IN HAULING RATE FROM FARM TO PLANT.

The commissioner shall monitor and review the rates charged to eligible producers for hauling their milk from farm to plant after the effective date of this program. If the commissioner finds a substantial increase or raising of rates without good cause shown, the commissioner shall immediately direct the fiscal agent to suspend payments of the Minnesota producer premium payment rate to the handler until the handler demonstrates good cause for the increase or reduces the hauling rate back to the rate charged prior to the increase.

1535.4396 [Emergency] HANDLER RESPONSIBILITY FOR RECORDS AND FACILITIES.

Subpart 1. **Requirement.** A handler shall maintain and retain records of the handler's operations and make the records available to the commissioner. If adequate records of a handler, or records of another person that are relevant to the obligation of the handler, are not maintained and made

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available, skim milk and butterfat required to be reported by the handler for which adequate records are not available must be considered accounted for or established as used in Class I.

Subp. 2. **Kinds of records.** A handler shall maintain the records in items A and B.

A. A handler shall maintain records of the handler's operations, including, but not limited to, records of purchases, sales, processing, packaging, and disposition, that are necessary to verify whether the handler has an obligation under this program, and, if so, the amount of the obligation. The records must establish for each plant or other receiving point for each month:

(1) the quantities of skim milk and butterfat contained in or represented by products received in any form, including inventories on hand at the beginning of the month according to form, time, and source of each receipt;

(2) the use of all skim milk and butterfat showing the respective quantities of the skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(3) payments to eligible producers, cooperative associations, and member cooperative associations, including:

(a) the amount and nature of any deductions and the disbursement of money deducted; and

(b) the amount of the Minnesota producer premium payment rate disbursed to each eligible producer for each month along with the total amount of milk by hundredweight, and the dates of delivery for the volume of milk to which the Minnesota producer premium payment rate applies.

B. A member cooperative association and a producer shall keep other specific records necessary to verify or establish the handler's obligation under the program.

Subp. 3. **Availability of records.** A handler shall make available to the commissioner all records pertaining to the handler's operations and allow access to all facilities during regular working hours or at other reasonable times to permit verification of the information required to be reported by the

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program or to ascertain the handler's reporting, monetary, or other obligation under the program.

Subp. 4. **Records retention.** Records reported to the commissioner must be retained by the handler for three years.

1535.4400 [Emergency] GENERAL AUTHORITY.

For purposes of the administration and enforcement of this program, the commissioner may examine the books and records of a regulated person, and for that purpose, the commissioner's properly designated employees or agents must be granted full access to the premises and records of all regulated persons.

1535.4520 [Emergency] LIQUIDATION.

If this program ends, the commissioner shall dispose of all funds received under this program, except funds collected to reimburse the department for handler audit as prescribed in part 1535.4360 [Emergency], in an equitable manner, together with claims for any funds unpaid and owing at the time of suspension of the program.

1535.4530 [Emergency] SEVERABILITY OF PROVISIONS.

If a part of this program is held invalid, the remaining parts of the program remain valid and in force and effect. If the application of a part of the program to a person or circumstance is held invalid, the application of that part and of the remaining parts of the program to other persons or circumstances is not affected.

1535.4540 [Emergency] AUTHORITY TO ENTER INTO AGREEMENTS TO REDUCE COSTS AND DUPLICATION.

The commissioner may enter into agreements with other state or federal agencies in the manner provided in the Agricultural Marketing Agreement Act of 1937, United States Code, title 7, section 610(i), as amended, to exchange information or services for the purposes of reducing regulatory burden and the cost of administration. The commissioner may reimburse other agencies for the reasonable cost of providing these services.

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1535.4550 [Emergency] IMPACT OF CLASS I MINNESOTA MINIMUM.

The commissioner may hold a public meeting of the dairy industry to discuss the impact of the program on existing trade practices and commercial transactions. The commissioner shall report to the Minnesota house committee on agriculture and the senate committee on agriculture and rural affairs by summarizing, in writing, the information given by the dairy industry during the meeting.

1535.4560 [Emergency] INVESTIGATION.

Subpart 1. **Authority.** To carry out the commissioner's enforcement duties under parts 1535.4000 to 1535.4560 [Emergency], the commissioner may, upon presenting appropriate credentials, during regular working hours or at other reasonable times, inspect premises subject to the commissioner's enforcement for reasons related to the commissioner's enforcement authority and conduct routine or special audits of relevant papers and records, including business records.

Subp. 2. **Failure to comply.** The commissioner may administer oaths, take and cause to be taken depositions of witnesses, and issue subpoenas, and may petition the district court in the county in which a premises is located to compel compliance with subpoenas or to permit routine or special audits.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Class I Milk

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1535

The attached rules are approved for
publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Class I Milk

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the *State Register* on August 24, 1992, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.30 on August 19, 1992.

(2) All persons were given the opportunity to submit comment on the rule for 25 days after the notice of proposed rulemaking.

(4) No requests for notice of submission to the attorney general were received by the department.

Based on the comments and evidence in the record before the agency, I find the following:

(3) 1535.4000, subpart 7

This part was changed to clarify the that the definition applies to cooperatives that process milk as well as those that only deliver it to others for handling or processing. This change is not substantial because cooperatives that process milk are common and this inclusion was implied.

1535.4000, subpart 21

This change corrects a typographical error.

1535.4020, subpart 1, E

This change was made to clarify that the report must included payments to those producers who receive payments through a cooperative association. This change is not substantial because it makes no additions to the reporting requirements

1535.4020, subpart 1, G

This is a technical correction on the title of the report.

1535.4020, subpart 2

These changes are strictly grammatical corrections.

1535.4030, subpart 3

This is a grammatical correction.

1535.4230, D

This change was necessary because the industry and the federal government round off to the nearest whole cent for their calculations. The change is not substantial because the payment difference made by 1/2 cent per hundredweight is negligible.

1535.4240

The date was changed from the 16th to the 18th because the information used to determine the payment rate is not available to the department until the 15th of the month. This is an unsubstantial technical change.

1535.4270

This change keeps the rule consistent by doing all calculations to the nearest one whole cent. This change is not substantial because it is in line with industry and federal government practices, and actually results in more timely payments to producers with less carryover for the department.

1535.4300

The additional language clarifies that this part applies only to processed milk. This change is not substantial because it ensures that the rule is consistent with statute. The prior language was confusing to the industry and open to interpretation.

1535.4310

The date in this part had to be moved forward because the date in part 1535.4240 was moved forward.

1535.4330

This change was made because the Minnesota Department of Finance said that it would be unable to make payments by the 18th.

1535.4340 and 1535.4350

These changes were also made to accommodate the Department of Finance. The 4th and 5th were necessary to conform with industry payment dates. The additional language clarifies that payments are made the month after the premium rate is announced. This change is not substantial because the date payment is issued is unimportant as long as it is consistent each month.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing class I milk, as modified, is adopted this 7th day of October, 1992, pursuant to authority vested in me by Minnesota Laws 1992, chapter 602, section 4.

Elton Redalen

Elton Redalen
Commissioner

Department of Agriculture

Dairy and Livestock Division

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Agriculture Governing State Mandated Minimum Class I Milk Pricing

NOTICE OF INTENT TO ADOPT A N EMERGENCY RULE

(1) Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled emergency rule. The statutory authority to adopt this rule is Laws, 1992, chapter 602, section 4. The department, in adopting this rule, is following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.29-14.36.

(2) All persons have 25 days after publication to submit data and view on the proposed emergency rule or any part or subpart of the rule in writing. The comment period ends on September 18, 1992. All comments must be received by the department by 4:30pm on that day.

(3) Comments must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

(4) A copy of the proposed emergency rule is attached to this notice.

(6) The proposed emergency rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed emergency rule as noticed.

(7) Upon adoption of the emergency rule, the emergency rule as adopted and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

(9)

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the department gives notice of continuation in accordance with Minnesota Statutes, section 14.35

(10) Many of the businesses affected by this rule are small businesses. And although the reporting requirements and compliance schedules are the same for all businesses affected by this rule regardless of size, the information requirements conform to those of federal programs that these businesses currently participate in. Therefore, no new burdens are being placed on small businesses.

7-22-92
Date

STATE OF MINNESOTA

Elton R. Redalen

Elton Redalen, Commissioner
Department of Agriculture

In the Matter of the Proposed Adoption
of the Emergency Rule of the State Department
of Agriculture Governing State Mandated
Minimum Class I Milk Pricing

AFFIDAVIT OF MAILING
THE NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 19th day of August, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-96

Marie Skerbitz
Marie Skerbitz
Mail Room Manager

Subscribed and sworn to before me
this 19th day of August, 1992.

Diane M. Windham

In the Matter of the Proposed Rule
of the State Department of Agriculture
Governing State Mandated Class I
Minimum Milk Pricing

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 19th day of August, 1992.

Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-96

Subscribed and sworn to before me
this 19th day of August, 1992.

Diane M. Windham

Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Agriculture

Proposed Emergency Rules Relating to Class I Milk

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled emergency rule. The statutory authority to adopt this rule is *Laws, 1992*, chapter 602, section 4. The department, in adopting this rule, is following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.29-14.36.

All persons have 25 days after publication to submit data and view on the proposed emergency rule or any part or subpart of the rule in writing. The comment period ends on September 18, 1992. All comments must be received by the department by 4:30 p.m. on that day.

Comments must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

A copy of the proposed emergency rule is attached to this notice.

The proposed emergency rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule, the emergency rule as adopted and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the department gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Many of the businesses affected by this rule are small businesses. And although the reporting requirements and compliance schedules are the same for all businesses affected by this rule regardless of size, the information requirements conform to those of federal programs that these businesses currently participate in. Therefore, no new burdens are being placed on small businesses.

Dated: 22 July 1992

Elton Redalen, Commissioner
Department of Agriculture

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Rules as Proposed (all new material)

1535.4000 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1535.4000 to 1535.4560 [Emergency]. Terms used in parts 1535.4000 to 1535.4560 [Emergency] that are not otherwise defined in this part have the meanings given in the federal milk marketing order.

Subp. 2. **Applicable Class I milk.** "Applicable Class I milk" means milk that is processed into Class I products at plants in Minnesota.

Subp. 3. **Class I milk.** "Class I milk" means all skim milk and butterfat classified as Class I by section 1068.40(a) and other applicable sections of the federal milk marketing order.

Subp. 4. **Class I Minnesota premium.** "Class I Minnesota premium" means the amount the Class I Minnesota minimum price of $13.20 per hundredweight exceeds the order Class I price announced for Zone 1, at 3.5 percent butterfat in the month.

Subp. 5. **Class I products.** "Class I products" means fluid milk products as defined in section 1068.15 of the federal milk marketing order, except when moved in bulk, tanker form.

Subp. 6. **Commissioner.** "Commissioner" means the Minnesota commissioner of agriculture or the commissioner's designee.

Subp. 7. **Cooperative association.** "Cooperative association" means an organization recognized as a cooperative association by the United States Department of Agriculture that causes milk belonging to its members to be delivered to other handlers and collects payment on behalf of its members.

Subp. 8. **Eligible producer.** "Eligible producer" means a person who possesses a grade A permit issued by the Minnesota Department of Agriculture and produces grade A milk on a farm located in Minnesota.

Subp. 9. **Eligible producer milk.** "Eligible producer milk" means grade A milk produced by an eligible producer in Minnesota.

Subp. 10. **Equalization fund.** "Equalization fund" means the Minnesota Class I premium equalization fund created under part 1535.4260 [Emergency].

Subp. 11. **Exempt milk.** "Exempt milk" means milk that was produced, processed, packaged, and sold at the farm where produced, directly to consumers or which was used on the farm.

Subp. 12. **Federal milk marketing order.** "Federal milk marketing order" means the Upper Midwest Federal Milk Marketing Order, *Code of Federal Regulations*, title 7, section 1068, or any successor order regulating milk produced and marketed in Minnesota, issued by the United States Secretary of Agriculture under the authority of the Agricultural Marketing Agreement Act of 1937, *United States Code*, title 7, section 601, et seq.

Subp. 13. **Handler.** "Handler" means a person acting as the operator of a Minnesota pool plant or a cooperative association who qualifies and acts as a regulated handler under section 1068.9(b) or 1068.9(c) of the federal milk marketing order.

Subp. 14. **Member cooperative association.** "Member cooperative association" means a cooperative organization that does not act as a handler under the Minnesota producer premium program, but instead authorizes another handler to market its milk. A member cooperative association may not draw from the equalization fund directly, but may collect payment in aggregate for members from its designated handler, who will act as its agent and receive and distribute the Minnesota producer premium payment rate to the member cooperative association as directed by the program.

Subp. 15. **Minnesota pool plant.** "Minnesota pool plant" means:

A. a pool distributing plant or pool unregulated plant that processes Class I products in Minnesota; or

B. a handler or cooperative association that buys milk from eligible producers.

Subp. 16. **Minnesota producer premium payment rate.** "Minnesota producer premium payment rate" means the rate per hundredweight of milk to be paid to eligible producers resulting from the Class I Minnesota premium.

Subp. 17. **Plant.** "Plant" means the land, buildings, surroundings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Plant does not include separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another.

Subp. 18. **Pool distributing plant.** "Pool distributing plant" means a plant located in Minnesota where milk is received from producers or other plants for processing into Class I products.

Subp. 19. **Pool unregulated plant.** "Pool unregulated plant" means a plant or cooperative association that processes milk into Class I products in Minnesota but is not regulated under section 1068.7 of the federal milk marketing order. This definition encompasses the plant definitions for nonpool and producer-handler plants under sections 1068.8 and 1068.10 of the federal milk marketing order.

Subp. 20. **Processed.** "Processed," in reference to milk, means converted by a handler from raw, unprocessed milk from any

source, regardless of the state of origin, into Class I products at a plant in Minnesota.

Subp. 21. **Program.** "Program" means the Minnesota producer premium program under parts 1535.4000 to 1535.4540 [Emergency] and *Minnesota Statutes*, section 32A.071.

Subp. 22. **Purchased.** "Purchased," in reference to milk, means delivery to a Minnesota pool plant that processes milk into Class I products.

EXAMPLE: A North Dakota grade A dairy farmer sells milk to a Minnesota processor of Class I dairy products. The milk is considered milk purchased in Minnesota for Class I use.

1535.4020 [Emergency] REPORTS OF RECEIPTS AND UTILIZATION; POOL DISTRIBUTING AND POOL UNREGULATED PLANTS THAT PROCESS CLASS I MILK.

Subpart 1. **Monthly reports.** On or before the 15th day of any month, each handler that operates a pool distributing plant or a pool unregulated plant in Minnesota during the preceding month shall report the following information for that month to the commissioner in the detail and on forms prescribed by the commissioner:

A. total Class I milk disposed as fluid milk products on routes;

B. total Class I packaged sales to other plants, listed by plant, specifying:

(1) sales to handlers inside Minnesota; and

(2) sales to handlers outside Minnesota;

C. total Class I packaged receipts from other plants, listed by plant, specifying:

(1) receipts from handlers inside Minnesota; and

(2) receipts from handlers outside Minnesota;

D. total receipts of milk from all sources;

E. total receipts of milk from Minnesota eligible producers for which the handler made payment to the producers;

F. receipts of milk from other Minnesota pool plants listed by handler, cooperative association, and plant; and

G. receipts from other sources or handlers, listed by plant.

Handlers regulated under the federal milk marketing order may satisfy part or all of this reporting requirement by submitting to the commissioner a complete copy of the report entitled "Report of Receipts and Utilization." The handler shall submit the copy that has been accepted and verified for accuracy by the market administrator of the federal milk marketing order.

Subp. 2. **Handler report of eligible receipts.** Total receipts under subpart 1, item E, must include receipts from member cooperative associations on whose behalf the handler markets milk and issues payment. These receipts must be listed by member cooperative association.

1535.4030 [Emergency] REPORT OF RECEIPTS OF MINNESOTA ELIGIBLE MILK.

Subpart 1. **Monthly report of receipts.** A handler not covered under the reporting requirements in part 1535.4020 [Emergency] who purchased milk from Minnesota eligible producers in the preceding month shall complete a report of receipts. The report must be delivered to the commissioner no later than the close of business on the 15th day of the month, for the preceding month, in the manner and on the form prescribed by the commissioner with respect to each Minnesota pool plant operated by the handler. The handler shall also list the member cooperative associations and the respective pounds of eligible producer milk the handler markets for the member cooperative associations. The report must include the following information:

A. total receipts of milk from all sources;

B. total receipts of milk from Minnesota eligible producers, for which the handler made payment to the producers or the member cooperative association;

C. receipts of milk from other Minnesota pool plants, listed by handler, cooperative association, and plant; and

D. receipts from other sources or handlers, listed by plant.

Subp. 2. **Handler report of eligible receipts.** The total receipts of milk in subpart 1, item B, must include receipts from member cooperative associations on whose behalf the handler markets milk and issues payments. Receipts must be listed by member cooperative associations.

1535.4040 [Emergency] PRODUCER PAYROLL REPORTS.

Each handler, cooperative association, and member cooperative association shall report with respect to producers on or before the 22nd day of the month the handler's or association's producer payroll for the preceding month. The payroll must show for each eligible

producer the Minnesota producer premium payment rate, the total amount, in hundredweight, of milk to which the Minnesota producer premium payment rate applied, the dates of delivery of each amount of milk, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the amount of milk delivered by the eligible producer. All producer payroll information required by state or federal milk marketing orders must accompany the report under this part.

1535.4050 [Emergency] OTHER REPORTS.

A handler shall report to the commissioner, in the manner and on forms prescribed by the commissioner, additional information necessary to administer this program.

1535.4060 [Emergency] RECORDS AND FACILITIES.

A handler shall maintain and make available to the commissioner during the usual hours of business all records and facilities necessary to verify the data reported under parts 1535.4020 to 1535.4040 [Emergency].

1535.4100 [Emergency] BASIS OF CLASSIFICATION.

Milk required to be reported by a handler under part 1535.4020 [Emergency] must be classified each month under part 1535.4110 [Emergency]. If any of the water contained in the milk from which a product is made is removed before the product is used or disposed of by a handler, the pounds of skim milk used or disposed of in the product must be considered to be an amount equivalent to the nonfat milk solids contained in the products plus all the water originally associated with the solids.

1535.4110 [Emergency] CLASSES OF UTILIZATION.

Milk subject to classification by part 1535.4100 [Emergency] must be classified as Class I, Class II, or Class III according to the classification rules of the federal milk marketing order as interpreted by the market administrator of the federal milk marketing order.

1535.4120 [Emergency] APPLICABLE CLASS I MILK.

Applicable Class I milk must be calculated from the report filed by a handler under part 1535.4020 [Emergency] for a pool distributing or pool unregulated plant that processed Class I milk in the preceding month. Applicable Class I milk at a pool distributing plant or pool unregulated plant must be calculated by the commissioner under items A to C.

A. Add the total under part 1535.4020 [Emergency], subpart 1, items A and B.

B. Subtract the total Class I packaged receipts from other plants under part 1535.4020 [Emergency], subpart 1, item C.

C. The resulting difference represents the total amount of Class I applicable milk at the individual plant by hundredweight.

1535.4130 [Emergency] RESPONSIBILITIES OF HANDLERS AND RECLASSIFICATION OF MILK.

All milk received at a pool distributing plant or pool unregulated plant must be applicable Class I milk unless the handler satisfies the commissioner that the milk should be classified otherwise.

1535.4200 [Emergency] CLASS I MINNESOTA MINIMUM PRICE.

The Class I Minnesota minimum price is $13.20 per hundredweight, as required by *Minnesota Statutes*, section 32A.071.

1535.4210 [Emergency] CALCULATING THE CLASS I MINNESOTA PREMIUM.

The Class I Minnesota premium each month is the amount, if any, by which the Class I Minnesota minimum price exceeds the announced Class I price for the month in the federal milk marketing order. The Class I Minnesota premium must not be adjusted for location, butterfat, or any other component or service provided by the handler or cooperative association.

1535.4220 [Emergency] ANNOUNCEMENT OF CLASS I MINNESOTA PREMIUM.

On or before the fifth day of each month, the commissioner shall publicly announce the Class I Minnesota premium calculated under part 1535.4210 [Emergency] for the following month and notify Class I processors by telephone, facsimile, or first class mail of that premium.

1535.4230 [Emergency] CALCULATING MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall calculate the Minnesota producer premium payment rate each month according to items A to E.

A. Multiply the total hundredweight of applicable Class I milk reported to the commissioner, by the Class I Minnesota premium for the month.

B. Add an amount equal to not less than one-half of the unobligated balance of the equalization fund.

C. Divide the resulting amount by the total hundredweight of Minnesota eligible producer milk reported to the commissioner.

D. Subtract not less than one-half cent nor more than 1-1/2 cents per hundredweight.

E. The resulting price per hundredweight, in whole cents, is the Minnesota producer premium payment rate for the month.

1535.4240 [Emergency] ANNOUNCEMENT OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall publicly announce the Minnesota producer premium payment rate on or before the 16th day after the end of each month to which the Minnesota producer premium payment rate applies, and notify affected handlers by telephone, facsimile, or first class mail.

1535.4250 [Emergency] ADJUSTMENTS TO MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

Adjustments for butterfat or other milk components to the Minnesota producer premium payment rate announced under part 1535.4240 [Emergency] are not allowed.

1535.4260 [Emergency] EQUALIZATION FUND; FISCAL AGENT.

The commissioner shall designate a fiscal agent to create and maintain a separate account known as the "Minnesota Class I premium equalization fund," into which the fiscal agent shall deposit all payments made by handlers under parts 1535.4310 [Emergency], 1535.4320 [Emergency], and 1535.4370 [Emergency], and out of which, at the direction of the commissioner, the fiscal agent shall make all payments under part 1535.4330 [Emergency].

1535.4270 [Emergency] CARRYOVER OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall direct the fiscal agent to withhold payments from the equalization fund if the Minnesota producer premium payment rate is less than five cents per hundredweight. The commissioner shall direct the fiscal agent to hold the money in the equalization fund until the sum of the Minnesota producer premium payment rate from two or more months equals or exceeds five cents per hundredweight. If the sum of two or more months of the Minnesota producer premium payment rate equals or exceeds five cents per hundredweight, the commissioner shall direct the fiscal agent to pay out the total. The commissioner shall direct the fiscal agent to pay out the Minnesota producer premium payment rate for the month of June of each fiscal year and any accumulated money from previous months even if the accumulated Minnesota producer premium payment rate is less than five cents per hundredweight.

1535.4300 [Emergency] NET POOL OBLIGATION OF HANDLER THAT OPERATES POOL DISTRIBUTING PLANT OR POOL UNREGULATED PLANT.

The net pool obligation of a handler that operates a pool distributing plant or pool unregulated plant having applicable Class I pounds in the preceding month, must be computed according to items A to F.

A. Multiply the total hundredweights of applicable Class I milk by the Class I Minnesota premium established for the month by the commissioner.

B. Multiply the total hundredweights of eligible producer milk purchased by the handler times the Minnesota producer premium payment rate.

C. Deduct the total calculated in item B from the total calculated in item A.

D. If the total in item A exceeds the total in item B, the handler shall pay that amount into the equalization fund under part 1535.4310 [Emergency]. The commissioner shall direct the fiscal agent to issue invoices for payments from handlers.

E. If the total in item B exceeds the total in item A, the handler is due that amount from the equalization fund under part 1535.4330 [Emergency] subject to the limitations of part 1535.4270 [Emergency].

F. If a handler that operates a pool distributing plant or pool unregulated plant fails to file the report required under part 1535.4020 [Emergency], the commissioner shall estimate that handler's applicable Class I milk to calculate the handler's net pool obligation to the equalization fund. The commissioner shall direct the fiscal agent to issue a payment invoice based on this estimate.

1535.4310 [Emergency] PAYMENTS TO EQUALIZATION FUND.

A handler with an obligation to the equalization fund as calculated in part 1535.4300 [Emergency] shall, on or before the 17th day of each month, pay to the fiscal agent for payment to the equalization fund the amount of its net pool obligation for the preceding month.

1535.4320 [Emergency] PENALTY FOR LATE PAYMENT TO EQUALIZATION FUND.

A handler or cooperative association that has not made remittance for an obligation, calculated pursuant to part 1535.4300 [Emergency], by the close of business on the next business day following the date specified for the payment, is subject to a late payment penalty. The unpaid obligation must be increased one percent for each month and any remaining amount due must be increased at a similar rate on the corresponding day of each succeeding month until paid. The amounts payable under this part must be computed monthly on each unpaid obligation, which must include any unpaid charges previously made under this part. Any obligation that was determined at a date later than prescribed by the program because of a handler's failure to submit a report to the commissioner when due must be considered to have been payable by the date it would have been due if the report had been filed when due. Amounts received by the commissioner under this part must be deposited with the fiscal agent in the separate account established in part 1535.4260 [Emergency].

1535.4330 [Emergency] PAYMENTS OUT OF EQUALIZATION FUND.

On or before the 18th day of each month, the commissioner shall direct the fiscal agent to make payment out of the equalization fund to each handler who has purchased milk from eligible producers.

Prior to directing the issuance of payments from the equalization fund, the commissioner shall determine the total payments due under items A and B. If the balance in the equalization fund is insufficient to make the payments, the commissioner shall uniformly reduce the payments and direct the completion of the payments as soon as the necessary funds are available. Payments from the equalization fund must be directed by the commissioner according to items A and B.

A. For handlers that operate a pool distributing plant or pool unregulated plant and that are due payment, the commissioner shall direct the fiscal agent to make payment in the amount calculated in part 1535.4300 [Emergency], item E.

B. For handlers that purchased milk from Minnesota eligible producers during the preceding month and filed the report under part 1535.4030 [Emergency], the commissioner shall direct the fiscal agent to make payment in the amount calculated by multiplying the total hundredweights in part 1535.4030 [Emergency], subpart 1, item B, times the Minnesota producer premium payment rate per hundredweight.

1535.4340 [Emergency] PAYMENTS TO ELIGIBLE PRODUCERS AND MEMBER COOPERATIVE ASSOCIATIONS BY HANDLERS AND COOPERATIVE ASSOCIATIONS.

A handler or cooperative association shall make payment to each eligible producer or member cooperative association on or before the 20th day of each month for the preceding month at not less than the applicable Minnesota producer premium payment rate established under part 1535.4240 [Emergency]. Payments to an eligible producer or member cooperative association must be accompanied by a document specifying the Minnesota producer premium payment rate, the total hundredweights of milk to which the Minnesota producer premium payment rate applies, the dates of delivery to which the payments pertain, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the total hundredweights of milk delivered by the eligible producer.

1535.4350 [Emergency] PAYMENTS TO ELIGIBLE PRODUCERS BY MEMBER COOPERATIVE ASSOCIATIONS.

A member cooperative association that receives payment of the Minnesota producer premium from a handler shall distribute the payment to eligible producers on or before the 22nd day of each month for the preceding month at not less than the applicable Minnesota producer premium payment rate established under part 1535.4240 [Emergency]. Payments to an eligible producer must be accompanied by a document specifying the Minnesota producer premium payment rate, the total hundredweights of milk to which the Minnesota producer premium payment rate applies, the dates of delivery to which the payments pertain, and the amount paid to each eligible producer calculated by multiplying the Minnesota producer premium payment rate by the total hundredweights of milk delivered by the eligible producer.

1535.4360 [Emergency] ADJUSTMENTS FOR OVERCHARGES OF HANDLER OBLIGATIONS.

A. If a handler has reason to believe there has been an overcharge in the handler's obligation to the equalization fund, the handler shall submit documentation including, but not limited to, federal milk marketing order audit adjustment reports, original production invoices, and other documents required by the commissioner to verify the overcharge. The handler shall reimburse the commissioner for the additional audit expense to verify the overcharge. If verification discloses payment is due from the equalization fund to a handler, the commissioner shall direct the fiscal agent to make the payment to the handler.

B. If the commissioner is required to make payments to a handler according to the program, and an amount is due from the handler to the equalization fund, the commissioner may direct the fiscal agent to issue a credit to the handler for the amount of the payment instead of the payment.

1535.4370 [Emergency] ADJUSTMENTS FOR UNDERCHARGES ON HANDLER OBLIGATIONS.

If verification of reports or payments of a handler or cooperative association by the commissioner discloses an undercharge in the obligation of a handler or cooperative association to the equalization fund, the commissioner shall promptly bill the handler or cooperative association for any unpaid amount. The handler or cooperative association shall, within five days, make payment to the fiscal agent of the amount billed.

1535.4380 [Emergency] UNDERPAYMENT OF MINNESOTA PRODUCER PREMIUM PAYMENT RATE.

The commissioner shall verify that handlers, cooperative associations, and member cooperative associations correctly paid eligible producers or member cooperative associations for milk delivered that is entitled to receive the Minnesota producer premium payment rate. If the commissioner determines that the handler, cooperative association, or member cooperative association underpaid the Minnesota producer premium payment rate as required under part 1535.4340 [Emergency] or 1535.4350 [Emergency], it shall make up the payment to the eligible producer, cooperative association, or member cooperative association by the date of the next payment following disclosure of underpayment.

1535.4390 [Emergency] EVIDENCE OF REDUCTION IN OTHER PRODUCER PREMIUMS.

The commissioner shall monitor and review the level of other producer premiums paid by handlers, cooperative associations, and member cooperative associations to assure Minnesota eligible producers that the level of other producer premiums has not been lowered by the handler, cooperative association, or member cooperative association to offset the Minnesota producer premium payment rate. If the commissioner finds evidence of a reduction, the commissioner shall immediately direct the fiscal agent to suspend payments of the Minnesota producer premium payment rate to the handler, cooperative association, or member cooperative association.

1535.4395 [Emergency] EVIDENCE OF INCREASE IN HAULING RATE FROM FARM TO PLANT.

The commissioner shall monitor and review the rates charged to eligible producers for hauling their milk from farm to plant after the effective date of this program. If the commissioner finds a substantial increase or raising of rates without good cause shown, the commissioner shall immediately direct the fiscal agent to suspend payments of the Minnesota producer premium payment rate to the handler until the handler demonstrates good cause for the increase or reduces the hauling rate back to the rate charged prior to the increase.

1535.4396 [Emergency] HANDLER RESPONSIBILITY FOR RECORDS AND FACILITIES.

Subpart 1. **Requirement.** A handler shall maintain and retain records of the handler's operations and make the records available to the commissioner. If adequate records of a handler, or records of another person that are relevant to the obligation of the handler, are not maintained and made available, skim milk and butterfat required to be reported by the handler for which adequate records are not available must be considered accounted for or established as used in Class I.

Subp. 2. **Kinds of records.** A handler shall maintain the records in items A and B.

A. A handler shall maintain records of the handler's operations, including, but not limited to, records of purchases, sales, processing, packaging, and disposition, that are necessary to verify whether the handler has an obligation under this program, and, if so, the amount of the obligation. The records must establish for each plant or other receiving point for each month:

(1) the quantities of skim milk and butterfat contained in or represented by products received in any form, including inventories on hand at the beginning of the month according to form, time, and source of each receipt;

(2) the use of all skim milk and butterfat showing the respective quantities of the skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(3) payments to eligible producers, cooperative associations, and member cooperative associations, including:

(a) the amount and nature of any deductions and the disbursement of money deducted; and

(b) the amount of the Minnesota producer premium payment rate disbursed to each eligible producer for each month along with the total amount of milk by hundredweight, and the dates of delivery for the volume of milk to which the Minnesota producer premium payment rate applies.

B. A member cooperative association and a producer shall keep other specific records necessary to verify or establish the handler's obligation under the program.

Subp. 3. **Availability of records.** A handler shall make available to the commissioner all records pertaining to the handler's operations and allow access to all facilities during regular working hours or at other reasonable times to permit verification of the information required to be reported by the program or to ascertain the handler's reporting, monetary, or other obligation under the program.

Subp. 4. **Records retention.** Records reported to the commissioner must be retained by the handler for three years.

1535.4400 [Emergency] GENERAL AUTHORITY.

For purposes of the administration and enforcement of this program, the commissioner may examine the books and records of a regulated person, and for that purpose, the commissioner's properly designated employees or agents must be granted full access to the premises and records of all regulated persons.

1535.4520 [Emergency] LIQUIDATION.

If this program ends, the commissioner shall dispose of all funds received under this program, except funds collected to reimburse the department for handler audit as prescribed in part 1535.4360 [Emergency], in an equitable manner, together with claims for any funds unpaid and owing at the time of suspension of the program.

1535.4530 [Emergency] SEVERABILITY OF PROVISIONS.

If a part of this program is held invalid, the remaining parts of the program remain valid and in force and effect. If the application of a part of the program to a person or circumstance is held invalid, the application of that part and of the remaining parts of the program to other persons or circumstances is not affected.

1535.4540 [Emergency] AUTHORITY TO ENTER INTO AGREEMENTS TO REDUCE COSTS AND DUPLICATION.

The commissioner may enter into agreements with other state or federal agencies in the manner provided in the Agricultural Marketing Agreement Act of 1937, *United States Code*, title 7, section 610(i), as amended, to exchange information or services for the purposes of reducing regulatory burden and the cost of administration. The commissioner may reimburse other agencies for the reasonable cost of providing these services.

1535.4550 [Emergency] IMPACT OF CLASS I MINNESOTA MINIMUM.

The commissioner may hold a public meeting of the dairy industry to discuss the impact of the program on existing trade practices and commercial transactions. The commissioner shall report to the Minnesota house committee on agriculture and the senate committee on agriculture and rural affairs by summarizing, in writing, the information given by the dairy industry during the meeting.

1535.4560 [Emergency] INVESTIGATION.

Subpart 1. **Authority.** To carry out the commissioner's enforcement duties under parts 1535.4000 to 1535.4560 [Emergency], the commissioner may, upon presenting appropriate credentials, during regular working hours or at other reasonable times, inspect premises subject to the commissioner's enforcement for reasons related to the commissioner's enforcement authority and conduct routine or special audits of relevant papers and records, including business records.

Subp. 2. **Failure to comply.** The commissioner may administer oaths, take and cause to be taken depositions of witnesses, and issue subpoenas, and may petition the district court in the county in which a premises is located to compel compliance with subpoenas or to permit routine or special audits.

Department of Natural Resources

Adopted Emergency Game and Fish Rules; State Game Refuge and Camp Ripley Wildlife

Notice of Adoption of Rules

NOTICE IS HEREBY GIVEN that the above entitled proposed rules have been adopted through the process prescribed by *Minnesota Statutes*, section 14.29, subd. 4(b). The statutory authority for the contents of these rules is *Minnesota Statutes*, sections 97A.091, subp. 2, 97B.305, and 97B.311. The form, content, and adoption procedure for these rules have been approved by the Office of the Revisor of Statutes and the Minnesota Attorney General's Office.

Dated: 13 August 1992

Rodney W. Sando, Commissioner
Department of Natural Resources

ADOPTED EMERGENCY AMENDMENTS TO AND PARTIAL EMERGENCY REPEAL OF COMMISSIONER'S ORDER

6230.0400 SPECIAL PROVISIONS FOR STATE GAME REFUGES.

[For text of subpart 1, see 16 SR 2800]

Subp. 2. **Whitewater Game Refuge, Winona county.** ~~In~~ The Whitewater Game Refuge, Winona county, ~~a person who possesses an archery deer license or a Zone 3 firearms deer license may not hunt or trap during the dates when the license is valid, except by permit. The refuge may be entered to retrieve a deer shot outside the refuge only if no uncased firearm or bow is taken into the refuge. The refuge~~ is open to:

A. small game hunting, except waterfowl, by bow and arrow or firearms using fine shot or .22 caliber rimfire only;

B. trapping by permit; and

C. firearms deer hunting only by permit.

[For text of subps 3 to 7, see 16 SR 2800]

Subp. 8. [See repealer.]

Subp. 8a. **Clay County Game Refuge, Clay county.** The Clay County Game Refuge in Clay county is open to:

A. deer and bear hunting by firearms; and

B. deer and bear hunting by archery.

[For text of subps 9 to 13, see 16 SR 2800, 2801]

In the Matter of the Adoption of
the Rule of the State Department
Agriculture Governing Class I Milk

DECLARATION
OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.

Paul Strandberg
Special Assistant Attorney General

Dated: 10/12/92

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture

Dairy and Livestock Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Emergency Rules Governing State-Mandated Minimum Class I Milk Pricing

NOTICE IS HEREBY GIVEN that the State Department of Agriculture is seeking information or opinions from sources outside the department in preparing to propose adoption of emergency rules governing state-mandated minimum class I milk pricing. The adoption is authorized by *Laws of Minnesota* 1992, chapter 602, section 4, subd. 3, which requires the commissioner to adopt rules necessary to implement an over-order premium milk price for Minnesota dairy farmers.

The State Department of Agriculture requests information and opinions concerning the subject matter of the emergency rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Carol Milligan, Agriculture Planning Division, Minnesota Department of Agriculture, 90 West Plato Blvd., St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at (612) 296-6906 and in person at the above address.

All statements of information and opinions shall be accepted until June 26, 1992. Any written material received by the department shall become part of the rulemaking record to be submitted to the attorney general in the event that the rule is adopted.

Dated: 1 June 1992

R. Newell Searle
Deputy Commissioner

Cottonwood County Law Library

Notice of Filing Fees for the Cottonwood County Law Library

PURSUANT to *Minnesota Statute* 134A.10, the Cottonwood County Law Library Board of Trustees announces the Law Library fees to be collected in the District Court of Cottonwood County.

A. CIVIL MATTERS INCLUDING FAMILY COURT DIVISION)	
Plaintiff/Petitioner	$5.00
Defendant/Respondent/Interveners (jointly or separately)	5.00
B. PROBATE DIVISION	
Petitioner	5.00
C. CRIMINAL DIVISION (INCLUDING TRAFFIC)	
Defendants	5.00
D. CONCILIATION COURT	
Petitioner	5.00
Respondent	5.00

These fees shall be in effect from July 1, 1992 until changed.

L. Douglas Storey
Board of Trustees

Frank Jungas, Chairman
Board of Commissioners

Board of Dentistry

Notice of Solicitation of Outside Information or Opinions Regarding Existing Rule Amendment Governing Fees *Minnesota Rules*, part 3100.2000, subpart 2

NOTICE IS HEREBY GIVEN that the Minnesota Board of Dentistry is seeking information or opinions from sources outside the