

New York State Consolidated Laws

Agriculture & Markets

ARTICLE 4.

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§ 46. Declaration of policy. It is hereby declared that the dairy industry is a paramount industry of the state and the production, processing, packaging, distribution and sale of milk products has become an enterprise of vast economic importance to the state and of vital importance to the consuming public of the state, and which should be encouraged and promoted in the public interest. It is further declared that milk and milk products have long been accepted by the consuming public as wholesome and nutritious articles of food. Advances in food technology have resulted in the development of a variety of products for similar usage including dairy foods with different composition than products now defined as well as products made with vegetable oils and proteins from sources other than dairy products, products which are similar in appearance, odor, or taste to dairy products, and which are difficult to differentiate from dairy products. It is further declared to be in the interest of the dairy industry and the consuming public to promote and encourage the development of new and different dairy products with varying proportions of fat, solids and other ingredients, including wholesome ingredients not now permitted in dairy products but which may be used without restriction in non-dairy products which are similar in appearance, odor or taste to dairy products. It is also declared to be in the interest of the dairy industry and particularly in the interest of the consuming public, that to the fullest extent possible, there be uniformity of definitions and standards for milk and milk products and in the labeling of milk and milk products between the various states to the end that there may be free movement of milk and milk products between states, and further to the end that the inefficiency, needless expense, and confusion caused by differences in products sold under the same name, and differences in labeling of identical products may be eliminated.

§ 46-a. Regulations. The commissioner shall, after public hearing, promulgate definitions and standards for milk and milk products, and for products other than milk and milk products, which products are similar in appearance, odor or taste to milk and milk products, together with rules and regulations for the packaging and labeling of all such products, and other conditions relating to the manufacture, processing, packaging, distribution and sale of all such products including sanitation pertaining to manufacture, processing, handling, distribution, surroundings, grounds, equipment, personnel and pasteurization of such products. Such regulations shall apply to all sources including farms where such milk is produced. A copy of all such rules and regulations governing sanitation shall be provided to the state commissioner of health fifteen days prior to the public hearing. The commissioner is further empowered to promulgate rules and regulations by which milk may be standardized, including the plants at which such standardization may be done and may provide that standardization may be done only at plants which are duly licensed and specifically approved by the commissioner to perform such standardization. The commissioner may provide in such rules and regulations for different standards and labeling for products manufactured within the state and sold out of state.

§ 47. Care and feed of cows, and care and keeping of milk. No person shall keep cows, for the production of milk for market or for sale or exchange, or for manufacturing the milk or cream from the same into any article of food, in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings and no person shall keep such cows or the product therefrom in such condition or surroundings or in such places as shall cause or tend to cause the produce from such cows to be in an unclean, unhealthful or diseased condition, if the produce from such cows is to be sold, offered or exposed for sale upon the markets for consumption or to be manufactured into any food product, nor shall such cows or the produce therefrom be handled or cared for by any person suffering with or affected by an infectious or contagious disease, nor shall any such cows be fed on any substance that is in a state of putrefaction or fermentation, or upon any food that is unhealthful or that produces or may produce impure, unhealthful, diseased or unwholesome milk. But this section shall not be construed to prohibit the feeding of ensilage.

No person having milk in his possession for the purpose of selling the same for consumption as such or for manufacturing the same into butter, cheese, evaporated or condensed milk or other food shall keep the same in utensils, cans, vessels, rooms or buildings that are unclean or have insanitary surroundings or drainage or in any condition whatsoever that would tend to produce or promote conditions favorable to unhealthfulness or disease. The commissioner shall notify all persons violating this section to clean said utensils, cans, vessels, rooms or buildings or to so improve the sanitary conditions that the foregoing provisions will not be violated; and if such notice is complied with within ten days no presecution, civil or criminal, for a violation of this section shall be instituted.

§ 47-a. Regulating the handling and sale of products made from recovered milk fat and solids. Notwithstanding any other provisions of this chapter, it shall not be unlawful to recover milk fat and other milk solids

(a) from mixtures of milk and potable water produced in the operation of high-temperature short-time pasteurizers or

(b) from rinsings or drippings recovered from cans or equipment used in the handling of milk and milk products, provided such rinsings or drippings do not contain excessive foreign substance, or

(c) from whey

or to use such fat and such other milk solids in

(1) products in the manufacture of which milk fat, other milk solids and water are permitted ingredients, or

(2) in the manufacture of butter and skimmed milk powder (nonfat dry-milk solids).

The commissioner is hereby authorized to promulgate regulations governing the handling, manufacturing and marketing of such mixtures, rinsings, drippings and whey and the products made therefrom, and may prescribe standards for such products.

§ 48. Receptacles to be cleansed before returning; receptacles may be seized; evidence; violation. Whenever any can or receptacle is used for transporting or conveying milk, cream or curd to market for the purpose of selling or furnishing the same for consumption as human food, or for

manufacturing into human food, which can or receptacle, when emptied, is returned or intended to be returned to the person so selling, furnishing or shipping such substance to be again thus used, or which is liable to continued use in so transporting, conveying, selling or shipping such substance as aforesaid, the consumer, dealer or consignee using, selling or receiving the milk, cream or curd from such can or receptacle, shall, before so returning such can or receptacle remove all substances foreign to milk therefrom, by rinsing with water or otherwise. When any such milk, cream or curd is sold within any city of this state or shipped into any such city, the fact of such shipment or sale shall be prima facie evidence that the same was so shipped or sold for consumption as human food or to be manufactured into human food. When any such can or receptacle is returned or delivered or shipped to any person or creamery so selling such substance within, or shipping the same into such city, it shall be deemed that such can or receptacle is liable to such continued use in so selling or shipping such substance therein for consumption as human food within the meaning and purposes of this article. No person shall place or suffer to be placed in any such can or receptacle any sweepings, refuse, dirt, litter, garbage, filth or any other animal or vegetable substance, nor shall any such consignee or other person through himself, his agent or employee, bring or deliver to any person or railroad or other conveyance any such can or receptacle for the purpose of such return, or any milk, cream or curd can or receptacle for the purpose of delivery or shipment to any person or creamery engaged in so selling or shipping such substances for consumption as human food, which can or receptacle contains such foreign substance or which has not been rinsed as herein provided. The word "curd" as used in this article applies to the substance otherwise known as "pot cheese" or "cottage cheese." Whenever any such can or receptacle is used, returned, delivered or shipped in violation of this article every such use, return, delivery or shipment of each such can or receptacle shall be deemed a separate violation thereof. Such cans or receptacles so used, returned, delivered or shipped in violation of this article may be seized by the commissioner, his assistants or agents and held as evidence of such violation.

§ 49. Insanitary cans and receptacles condemned. All cans, or receptacles used in the sale of milk, cream or curd for consumption, or in transporting or shipping the same to market or the delivery thereof to purchasers for consumption as human food, when found by the commissioner or his assistants or agents to be in unfit condition to be so used by reason of being worn out, badly rusted, or with rusted inside surface, or unclean or insanitary or in such condition that they can not be rendered clean and sanitary by washing, and will tend to produce or promote in milk, cream or curd when contained therein, bad flavors, unclean or unwholesome conditions favorable to unhealthfulness or disease, shall be condemned by the commissioner or his assistants or agents. Every such can or receptacle when so condemned shall be marked by a stamp, impression or device, designed by the commissioner, showing that it has been so condemned, and when so condemned shall not thereafter be used by any person for the purpose of so selling, transporting or shipping milk, cream or curd.

§ 50-e. Legislative finding and declaration of policy. It is hereby declared that cream, half and half, milk and mixtures of milk and cream have long been accepted by the consuming public; recognized as wholesome

and nutritious articles of food, and their composition generally understood by consumers.

Advances in food technology have resulted in the development of a variety of products for similar usage including dairy foods of lower butterfat and blends made with vegetable oils and with proteins from sources other than dairy products; products which are so similar in appearance, odor and taste that they are difficult to differentiate from dairy products. It is further declared to be the purpose of this article to promote honesty and fair dealing in the interest of consumers, to insure fair competition with a highly regulated dairy industry which is of considerable economic importance to the economy of the state and to prevent confusion and deception in the sale of such foods by establishing definitions and standards of identity for such foods, and by providing for rules and regulations which will effect their orderly marketing and insure similar sanitary standards.

It is the further intent of the legislature, in view of the well known nutritional qualities of whole milk (including standardized milk) and other dairy products that the burden of proof of nutritional claims of products offered for sale to consumers which have the appearance, odor and taste of whole milk (including standardized milk) or other dairy products is placed on the persons or corporations offering the product or products for sale to consumers.

§ 50-f. Definitions and standards of identity. As used in this section the terms "melloream" or "a vegetable oil blend" mean any substance, mixture or compound regardless of the name by which it is represented, which contains vegetable fats or oils and proteins derived from animal or vegetable sources, and whose appearance, odor and taste is similar to cream, half and half, milk or a mixture of milk and cream, to the point of rendering these products difficult to differentiate from each other.

§ 50-g. Licenses to manufacturers of melloream. 1. No person shall engage in the manufacture or production of melloream in the state of New York or for sale or distribution in the state of New York unless duly licensed as provided in this article or unless licensed as a milk dealer pursuant to article twenty-one of the agriculture and markets law.

2. Application for a license shall be made upon a form prescribed by the commissioner and shall include such facts concerning the applicant's status and operations as are deemed necessary by the commissioner for administration of this article. A license shall be for a period not to exceed two years and a renewal of license must be duly made at least thirty days in advance of the expiration date. The license fee pursuant to this article for the license period for a person who is not otherwise licensed as a milk dealer pursuant to article twenty-one of the agriculture and markets law shall be fifty dollars for each manufactory, plant or place where melloream is manufactured or produced.

3. No license issued pursuant to this article to a manufacturer of melloream shall be denied or revoked unless the commissioner finds by a preponderance of evidence, after due notice and opportunity of a hearing to the applicant or licensee, that such person is not in compliance with or is in violation of any of the provisions of this article or regulations of the commissioner governing the manufacture and labeling of melloream.

§ 50-h. Entry, inspection and investigation. Any person designated for the purpose shall have access to and may enter at all reasonable hours

all places where melloream is being manufactured, packaged or stored for sale or distribution in the state of New York, where melloream is otherwise being handled or sold in the state of New York, or where the books, papers, records or documents relating to such transactions are kept, and shall have power to inspect and copy the same, and may administer oaths and take testimony for the purpose of ascertaining facts which in the judgment of the commissioner are necessary to administer this article. The commissioner may inspect a plant beyond the boundary of the state, and when he does, the applicant or licensee shall, prior to such inspection, agree to pay, in addition to the license fee provided pursuant to subdivision two of section fifty-g of this article, fees for the inspection of the plant by the commissioner or his representatives. Such fees shall be twenty-five dollars for each day consisting of seven hours or part thereof during which an employee of the commissioner spends traveling to and from and inspecting the plant. In addition the applicant or licensee shall agree to pay all necessary expenses including but not limited to expenses for traveling, lodging and meals. The commissioner may, if satisfied with the adequacy of inspection by some other regulatory agency, and if satisfied that there is substantial compliance with the regulations of the commissioner, forego actual inspection of such out-of-state plant or plants.

§ 50-i. Labeling of melloream and vegetable oil blends. Whenever the brand name of melloream or a vegetable oil blend, as defined in section fifty-f, appears on the container so conspicuously as to be seen under customary conditions of purchase, there shall immediately and conspicuously precede or follow the brand name or product designation without intervening written, printed or graphic matter in letters at least one-third of the size of the brand name and on a contrasting background, any one of the following statements: "melloream," "a vegetable blend," "a vegetable oil product," "not a dairy product," and the words "milk," "cream," "half and half," or "a mixture of milk and cream" shall not be used on the package label of melloream or vegetable oil blends except to the extent that there shall also appear on the label an accurate list of ingredients. In the event that a product under this section shall contain an ingredient which has been derived from milk or a milk by-product or during its formation has used milk or a milk by-product, the ingredient labeling shall after specifying the name of the ingredient, place in parentheses the words "milk derived".

Persons or corporations offering such products for sale shall upon request by the commissioner submit to him evidence in support of any nutritional claims made for such products through advertising, labeling or public announcement, and failure to submit such evidence or to revise such claims in the manner suggested by the commissioner shall be presumed to be a misbranding of said products within the meaning of section two hundred one of this chapter.

§ 50-j. Serving melloream, vegetable oil blends and cream in restaurants and other public eating places. Whenever melloream, a vegetable oil blend, cream, half and half, milk or a mixture of milk and cream is served in a restaurant, hotel, boarding house, lunch counter, place of entertainment, public eating place or any establishment where food is sold for consumption on the premises, the name of the product served should be clearly stated by label, sign or menu statement in a

manner likely to be read by the customer.

§ 50-k. Rules and regulations. The commissioner shall from time to time, after inquiry and public hearing, promulgate and adopt rules and regulations to supplement and give full effect to the provisions of section fifty-e. Such rules and regulations shall establish sanitary regulations pertaining to the manufacture, packing and distribution of melloream and vegetable oil blends, including the sanitary condition of buildings, ground, and equipment where melloream and vegetable oil blends are manufactured and the sanitary condition of the ingredients and of the persons in direct physical contact with melloream and vegetable oil blends during manufacture. Such sanitary rules and regulations shall be equal to those established for dairy products.

§ 51. Milk inspection. The commissioner or his agent, in inspecting milk for the purpose of analysis to determine the percentage of fat or other milk solids, shall take duplicate samples thereof and shall seal both samples, and shall tender, and, if accepted, deliver one sample to the person from whom the milk was taken. When samples are taken from the producer of the milk sampled or his agent, at a place other than the dairy where the milk was produced, the commissioner or his agent shall within ten days thereafter, with the consent of the producer, take duplicate samples of the mixed milk of the herd of cows from which the milk first sampled was drawn, and shall deliver one such sample to the producer or his agent and shall submit the other to analysis. If upon analysis it proves to contain no higher percentage of milk solids, or no higher percentage of fat, or has no lower freezing temperature than the sample first taken, then no action shall lie against the producer for violation of standards as established by the commissioner pursuant to the provisions of section forty-six-a. If the producer refuses to allow such herd sample to be taken, then the producer shall be precluded from offering any evidence that the milk from which the first sample was taken was just as it came from the cow. Where a sample of milk taken by the commissioner or his agent consists of the entire contents of a container unopened at the time of taking, no duplicate need be taken or tendered or delivered.

§ 52. Presumptions in regard to cream and skim milk. When cream is separated or skimmed from milk at any station or establishment where milk is received from producers for the purpose of selling the same or shipping the same to market for consumption as food and the supply of milk on hand thereat at the time of the next regular daily shipment of milk therefrom, consisting of the total amount of milk in such shipment, together with that remaining on hand immediately after such shipment, is not thereby decreased or correspondingly less than the total quantity received during any period extending from some point of time before such skimming was done until the time of such shipment, together with the amount of milk on hand at the commencement of such period, and such decrease is not equal in amount to the quantity of milk that must have been used in so separating such cream in addition to the quantity otherwise there used or disposed of during such period, such fact is conclusive that skim milk or other foreign substance was added to such milk supply within such period and shall be presumptive evidence within the meaning of this section that the same was added to each can or

vessel of milk in such shipment. When cream or skim milk is found to have been on the premises of any such station or establishment or is sold or shipped therefrom, such cream or skim milk so found or so sold or shipped therefrom shall be presumed to have been produced by separating or skimming at such station or establishment. In any action or proceeding relative to the adulteration of milk by removing cream therefrom or adding skim milk or other foreign substance thereto, it shall be presumed that when cream has been produced by so skimming or separating or butter has been manufactured, there was made at least five quarts of milk in the production of each quart of cream so produced and there was necessarily so produced thereby at least four quarts of skim milk to each quart of cream so produced, and that there was used at least nine quarts of milk in the production of each pound of butter so manufactured.

§ 54. Regulations in regard to manufactories, plants or places where milk or cream is brought or received. No person shall sell, supply or bring to any butter or cheese factory or to any plant or place which manufactures a food product from milk or which ships or sells milk for consumption any milk diluted with water, or any unclean, impure, unhealthy, adulterated or unwholesome milk, or milk from which any of the cream has been taken, except pure skim milk to skim-cheese factories. No person shall sell, supply or bring to be manufactured to any butter or cheese factory or to any plant or place which manufactures a food product from milk or which ships or sells milk for consumption any milk that is sour or from which has been kept back any part of the milk commonly known as strippings, except pure skim milk to skim-cheese factories. The owner or proprietor or the person having charge of any such manufactory, plant or place where milk is received for any such purpose, not buying all the milk used by him, shall not use for his own benefit, or allow any of his employees or any other person to use for his own benefit, any milk, cream, butter or cheese or any other product thereof, brought to such factory, without the consent of the owners of such milk or the products thereof. Every such manufactory, plant or place not buying all the milk used, shall keep a correct account of all the milk or cream daily received, of the number of packages of butter and cheese made each day, and the number of packages and aggregate weight of cheese and butter disposed of each day; which account shall be open to inspection to any person who delivers milk to such manufactory, plant or place. Every purchaser or receiver of milk from the producer thereof, for manufacturing purposes or for reselling the same, shall on written request therefor, tender daily thereafter at time of delivery to such producer, or to the person delivering such milk to such purchaser in behalf of such producer, a written statement of the amount of milk so received or purchased until or unless such producer notifies such purchaser in writing that he no longer desires such statement; such statement shall give, first, the name of the producer or seller, second, the date of delivery, third, the amount so delivered, fourth, shall be signed by the purchaser or his duly authorized representative; such statement shall be given in the terms of the unit used as a basis for determining the value thereof. Such purchaser or receiver shall, at each periodical time of payment for such milk, give each such producer, so delivering milk, a statement showing the amount of milk delivered during the periodical time for which payment is made, and the average per centum of butter fat test of same, provided payment is made on basis of butter fat content.

Any person having charge of a milk gathering station or establishment as aforesaid shall keep a true and correct monthly record of the receipts of milk or other dairy products received at such station or establishment, and also a true and correct monthly record of all sales or shipments of milk, cream or other dairy products shipped or sold from such station or establishment, and shall also keep a true and correct monthly record of the amount of skim milk produced in such station or establishment and of the disposition of said skim milk. Such record shall be preserved at such station or establishment for at least two years after the same shall have been made and such records shall at all times be open to the inspection of the commissioner, his assistants or agents. When cream is sold or shipped from any such station or establishment so selling or shipping milk for consumption as aforesaid, each original bottle or package of one quart or less of cream so shipped or sold shall bear a label securely attached to the side of such bottle or package on which shall be conspicuously printed the word "cream" in black letters of at least one-fourth of an inch in length or else the word "cream" shall be blown in the side of such bottle in plain raised letters of at least one-half an inch in length, and the top and side of each and every other original package or can containing cream or original crate or case containing bottles of cream so shipped or sold shall bear a label securely attached on which shall be conspicuously printed the word "cream" in black letters of at least one inch in length and also a plainly written or printed statement on the label stating from whom and what station the same is shipped and the name of the consignee and point of destination and date on which the cream therein was produced by such separation or skimming. The shipment of each and every such original package of cream so shipped and not so labeled as herein required shall constitute a separate violation.

§ 55. Skimmed milk, whey, buttermilk or milk container or plant equipment rinsings to be heated before being used for feeding. Any person operating any butter factory, cheese factory or other milk plant, before delivering to any person any skimmed milk, whey, buttermilk or milk container or plant equipment rinsings, to be used for the feeding of domestic animals, shall cause such by-product to be uniformly heated to a temperature of not less than one hundred and forty-three degrees Fahrenheit and held at such temperature for at least thirty minutes, or to be uniformly heated to a temperature of one hundred and seventy degrees. No such by-product shall be used for the feeding of domestic animals until heated as provided herein.

§ 56. Determination of the content of milk and/or cream where purchase or settlement therefor is made on the basis of such content. 1. The commissioner shall, after public hearing, prescribe, by rules and regulations, the methods, equipment, and procedures, including the calibration and use of electronic equipment, which shall be used in determining the percentage of the components of milk and/or cream where the result of such determination is to be used wholly, or in part, as a basis for payment or settlement for such milk and/or cream, or where the proceeds of co-operative creameries or such milk-receiving or manufacturing plants are allotted on the basis of the determination of a component or components of milk, or where the result of such test is used for the purpose of official inspection or for public record.

2. Whenever the amount of a milk component or components contained in milk and/or cream is used wholly or in part as a basis for payment or settlement for such milk and/or cream, or whenever such component, or

components, of milk and/or cream are made a matter of public record or official inspection, no person or persons shall report or record a greater or lesser percentage or average percentage of such milk component than is actually contained in such milk and/or cream. The commissioner or persons employed by him for that purpose may at any time inspect the equipment and assist in making tests of milk and/or cream received at any milk-receiving or manufacturing plant or other place of testing for the purpose of determining the accuracy of tests so made.

3. Any person or persons using other than the method, equipment and procedures prescribed by the commissioner pursuant to this section, or crediting any patron delivering milk and/or cream with a greater or lesser percentage or average percentage of a milk component than is actually contained in such milk and/or cream so delivered and as determined by such prescribed method or methods shall be deemed to have violated the provisions of this chapter.

4. For the purposes of this article, components of milk or cream shall include non-fat solids, milk fat, protein, lactose and total solids contained in milk or cream.

§ 56-a. Taking of composite sample; record of tests. Corporations, associations or persons buying milk and/or cream from producers of milk and/or cream to be paid for on the basis of the percentage of a component or components of such milk or cream and taking samples therefrom to form a composite sample to be tested periodically to determine its value on such basis, shall, at the request of the producer, or of his agent designated in writing, take such samples in duplicate and subject them to the same treatment. At the end of the period for which the composite samples were taken, such corporation, association or person shall tender same to the producer thereof, or to his authorized agent, and give such producer, or his authorized agent, the choice of one of the two composite samples so taken. Such producer, or his authorized agent, may send such duplicate composite sample, properly marked for identification of the component or components upon which payment or settlement for the milk is based and with the producer's name and post office address, to the New York State food laboratory of the department within three days from the receipt thereof. Such laboratory shall cause such sample to be tested for the per centum of such component or components contained therein, and shall cause a report of such test to be sent to the producer or to his authorized agent, from whom it was received within ten days thereof, or as soon thereafter as possible. Persons testing composite samples of milk and/or cream taken from milk or cream bought or received from producers, where the value thereof is determined by the percentage of a component or components contained in such milk or cream, shall preserve intact the remaining portion of the sample from which the test was made, and in the case of milk keep the same for at least ten days and in the case of cream keep the same for at least one day after the making of such test, for the purpose of permitting the commissioner or his duly authorized representative to examine and test the same. Whenever a producer shall designate in writing his authorized agent, the period for which such authorization shall be in effect shall be stated and the time or times when such duplicate composite sample or samples shall be tendered to the authorized agent. The corporation, association or person buying such milk and/or cream shall permit the authorized agent to collect the samples so chosen.

Persons making such tests of samples of milk and/or cream so purchased or received shall, immediately after such tests are completed, prepare a

list containing the names or numbers of the producers whose milk and/or cream was so tested, and place opposite each such producer's name or number the percentage of each component or components, upon which payment or settlement is based, found to have been contained in the sample of milk and/or cream representing the milk and/or cream delivered by each such producer. Such lists so prepared shall be made with indelible pencil or permanent ink and shall be filed in the plant or place where such milk and/or cream is bought or received, and each such list shall be duly signed by the person making such tests and preparing such lists, and such person shall place beneath his signature the number of the state license under which he is testing.

All such lists shall be kept as a record for at least one year and shall be open to examination at all times by the commissioner or his duly authorized representative. At any time, upon request of any producer, or his authorized agent, the purchaser or receiver of such milk and/or cream shall permit such producer to examine such part of said record as contains information concerning the samples of milk and/or cream representing the milk and/or cream delivered by such producer. Every such purchaser or receiver of milk and/or cream from the producer thereof shall, on written request therefor, made by the producer or by his authorized agent, mail or deliver to the producer or his authorized agent, at each time thereafter when such list is made a written statement of the percentage of the component or components, upon which payment or settlement was based, found to have been contained in the sample or samples representing the milk and/or cream delivered by such producer. Without the written permission of the commissioner, no sample of milk and/or cream so tested by the purchaser or his representative shall be tested at a plant or place other than the one where received, nor without such permission shall any such sample of milk be removed from any such plant or place where tested within ten days from the date of testing, nor shall any such sample of cream be removed therefrom within one day from such date of testing.

§ 56-b. Determination of bacteria in milk and/or cream where purchase or settlement is made therefor on the basis of bacterial count. In milk-receiving or manufacturing plants and other places using methods approved by the commissioner for determining the bacterial count in milk and/or cream, where the result of such determination is to be used wholly or in part as a basis for payment or settlement for such milk or cream, or where the proceeds of co-operative creameries or such milk-receiving or manufacturing plants are allotted on the basis of the bacterial count, no pipette or syringe shall be used in such determination unless the same has been legibly and indelibly marked with the letters "N. Y." by the commissioner or by his duly authorized representative. No such pipette or syringe shall be so marked unless it has been found upon examination to be so constructed and graduated as to deliver accurately the amount of liquid required for the determination. The provisions of this article, however, shall not preclude the use of a pipette already marked "S. B." or "N. Y.", by the director of the New York state agricultural experiment station.

Whenever the bacterial count of such milk and/or cream is used wholly or in part as a basis for payment or settlement for such milk and/or cream, or whenever the bacterial count affects the classification of the milk and/or cream as received from the producer, or the acceptance or rejection of such milk and/or cream by the operator of a milk-receiving or manufacturing plant, no person or persons shall report or record a larger or smaller bacterial count than that obtained by the actual

examination of the milk and/or cream so delivered by the producer. The commissioner or persons employed by him for that purpose may at any time inspect the equipment and assist in making bacterial counts of milk and/or cream received at any milk-receiving or manufacturing plant or other place where counts are made for the purpose of determining the accuracy of the counts so made.

Any person or persons using other than the properly marked pipettes or syringes or crediting any patron delivering milk and/or cream with a larger or smaller bacterial count than that obtained by the actual count of the bacteria in the milk and/or cream so delivered and as determined by the method or methods approved by the commissioner shall be deemed to have violated the provisions of the agriculture and markets law.

§ 57. Licensing of persons in charge of milk-gathering stations, manufactories or plants; licensing of persons sampling milk and/or cream and/or determining weight or volume of milk and/or cream; and of persons making milk component tests. 1. No person shall take charge, either as superintendent, manager or otherwise, of any milk-gathering station, manufactory or plant where milk and/or cream is received from producers for sale or resale or for manufacture, unless licensed by the commissioner.

2. No person shall measure, weigh, or otherwise determine the volume or weight of milk and/or cream received from or offered for sale by the producer thereof or sample such milk and/or cream, or handle, or prepare such milk and/or cream samples when such samples are to be used for the purpose of determining the amount of a milk component or components contained therein, and/or to determine the bacterial count thereof, or for any other purpose where the result of such test or examination is used as a basis for payment for such milk and/or cream, for the classification of such milk and/or cream, for the rejection or acceptance of such milk and/or cream, or for official inspection, or for public record, unless licensed by the commissioner provided, however, that the provisions of this section shall not be deemed to apply to any person employed by the state department of health or any municipal department of health in New York state when performing his official duties for such health agency. Such license shall be designated as a "milk receiver's license."

3. No person shall prepare or test milk and/or cream samples by any method, for the purpose of determining the amount of any milk component contained therein, where the result of such test is used as a basis for payment for such milk and/or cream, or for official inspection or for public record, unless licensed by the commissioner.

4. Application for a license, or licenses shall be made upon a form prescribed by the commissioner. The applicant shall furnish satisfactory evidence of good moral character, and shall give proof of his ability to perform the functions for which a license is applied, to the satisfaction of the commissioner. The applicant shall pay a license fee of five dollars to the commissioner for remittance to the state treasury. The commissioner, in his discretion, may combine in one license authority to perform any of the functions for which a license is required pursuant to the provisions of subdivisions one, two and three of this section. A license shall be for a period not exceeding five years, and may be renewed, in the discretion of the commissioner, for successive periods of not exceeding five years each upon payment of a license fee of two dollars to the commissioner for remittance to the state treasury.

Each license shall be kept at the place where the licensee is employed

and shall be open to inspection.

A license may be revoked by the commissioner, after a hearing upon due notice to the licensee, for false statement in the application, dishonesty, incompetency, inaccuracy or a violation of the provisions of this article, and a license to take charge of a milk-gathering station, manufactory or plant may also be revoked for dishonesty, incompetency, inaccuracy, or a violation of the provisions of this article by any person working under the direction of the licensee and subject to his orders.

§ 57-a. Licensing of persons making bacterial counts of milk and/or cream or making tests of milk and/or cream to detect certain abnormalities. No person shall test milk and/or cream in order to determine the bacterial or leucocyte count or make other tests to determine the presence or absence of abnormal milk, where the results of such test affects the rate of payment to the producer for such milk and/or cream, the classification of milk and/or cream as received from the producer, or the acceptance or rejection of such milk and/or cream by the operator of a milk-receiving or manufacturing plant, unless licensed by the commissioner. Application for such license shall be made upon a form prescribed by the commissioner. The applicant shall furnish satisfactory evidence of good moral character, and shall demonstrate his ability to make such tests by an examination under the direction of the commissioner. The applicant shall pay a license fee of five dollars to the commissioner for remittance to the state treasury. A license shall be for a period not exceeding five years. A license may be renewed in the discretion of the commissioner, without an examination, for successive periods of not exceeding five years each upon payment of a license fee of two dollars to the commissioner for remittance to the state treasury.

Each license shall be kept at the place where the licensee is engaged in testing milk and/or cream and shall be open to inspection.

A license may be revoked by the commissioner, after a hearing upon due notice to the licensee, for dishonesty, incompetency, inaccuracy or a violation of the provisions of this article.

§ 59. Powers of the department concerning oleomargarine. The department through the commissioner shall have power and it shall be its duty to:

1. Investigate, inspect and supervise the sale and exposure for sale of oleomargarine for home consumption.
2. Investigate, inspect and supervise the sale and serving in public eating places of oleomargarine.
3. Make and enforce reasonable rules and regulations implementing the provisions of this chapter relating to the manufacture, production and sale of oleomargarine.

Nothing contained in this section shall be deemed or construed to limit in any way the effect of any other provision of this chapter conferring a power or imposing a duty upon the department or the commissioner.

§ 61. Manufacture, sale, and use of oleomargarine. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

- (a) "Person" means any person, firm, corporation, copartnership, association, co-operative corporation, or unincorporated co-operative

association.

(b) "Oleomargarine" or "margarine" means any oleaginous substance, sold or exposed for sale, as a substitute for, or to take the place of, or used for the same purpose or purposes as butter, or having the appearance, odor, or taste which is similar to butter, and which is not made exclusively of milk or cream, or any substance into which any oil or fat other than that obtained from milk or cream has been introduced to take the place of butterfat. The terms include oleomargarine of any shade or color.

(c) "Public eating place" means any hotel, boarding house, restaurant, saloon, lunch counter, place of public entertainment or any other place where prepared or cooked food is offered for sale to the public for consumption on the premises. When a hotel or other establishment operates more than one public eating place, each such place shall be deemed to be a separate public eating place. It shall be deemed to include camps, dude ranches, and other similar establishments operated for profit even though restricted to a certain age, or other distinctive group, but shall not be deemed to include religious, charitable or private camps.

2. Fat standard. Oleomargarine manufactured, sold, offered or exposed for sale shall contain not less than eighty per centum of fat.

3. Notice to consumers. Consumers shall be given notice of the use of oleomargarine in public eating places under the following conditions and in the following manners.

(a) If oleomargarine is served directly to the customer or is placed on the table or counter where the customer is served notice of such serving shall be given.

(b) If oleomargarine is served in such a manner that the customer cannot identify it, notice of such serving shall be given, provided, however, that use of oleomargarine in preparation of cooked or other foods, in which the identity of the oleomargarine is lost, shall not require notice.

(c) Form of notice. Notice shall be given in such a manner that it is likely to be seen and understood by each person being served. If the public eating place is such that a single sign can be readily seen by each person being served, such sign shall be sufficient; otherwise notice shall be given by signs so located that one can be seen by each customer, or by notice on menus given to each customer.

(d) Wording of notice. If oleomargarine is served on the tables or counters where customers are served, the notice shall read as, "Oleomargarine served here" or "margarine served here", provided, however, that if the oleomargarine is not served or used in any other manner notice may be given by a label on or accompanying the oleomargarine and identifying it as such. If oleomargarine is served in other ways, the notice shall be the same as hereinabove provided, or may specify the food or foods with which the oleomargarine is served.

4. Rules and regulations. The commissioner is authorized, after due notice and hearing, to issue such rules and regulations as are necessary to carry out the provisions of this section.

§ 62. Coloring matter, dairy terms, size of package, labeling, false advertising. No person, manufacturing with intent to sell, any substance or article to be used as a substitute for cheese and which is not made exclusively from unadulterated milk or cream or both, with or without salt or rennet or both but into which any animal, intestinal or offal fats, or any oils or fats or oleaginous substance of any kind not produced from pure, unadulterated milk or cream, or into which melted

butter, or butter in any condition or state or any modification of the same, or lard or tallow shall be introduced, shall add thereto or combine therewith any annatto or compounds of the same, or any other substance or substances whatever, for the purpose or with the effect of imparting thereto a color resembling yellow, or any shade of yellow cheese, nor introduce any such coloring matter or other substance into any of the articles of which the same is composed. No person manufacturing, selling or offering for sale any oleaginous substance not made from pure milk or cream from the same, designed to take the place of butter, shall make or sell the same under any brand, device or label bearing words indicative of cows or the product of the dairy or the names of breeds of cows or cattle, nor use terms indicative of processes in the dairy in making or preparing butter; no oleaginous substance not made from pure milk or cream from the same, designed to take the place of butter, shall hereafter be sold, offered or exposed for sale in this state unless

(1) such substance is packaged,

(2) the net weight of the contents of any package thereof sold in a retail establishment is one pound or less,

(3) there appears on the label of the package (a) the word "oleomargarine" or "margarine" in type or lettering at least as large as any lettering on such label, (b) a statement of the net weight of the contents of the package, and (c) a full and accurate statement of the ingredients contained in such substance, and

(4) each part of the contents of the package is contained in a wrapper which bears the words "oleomargarine" or "margarine" in type or lettering not smaller than twenty point type.

No person, firm, association or corporation shall, in connection or association with the sale or exposure for sale, advertisement, or on the package, of any substance designed to be used as a substitute for butter, represent or suggest by any means whatever that such substance is a dairy product, except that nothing herein contained shall prevent an accurate statement of any of the ingredients contained in such substance.

§ 63. Labeling of imitation cheese; imitation cheese food and products containing imitation cheese. 1. Whenever the brand name or product designation of imitation cheese or imitation cheese food appears on a package, the brand name or product designation, whichever is larger, shall be immediately preceded, without intervening printed or graphic material by the word imitation and the name of the food imitated, in letters of the same color and on the same contrasting background and of equal size as the brand name or product designation, whichever is larger.

2. On the label of any product containing imitation cheese or imitation cheese food, the product designation shall be immediately preceded or followed by the words "contains imitation cheese" or "contains imitation cheese food" whichever is appropriate, in letters of the same color and on the same contrasting background and of equal size as the product designation.

3. Whenever imitation cheese or imitation cheese food is used in a product which is offered for sale for carry out or on premises consumption, a sign shall be prominently posted at the place of sale which states the product designation of the food followed immediately by the words "contains imitation cheese" or "contains imitation cheese food," whichever is appropriate. The letters on such sign shall be in block letters at least three inches in height and on a contrasting

background which can be easily read by consumers under normal conditions of purchase.

4. Whenever any product which contains imitation cheese or imitation cheese food product is offered for sale on the menu of any service food establishment, the product designation on such menu shall be immediately followed by the words "contains imitation cheese" or "contains imitation cheese food", whichever is appropriate, in letters of equal size and on a contrasting background.

5. Whenever any imitation cheese or imitation cheese food product is placed on the tables or otherwise made available for use by customers in any service food establishment, the container of such product shall be conspicuously labeled "imitation cheese", or "imitation cheese food product".

6. The commissioner shall promulgate such rules and regulations as are necessary and appropriate to carry out the provisions of this section, including specific identification of imitation cheese and imitation cheese food.

§ 67. Manufacturers identification markings and grade brands for cheese. 1. Every manufacturer of cheddar type cheese made in New York state shall put a stencil, brand, stamp or label upon such cheese indicating the variety of cheese as prescribed pursuant to rules and regulations promulgated by the commissioner pursuant to section forty-six-a; and no person shall use such markings upon any cheese which has not been manufactured under sanitary conditions as set forth in article four of this chapter and in accordance with the rules and regulations of the commissioner. The commissioner shall procure and issue on proper application therefor, and under such regulations as to the custody and use thereof as he may prescribe, a uniform stencil, brand, stamp or label bearing the words "cheddar cheese," "washed curd cheese" or "colby cheese," and a different number assigned by the commissioner for each separate factory to any manufacturer of cheese in New York state licensed by the commissioner. Every such stencil, brand, stamp or label shall be used upon the outside of the cheese and shall not be used upon any other than cheddar, washed curd or colby cheese or packages containing the same. It shall be unlawful for any person to use a cheese identification stencil, brand, stamp or label supplied by the commissioner as herein provided, to mark such cheese which does not conform to standards established by the commissioner pursuant to section forty-six-a. Every whole and uncut cheddar type cheese bearing the numbered identification stencil, brand, stamp or label markings herein provided shall be deemed to be in compliance with the provisions of subdivision five, section two hundred one of the agriculture and markets law.

2. Every manufacturer of New York state cheddar type cheese, or his registered agent as provided herein, may put a state brand stamp or stencil issued by the commissioner upon such cheese manufactured in New York state which meets the requirements of the highest grade for New York state cheese. Such requirements shall be established by the commissioner. Such state brand stamp or stencil issued by the commissioner shall have markings at least one-half inch high, reading on a first line "grade" and on a second line "New York state brand," enclosed within a miniature map of New York state and with the letters "NYS" superimposed thereon. Every such state brand stamp or stencil shall bear a different number for each manufacturer.

3. Every manufacturer of New York state cheddar type cheese, or his registered agent as provided herein, may put a New York standard stamp

or stencil upon such cheese manufactured in New York state which meets the requirements of the second highest grade for cheese. Such requirements shall be established by the commissioner. Such New York standard stamp or stencil shall be issued by the commissioner and shall have markings at least one-half inch high, reading on a first line "grade" and on a second line "New York standard," and shall bear a different number for each manufacturer, but no map of New York state shall be a part of this stamp or stencil.

4. No person shall by means of any stencil, brand, stamp, label or other device use identification or grade markings which are similar to those provided pursuant to subdivisions one, two, and three of this section, unless authorized by the commissioner to do so.

5. The commissioner shall keep a record in which shall be registered the name and location of each manufacturer to whom such identification markings are issued as provided in subdivision one of this section, and the name and location of each manufacturer and his designated agent to whom grade markings are issued as provided in subdivisions two and three of this section. Whenever evidence is found or received by the commissioner tending to show that the grade-designating stamps or stencils, as provided in subdivisions two and three of this section, have been used to mark cheese which does not meet the requirements of grade for which it is marked, he may order the custodian of such grade markings to immediately discontinue use thereof and return such stamps or stencils to the commissioner; and it is further provided that the commissioner may order the removal or obliteration of such grade markings as provided herein from the cheese which does not meet the grade represented and as established by the commissioner. The custodian to whom such a grade marking device or devices has been issued, and the use of which has been revoked, or who possesses or has possessed cheese from which grade marks have been ordered obliterated, shall, upon request, be granted a hearing before the commissioner or his designated agent, and at such hearing, said custodian may present evidence to show why use of such device or devices should be restored to him and obliterated grade marks on cheese should be replaced. The commissioner may promulgate rules and regulation pertaining to the use of the New York state identifications and grade markings issued by him as provided in this section.

§ 67-b. Pasteurization of cheese. No person manufacturing cheese or cheese curd or handling cheese or cheese curd as a wholesaler, assembler or broker in the state of New York and no person obtaining cheese from outside the state shall release any cheese or cheese curd to the retail trade or to consumers unless such cheese or cheese curd has been pasteurized or has been made from whole milk, skim milk or cream which has been pasteurized in accordance with rules and regulations promulgated by the commissioner after inquiry and public hearing; except that cheese cured for sixty days or longer after manufacture may be made from unpasteurized milk.

§ 68. Use of false brand prohibited. No person shall offer, sell or expose for sale, in any package, butter or cheese which is falsely branded or labeled.

§ 69. County trade marks. At a regular or special meeting of a county dairymen's association in any county of the state there may be adopted a county trade mark, by a majority of the members present and voting, to be used as a trade mark by a person manufacturing pure unadulterated

butter or full-cream cheese in such county. The secretary of the association shall forthwith send to the commissioner a copy of such trade mark, which copy he shall place on file in his office, noting thereupon the day and hour he received the same. But one county trade mark for butter and for cheese shall be placed on file for the same county. No association shall adopt any trade mark of any county already on file, or use that of any other county in the formation of a trade mark.

§ 70. Branded cans, jars, bottles, cases, boxes or barrels not to be sold, remarked or used without consent of owner. No person shall hereafter without the consent of the owner use, sell, dispose of, buy or traffic in any milk can, jar or bottle, or any cream can, jar or bottle, or any milk bottle case, or any meat case, box or barrel having the name or initials of the owner stamped, marked or fastened on such can, jar, bottle, box, barrel or case, or wilfully mar, erase or change by remarking or otherwise said name or initials of any such owner, so stamped, marked or fastened upon said can, jar, bottle, box, barrel or case. Nor shall any person without the consent of the owner place in any such can, jar or bottle, any substance or product other than milk or cream.

§ 71. Registration of mark; defacing mark; seizure. Any person owning milk cans, jars, bottles, bottle cases or carton cases upon which he has placed or desires to place any designating mark may register the said designating mark with the commissioner, who shall keep a record thereof, and he may also register with the commissioner, from time to time, the number of such cans, jars, bottles, bottle cases or carton cases, which he has or is to have, which do or may bear such designating mark. Such cans, jars, bottles, bottle cases or carton cases may, after such registration be numbered consecutively and such consecutive numbers may be registered in the department, as above provided, with the designating mark. If any such can, jar, bottle, bottle case or carton case, bearing such designating mark, shall be found in possession of, and being used by any person other than the one so registering the same it shall be presumptive evidence of a violation of the provisions of this article, unless such person has the consent of the owner thereof to so have and use the same.

No person, except the original owner thereof, or a person duly authorized by him so to do, shall remove, deface or erase any of the marks upon the cans, jars, bottles, bottle cases or carton cases herein provided for.

When the commissioner, or any person duly authorized by him, shall find any such cans, jars, bottles, bottle cases or carton cases, bearing such registered designating mark, in the possession of or being used by another person than the owner thereof, he may seize the same, and if evidence is produced in three days showing that such person had been given permission to have or use such cans, jars, bottles, bottle cases or carton cases, then they shall be delivered by the commissioner, or his agents, to the person from whom taken, otherwise the commissioner shall notify the owner of such cans, jars, bottles, bottle cases or carton cases, that he has the same and upon application deliver the same to such owner.